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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 2800

(By Delegates Beach, Kelley, Prunty,  
Heck, Riggs, Doggs and Evans)



Passed March 10, 1998

In Effect Ninety Days from Passage

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# H. B. 2800

(BY DELEGATES BEACH, KELLEY, PRUNTY,  
HECK, RIGGS, BOGGS AND EVANS)

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AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-c, relating to the southern dairy compact; declaring purpose, policy and findings; creating definitions; establishing a commission to implement and enforce the compact; setting forth voting requirements for compact pricing orders; establishing commission administrative powers including the right to borrow, acquisition of real and/or personal property, investigatory powers; permitting rulemaking powers; providing for milk pricing orders; authorizing the examination of books and records of regulated persons; establishing criminal penalty for disclosure of confidential information not to exceed fine of \$1000 and/or confinement of one year; providing for subpoena powers; establishing civil penalties for violation of commission orders; financing the commission by assessment of milk handlers; establishing judicial enforcement jurisdiction with respective states or federal district; setting forth accounting procedures; providing for the enactment of compact effective only after approval by three regional states and U. S. Congress; providing for withdrawal from compact; permitting the commissioner of agriculture to administer compact for West Virginia; and authorizing the commissioner of agriculture to appoint state delegation.

*Be it enacted by the Legislature of West Virginia:*

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-c, to read as follows:

**ARTICLE 11C. SOUTHERN DAIRY COMPACT.**

**§19-11C-1. Enactment of compact.**

1       The southern dairy compact is hereby entered into on  
2   behalf of the state of West Virginia. The southern dairy  
3   compact shall become effective when enacted into law by  
4   a majority of the states within the compact group of states  
5   and when the consent of Congress has been obtained. The  
6   full text of the southern dairy compact is as follows:

**SOUTHERN DAIRY COMPACT**

**ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND  
DECLARATION OF POLICY.**

**§1. STATEMENT OF PURPOSE, FINDINGS AND  
DECLARATION OF POLICY.**

1       The purpose of this compact is to recognize the  
2   interstate character of the southern dairy industry and the  
3   prerogative of the states under the United States  
4   Constitution to form an interstate commission for the  
5   southern region. The mission of the commission is to take  
6   such steps as are necessary to assure the continued  
7   viability of dairy farming in the south, and to assure  
8   consumers of an adequate, local supply of pure and  
9   wholesome milk.

10       The participating states find and declare that the dairy  
11   industry is an essential agricultural activity of the south.  
12   Dairy farms, and associated suppliers, marketers,  
13   processors and retailers, are an integral component of the  
14   region's economy. Their ability to provide a stable, local  
15   supply of pure, wholesome milk is a matter of great  
16   importance to the health and welfare of the region.

17       The participating states further find that dairy farms  
18   are essential and they are an integral part of the region's

19 rural communities. The farms preserve land for  
20 agricultural purposes and provide needed economic  
21 stimuli for rural communities.

22 By entering into this compact, the participating states  
23 affirm that their ability to regulate the price which  
24 southern dairy farmers receive for their product is  
25 essential to the public interest. Assurance of a fair and  
26 equitable price for dairy farmers ensures their ability to  
27 provide milk to the market and the vitality of the southern  
28 dairy industry, with all the associated benefits.

29 Recent, dramatic price fluctuations, with a pronounced  
30 downward trend, threaten the viability and stability of the  
31 southern dairy region. Historically, individual state  
32 regulatory action had been an effective emergency  
33 remedy available to farmers confronting a distressed  
34 market. The federal order system, implemented by the  
35 Agricultural Marketing Agreement Act of 1937,  
36 establishes only minimum prices paid to producers for raw  
37 milk, without preempting the power of states to regulate  
38 milk prices above the minimum levels so established.

39 In today's regional dairy marketplace, cooperative,  
40 rather than individual state action is needed to more  
41 effectively address the market disarray. Under our  
42 constitutional system, properly authorized states acting  
43 cooperatively may exercise more power to regulate  
44 interstate commerce than they may assert individually  
45 without such authority. For this reason, the participating  
46 states invoke their authority to act in common agreement,  
47 with the consent of Congress, under the compact clause of  
48 the Constitution.

49 In establishing their constitutional regulatory authority  
50 over the region's fluid milk market by this compact, the  
51 participating states declare their purpose that this compact  
52 neither displace the federal order system nor encourage  
53 the merging of federal orders. Specific provisions of the  
54 compact itself set forth this basic principle.

55 Designed as a flexible mechanism able to adjust to  
56 changes in a regulated marketplace, the compact also  
57 contains a contingency provision should the federal order

58 system be discontinued. In that event, the interstate  
59 commission is authorized to regulate the marketplace in  
60 replacement of the order system. This contingent  
61 authority does not anticipate such a change, however, and  
62 should not be so construed. It is only provided should  
63 developments in the market other than establishment of  
64 this compact result in discontinuance of the order system.

## ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION.

### §2. DEFINITIONS.

1 For the purposes of this compact, and of any  
2 supplemental or concurring legislation enacted pursuant  
3 thereto, except as may be otherwise required by the  
4 context:

5 (a) "Class I milk" means milk disposed of in fluid  
6 form or as a fluid milk product, subject to further  
7 definition in accordance with the principles expressed in  
8 subdivision (b) of section three.

9 (b) "Commission" means the Southern Dairy  
10 Compact Commission established by this compact.

11 (c) "Commission marketing order" means  
12 regulations adopted by the commission pursuant to  
13 sections nine and ten of this compact in place of a  
14 terminated federal marketing order or state dairy  
15 regulation. Such order may apply throughout the region  
16 or in any part or parts thereof as defined in the regulations  
17 of the commission. Such order may establish minimum  
18 prices for any or all classes of milk.

19 (d) "Compact" means this interstate compact.

20 (e) "Compact over-order price" means a minimum  
21 price required to be paid to producers for Class I milk  
22 established by the commission in regulations adopted  
23 pursuant to sections nine and ten of this compact, which is  
24 above the price established in federal marketing orders or  
25 by state farm price regulation in the regulated area. Such  
26 price may apply throughout the region or in any part or  
27 parts thereof as defined in the regulations of the  
28 commission.

29 (f) "Milk" means the lacteal secretion of cows and  
30 includes all skim, butterfat, or other constituents obtained  
31 from separation or any other process. The term is used in  
32 its broadest sense and may be further defined by the  
33 commission for regulatory purposes.

34 (g) "Partially regulated plant" means a milk plant not  
35 located in a regulated area but having Class I distribution  
36 within such area. Commission regulations may exempt  
37 plants having such distribution or receipts in amounts less  
38 than the limits defined therein.

39 (h) "Participating state" means a state which has  
40 become a party to this compact by the enactment of  
41 concurring legislation.

42 (i) "Pool plant" means any milk plant located in a  
43 regulated area.

44 (j) "Region" means the territorial limits of the states  
45 which are parties to this compact.

46 (k) "Regulated area" means any area within the  
47 region governed by and defined in regulations  
48 establishing a compact over-order price or commission  
49 marketing order.

50 (l) "State dairy regulation" means any state  
51 regulation of dairy prices, and associated assessments,  
52 whether by statute, marketing order or otherwise.

### §3. RULES OF CONSTRUCTION.

1 (a) This compact shall not be construed to displace  
2 existing federal milk marketing orders or state dairy  
3 regulation in the region but to supplement them. In the  
4 event some or all federal orders in the region are  
5 discontinued, the compact shall be construed to provide  
6 the commission the option to replace them with one or  
7 more commission marketing orders pursuant to this  
8 compact.

9 (b) This compact shall be construed liberally in order  
10 to achieve the purposes and intent enunciated in section  
11 one. It is the intent of this compact to establish a basic  
12 structure by which the commission may achieve those

13 purposes through the application, adaptation and  
14 development of the regulatory techniques historically  
15 associated with milk marketing and to afford the  
16 commission broad flexibility to devise regulatory  
17 mechanisms to achieve the purposes of this compact. In  
18 accordance with this intent, the technical terms which are  
19 associated with market order regulation and which have  
20 acquired commonly understood general meanings are not  
21 defined herein but the commission may further define the  
22 terms used in this compact and develop additional  
23 concepts and define additional terms as it may find  
24 appropriate to achieve its purposes.

#### **ARTICLE III. COMMISSION ESTABLISHED.**

##### **§4. COMMISSION ESTABLISHED.**

1       There is hereby created a commission to administer  
2 the compact, composed of delegations from each state in  
3 the region. The commission shall be known as the  
4 Southern Dairy Compact Commission. A delegation shall  
5 include not less than three or more than five persons.  
6 Each delegation shall include at least one dairy farmer  
7 who is engaged in the production of milk at the time of  
8 appointment or reappointment, and one consumer  
9 representative. Delegation members shall be residents and  
10 voters of, and subject to such confirmation process as is  
11 provided for in, the appointing state. Delegation members  
12 shall serve no more than three consecutive terms with no  
13 single term of more than four years, and be subject to  
14 removal for cause. In all other respects, delegation  
15 members shall serve in accordance with the laws of the  
16 state represented. The compensation, if any, of the  
17 members of a state delegation shall be determined and  
18 paid by each state, but their expenses shall be paid by the  
19 commission.

##### **§5. VOTING REQUIREMENTS.**

1       All actions taken by the commission, except for the  
2 establishment or termination of an over-order price or  
3 commission marketing order, and the adoption,  
4 amendment or rescission of the commission's bylaws,  
5 shall be by majority vote of the delegations present. Each

6 state delegation shall be entitled to one vote in the conduct  
7 of the commission's affairs. Establishment or termination  
8 of an over-order price or commission marketing order  
9 shall require at least a two-thirds vote of the delegations  
10 present. The establishment of a regulated area which  
11 covers all or part of a participating state shall require also  
12 the affirmative vote of that state's delegation. A majority  
13 of the delegations from the participating states shall  
14 constitute a quorum for the conduct of the commission's  
15 business.

#### **§6. ADMINISTRATION AND MANAGEMENT.**

1 (a) The commission shall elect annually from among  
2 the members of the participating state delegations a  
3 chairperson, a vice-chairperson, and a treasurer. The  
4 commission shall appoint an executive director and fix his  
5 or her duties and compensation. The executive director  
6 shall serve at the pleasure of the commission and, together  
7 with the treasurer, shall be bonded in an amount  
8 determined by the commission. The commission may  
9 establish through its bylaws an executive committee  
10 composed of one member elected by each delegation.

11 (b) The commission shall adopt bylaws for the  
12 conduct of its business by a two-thirds vote, and shall have  
13 the power by the same vote to amend and rescind these  
14 bylaws. The commission shall publish its bylaws in  
15 convenient form with the appropriate agency or officer in  
16 each of the participating states. The bylaws shall provide  
17 for appropriate notice to the delegations of all commission  
18 meetings and hearings and of the business to be transacted  
19 at such meetings or hearings. Notice also shall be given to  
20 other agencies or officers of participating states as  
21 provided by the laws of those states.

22 (c) The commission shall file an annual report with  
23 the Secretary of Agriculture of the United States, and with  
24 each of the participating states by submitting copies to the  
25 governor, both houses of the Legislature, and the head of  
26 the state department having responsibilities for agriculture.



27 (d) In addition to the powers and duties elsewhere  
28 prescribed in this compact, the commission shall have the  
29 power:

30 (1) To sue and be sued in any state or federal court;

31 (2) To have a seal and alter the same at pleasure;

32 (3) To acquire, hold and dispose of real and personal  
33 property by gift, purchase, lease, license or other similar  
34 manner, for its corporate purposes;

35 (4) To borrow money and to issue notes, to provide  
36 for the rights of the holders thereof and to pledge the  
37 revenue of the commission as security therefore, subject to  
38 the provisions of section eighteen of this compact;

39 (5) To appoint such officers, agents and employees as  
40 it may deem necessary, prescribe their powers, duties and  
41 qualifications; and

42 (6) To create and abolish such offices, employments  
43 and positions as it deems necessary for the purpose of the  
44 compact and provide for the removal, term, tenure,  
45 compensation, fringe benefits, pension and retirement  
46 rights of its officers and employees. The commission may  
47 also retain personal services on a contract basis.

#### **§7. RULEMAKING POWER.**

1 In addition to the power to promulgate a compact  
2 over-order price or commission marketing orders as  
3 provided by this compact, the commission is further  
4 empowered to make and enforce such additional rules and  
5 regulations as it deems necessary to implement any  
6 provisions of this compact, or to effectuate in any other  
7 respect the purpose of this compact.

#### **ARTICLE IV. POWERS OF THE COMMISSION.**

#### **§8. POWERS TO PROMOTE REGULATORY UNIFORMITY, SIMPLICITY AND INTERSTATE COOPERATION.**

1 The commission is hereby empowered to:

2 (a) Investigate or provide for investigations or research  
3 projects designed to review the existing laws and  
4 regulations of the participating states, to consider their  
5 administration and costs, to measure their impact on the  
6 production and marketing of milk and their effects on the  
7 shipment of milk and milk products within the region.

8 (b) Study and recommend to the participating states  
9 joint or cooperative programs for the administration of the  
10 dairy marketing laws and regulations and to prepare  
11 estimates of cost savings and benefits of such programs.

12 (c) Encourage the harmonious relationships between  
13 the various elements in the industry for the solution of  
14 their material problems. Conduct symposia or  
15 conferences designed to improve industry relations, or a  
16 better understanding of problems.

17 (d) Prepare and release periodic reports on activities  
18 and results of the commission's efforts to the participating  
19 states.

20 (e) Review the existing marketing system for milk and  
21 milk products and recommend changes in the existing  
22 structure for assembly and distribution of milk which may  
23 assist, improve or promote more efficient assembly and  
24 distribution of milk.

25 (f) Investigate costs and charges for producing,  
26 hauling, handling, processing, distributing, selling and for  
27 all other services performed with respect to milk.

28 (g) Examine current economic forces affecting  
29 producers, probable trends in production and  
30 consumption, the level of dairy farm prices in relation to  
31 costs, the financial conditions of dairy farmers and the  
32 need for an emergency order to relieve critical conditions  
33 on dairy farms.

## **§9. EQUITABLE FARM PRICES.**

1 (a) The powers granted in this section and section ten  
2 shall apply only to the establishment of a compact over-  
3 order price, so long as federal milk marketing orders  
4 remain in effect in the region. In the event that any or all

5 such orders are terminated, this article shall authorize the  
6 commission to establish one or more commission  
7 marketing orders, as herein provided, in the region or  
8 parts thereof as defined in the order.

9 (b) A compact over-order price established pursuant  
10 to this section shall apply only to Class I milk. Such  
11 compact over-order price shall not exceed one dollar and  
12 fifty cents per gallon at Atlanta, GA; however, this  
13 compact over-order price shall be adjusted upward or  
14 downward at other locations in the region to reflect  
15 differences in minimum federal order prices. Beginning  
16 in one thousand nine hundred ninety, and using that year  
17 as a base, the foregoing one dollar fifty cents per gallon  
18 maximum shall be adjusted annually by the rate of change  
19 in the Consumer Price Index as reported by the Bureau of  
20 Labor Statistics of the United States Department of Labor.  
21 For purposes of the pooling and equalization of an over-  
22 order price, the value of milk used in other use  
23 classifications shall be calculated at the appropriate class  
24 price established pursuant to the applicable federal order  
25 or state dairy regulation and the value of unregulated milk  
26 shall be calculated in relation to the nearest prevailing  
27 class price in accordance with and subject to such  
28 adjustments as the commission may prescribe in  
29 regulations.

30 (c) A commission marketing order shall apply to all  
31 classes and uses of milk.

32 (d) The commission is hereby empowered to establish  
33 a compact over-order price for milk to be paid by pool  
34 plants and partially regulated plants. The commission is  
35 also empowered to establish a compact over-order price to  
36 be paid by all other handlers receiving milk from  
37 producers located in a regulated area. This price shall be  
38 established either as a compact over-order price or by one  
39 or more commission marketing orders. Whenever such a  
40 price has been established by either type of regulation, the  
41 legal obligation to pay such price shall be determined  
42 solely by the terms and purposes of the regulation without  
43 regard to the status of the transfer of title, possession or  
44 any other factors not related to the purposes of the

45 regulation and this compact. Producer-handlers as  
46 defined in an applicable federal market order shall not be  
47 subject to a compact over-order price. The commission  
48 shall provide for similar treatment of producer-handlers  
49 under commission marketing orders.

50 (e) In determining the price, the commission shall  
51 consider the balance between production and  
52 consumption of milk and milk products in the regulated  
53 area, the costs of production including, but not limited to,  
54 the price of feed, the cost of labor including the  
55 reasonable value of the producer's own labor and  
56 management, machinery expense, and interest expense, the  
57 prevailing price for milk outside the regulated area, the  
58 purchasing power of the public and the price necessary to  
59 yield a reasonable return to the producer and distributor.

60 (f) When establishing a compact over-order price, the  
61 commission shall take such other action as is necessary  
62 and feasible to help ensure that the over-order price does  
63 not cause or compensate producers so as to generate local  
64 production of milk in excess of those quantities necessary  
65 to assure consumers of an adequate supply for fluid  
66 purposes.

67 (g) The commission shall whenever possible enter into  
68 agreements with the state or federal agencies for exchange  
69 of information or services for the purpose of reducing  
70 regulatory burden and cost of administering the compact.  
71 The commission may reimburse other agencies for the  
72 reasonable cost of providing these services.

#### **§10. OPTIONAL PROVISIONS FOR PRICING ORDER.**

1 Regulations establishing a compact over-order price or  
2 a commission marketing order may contain, but shall not  
3 be limited to, any of the following:

4 (1) Provisions classifying milk in accordance with the  
5 form in which or purpose for which it is used, or creating  
6 a fault pricing program;

7 (2) With respect to a commission marketing order  
8 only, provisions establishing or providing a method for  
9 establishing separate minimum prices for each use

10 classification prescribed by the commission, or a single  
11 minimum price for milk purchased from producers or  
12 associations of producers;

13 (3) With respect to an over-order minimum price  
14 provisions establishing or providing a method for  
15 establishing such minimum price for Class I milk;

16 (4) Provisions for establishing either an over-order  
17 price or a commission marketing order may make use of  
18 any reasonable method for establishing such price or  
19 prices including flat pricing and formula pricing.  
20 Provision may also be made for location adjustments, zone  
21 differentials and for competitive credits with respect to  
22 regulated handlers who market outside the regulated area.

23 (5) Provisions for the payment to all producers and  
24 associations of producers delivering milk to all handlers of  
25 uniform prices for all milk so delivered, irrespective of the  
26 uses made of such milk by the individual handler to whom  
27 it is delivered, or for the payment of producers delivering  
28 milk to the same handler or uniform prices for all milk  
29 delivered by them.

30 (a) With respect to regulations establishing a compact  
31 over-order price, the commission may establish one  
32 equalization pool within the regulated area for the sole  
33 purpose of equalizing returns to producers throughout the  
34 regulated area.

35 (b) With respect to any commission marketing order,  
36 as defined in section two, subdivision nine, which replaces  
37 one or more terminated federal orders or state dairy  
38 regulation, the marketing area of now separate state or  
39 federal orders shall not be merged without its delegation,  
40 which is partly or wholly included within any such new  
41 marketing area.

42 (6) Provisions requiring persons who bring Class I  
43 milk into the regulated area to make compensatory  
44 payments with respect to all such milk to the extent  
45 necessary to equalize the cost of milk purchased by  
46 handlers subject to a compact over-order price or  
47 commission marketing order. No such provisions shall

48 discriminate against milk producers outside the regulated  
49 area. The provisions for compensatory payments may  
50 require to be paid for such milk in the state of production  
51 by a federal milk marketing order or state dairy regulation  
52 and the Class I price established by the compact over-  
53 order price or commission marketing order.

54 (7) Provisions specially governing the pricing and  
55 pooling of milk handled by partially required plants.

56 (8) Provisions requiring that the account of any  
57 person regulated under the compact over-order price shall  
58 be adjusted for any payments made to or received by such  
59 persons with respect to a producer settlement fund of any  
60 federal or state milk marketing order or other state dairy  
61 regulation within the regulated area.

62 (9) Provisions requiring the payment by handlers of  
63 an assessment to cover the costs of the administration and  
64 enforcement of such order pursuant to Article VII, Section  
65 18(a).

66 (10) Provisions for reimbursement to participants of  
67 the Women, Infants and Children Special Supplement  
68 Food Program of the United States Child Nutrition Act of  
69 1966.

70 (11) Other provisions and requirements as the  
71 commission may find are necessary or appropriate to  
72 effectuate the purposes of this compact and to provide for  
73 the payment of fair and equitable minimum prices to  
74 producers.

#### ARTICLE V. RULE-MAKING PROCEDURE.

##### §11. RULE-MAKING PROCEDURE.

1 Before promulgation of any regulations establishing a  
2 compact over-order price or commission marketing order,  
3 including any provision with respect to milk supply under  
4 subsection 9(f), or amendment thereof, as provided in  
5 Article IV, the commission shall conduct an informal rule-  
6 making proceeding to provide interested persons with an  
7 opportunity to present data and views. Such rule-making  
8 proceeding shall be governed by section four of the

9 Federal Administrative Procedure Act, as amended (5  
10 U.S.C. §553). In addition, the commission shall, to the  
11 extent practicable, publish notice of rule-making  
12 proceedings in the official register of each participating  
13 state. Before the initial adoption of regulations  
14 establishing a compact over-order price or a commission  
15 marketing order and thereafter before any amendment  
16 with regard to prices or assessments, the commission shall  
17 hold a public hearing. The commission may commence a  
18 rule-making proceeding on its own initiative or may in its  
19 sole discretion act upon the petition of any person  
20 including individual milk producers, any organization of  
21 milk producers or handlers, general farm organizations,  
22 consumer or public interest groups, and local, state or  
23 federal officials.

## §12. FINDINGS AND REFERENDUM.

1 (a) In addition to the concise general statement of  
2 basis and purpose required by section 4(b) of the Federal  
3 Administrative Procedure Act, as amended (5 U.S.C.  
4 §553(c)), the commission shall make findings of fact with  
5 respect to:

6 (1) Whether the public interest will be served by the  
7 establishment of minimum milk prices to dairy farmers  
8 under Article IV;

9 (2) What level or prices will assure that producers  
10 receive a price sufficient to cover their costs of production  
11 and will elicit an adequate supply of milk for the  
12 inhabitants of the regulated area and for manufacturing  
13 purposes;

14 (3) Whether the major provisions of the order, other  
15 than those fixing minimum milk prices, are in the public  
16 interest and are reasonably designed to achieve the  
17 purposes of the order;

18 (4) Whether the terms of the proposed regional order  
19 or amendment are approved by producers as provided in  
20 section thirteen.

## §13. PRODUCER REFERENDUM.

1 (a) For the purpose of ascertaining whether the  
2 issuance or amendment of regulations establishing a  
3 compact over-order price or a commission marketing  
4 order, including any provision with respect to milk supply  
5 under subsection 9(f), is approved by producers, the  
6 commission shall conduct a referendum among  
7 producers. The referendum shall be held in a timely  
8 manner, as determined by regulation of the commission.  
9 The terms and conditions of the proposed order or  
10 amendment shall be described by the commission in the  
11 ballot used in the conduct of the referendum, but the  
12 nature, content, or extent of such description shall not be a  
13 basis for attacking the legality of the order or any action  
14 relating thereto.

15 (b) An order or amendment shall be deemed approved  
16 by producers if the commission determines that it is  
17 approved by at least two thirds of the voting producers  
18 who, during a representative period determined by the  
19 commission, have been engaged in the production of milk  
20 the price of which would be regulated under the proposed  
21 order of amendment.

22 (c) For purposes of any referendum, the commission  
23 shall consider the approval or disapproval by any  
24 cooperative association of producers, qualified under the  
25 provisions of the Act of Congress of February 18, 1922, as  
26 amended, known as the Capper-Volstead Act, bona fide  
27 engaged in marketing milk, or in rendering services for  
28 or advancing the interests of producers of such  
29 commodity as the approval or disapproval of the  
30 producers who are members or stockholders in, or under  
31 contract with, such cooperative association of producers,  
32 except as provided in subdivision (1) hereof and subject to  
33 the provision of subdivisions (2) through (5) hereof.

34 (1) No cooperative which has been formed to act as a  
35 common marketing agency for both cooperatives and  
36 individual producers shall be qualified to block vote for  
37 either.

38 (2) Any cooperative which is qualified to block vote  
39 shall, before submitting its approval or disapproval in any  
40 referendum, give prior written notice to each of its



41 members as to whether and how it intends to cast its vote.  
42 The notice shall be given in a timely manner as  
43 established, and in the form prescribed, by the  
44 commission.

45 (3) Any producer may obtain a ballot from the  
46 commission in order to register approval or disapproval of  
47 the proposed order.

48 (4) A producer who is a member of a cooperative  
49 which has provided notice of its intent to approve or not to  
50 approve a proposed order, and who obtains a ballot and  
51 with such ballot expresses his approval or disapproval of  
52 the proposed order, shall notify the commission as to the  
53 name of the cooperative of which he or she is a member,  
54 and the commission shall remove such producer's name  
55 from the list certified by such cooperative with its  
56 corporate vote.

57 (5) In order to insure that all milk producers are  
58 informed regarding a proposed order, the commission  
59 shall notify all milk producers that an order is being  
60 considered and that each producer may register his  
61 approval or disapproval with the commission either  
62 directly or through his or her cooperative.

#### **§14. TERMINATION OF OVER-ORDER PRICE OR MARKETING ORDER.**

1 (a) The commission shall terminate any regulations  
2 establishing an over-order price or commission marketing  
3 order issued under this article whenever it finds that such  
4 order or price obstructs or does not tend to effectuate the  
5 declared policy of this compact.

6 (b) The commission shall terminate any regulations  
7 establishing an over-order price or a commission  
8 marketing order issued under this article whenever it finds  
9 that such termination is favored by a majority of the  
10 producers who, during a representative period determined  
11 by the commission, have been engaged in the production  
12 of milk the price of which is regulated by such order; but  
13 such termination shall be effective only if announced on

14 or before such date as may be specified in such marketing  
15 agreement or order.

16 (c) The termination or suspension of any order or  
17 provision thereof, shall not be considered an order within  
18 the meaning of this article and shall require no hearing,  
19 but shall comply with the requirements for informal rule-  
20 making prescribed by section four of the Federal  
21 Administrative Procedure Act, as amended (5 U.S.C.  
22 §553).

#### ARTICLE VI. ENFORCEMENT.

##### **§15. RECORDS, REPORTS, ACCESS TO PREMISES.**

1 (a) The commission may by rule and regulation  
2 prescribe recordkeeping and reporting requirements for  
3 all regulated persons. For purposes of the administration  
4 and enforcement of this compact, the commission is  
5 authorized to examine the books and records of any  
6 regulated person relating to his or her milk business and  
7 for that purpose, the commission's properly designated  
8 officers, employees or agents shall have full access during  
9 normal business hours to the premises and records of all  
10 regulated persons.

11 (b) Information furnished to or acquired by the  
12 commission officers, employees or its agents pursuant to  
13 this section shall be confidential and not subject to  
14 disclosure except to the extent that the commission deems  
15 disclosure to be necessary in any administrative or judicial  
16 proceeding involving the administration or enforcement  
17 of this compact, an over-order price, a compact marketing  
18 order or other regulations of the commission. The  
19 commission may promulgate regulations further defining  
20 the confidentiality of information pursuant to this section.  
21 Nothing in this section shall be deemed to prohibit: (i)  
22 The issuance of general statements based upon the reports  
23 of a number of handlers, which do not identify the  
24 information furnished by any person; or (ii) the  
25 publication by direction of the commission of the name of  
26 any person violating any regulation of the commission,  
27 together with a statement of the particular provisions  
28 violated by such person.

29 (c) No officer, employee or agent of the commission  
30 shall intentionally disclose information, by inference or  
31 otherwise, which is made confidential pursuant to this  
32 section. Any person violating the provisions of this  
33 section shall, upon conviction, be subject to a fine of not  
34 more than \$1,000 or to imprisonment for not more than  
35 one year, or to both, and shall be removed from office.  
36 The commission shall refer any allegation of a violation of  
37 this section to the appropriate state enforcement authority  
38 or United States Attorney.

**§16. SUBPOENA, HEARINGS AND JUDICIAL REVIEW.**

1 (a) The commission is hereby authorized and  
2 empowered by its members and its properly designated  
3 officers to administer oaths and issue subpoenas  
4 throughout all signatory states to compel the attendance of  
5 witnesses and the giving of testimony and the production  
6 of other evidence.

7 (b) Any handler subject to an order may file a written  
8 petition with the commission stating that any such order or  
9 any provision of any such order or any obligation  
10 imposed in connection therewith is not in accordance with  
11 law and praying for a modification thereof or to be  
12 exempted therefrom. He shall thereupon be given an  
13 opportunity for a hearing upon such petition, in  
14 accordance with regulations made by the commission.  
15 After such hearing, the commission shall make a ruling  
16 upon the prayer of such petition which shall be final, if in  
17 accordance with law.

18 (c) The district courts or the United States in any  
19 district in which such handler is an inhabitant, or has his  
20 principal place of business, are hereby vested with  
21 jurisdiction to review such ruling, provided a complaint  
22 for that purpose is filed within thirty days from the date of  
23 the entry of such ruling. Service of process in such  
24 proceedings may be had upon the commission by  
25 delivering to it a copy of the complaint. If the court  
26 determines that such ruling is not in accordance with law,  
27 it shall remand such proceedings to the commission with  
28 directions either: (1) To make such ruling as the court  
29 shall determine to be in accordance with law, or (2) To

30 take such further proceedings as, in its opinion, the law  
31 requires. The pendency of proceedings instituted  
32 pursuant to this subdivision shall not impede, hinder or  
33 delay the commission from obtaining relief pursuant to  
34 section seventeen. Any proceedings brought pursuant to  
35 section seventeen, except where brought by way of  
36 counterclaim in proceedings instituted pursuant to this  
37 section, shall abate whenever a final decree has been  
38 rendered in proceedings between the same parties, and  
39 covering the same subject matter, instituted pursuant to  
40 this section.

**§17. ENFORCEMENT WITH RESPECT TO HANDLERS.**

1 (a) Any violation by a handler of the provisions of  
2 regulations establishing an over-order price or a  
3 commission marketing order, or other regulations adopted  
4 pursuant to this compact shall:

5 (1) Constitute a violation of the laws of each of the  
6 signatory states. Such violation shall render the violator  
7 subject to a civil penalty in an amount as may be  
8 prescribed by the laws of each of the participating states,  
9 recoverable in any state or federal court of competent  
10 jurisdiction. Each day such violation continues shall  
11 constitute a separate violation;

12 (2) Constitute grounds for the revocation of license or  
13 permit to engage in the milk business under the applicable  
14 laws of the participating states.

15 (b) With respect to handlers, the commission shall  
16 enforce the provision of this compact, regulations  
17 establishing an over-order price, a commission marketing  
18 order or other regulations adopted hereunder by:

19 (1) Commencing an action for legal or equitable relief  
20 brought in the name of the commission in any state or  
21 federal court of competent jurisdiction; or

22 (2) Referral to the state agency for enforcement by  
23 judicial or administrative remedy with the agreement of  
24 the appropriate state agency of a participating state.

25 (c) With respect to handlers, the commission may  
26 bring an action for injunction to enforce the provisions of  
27 this compact or the order or regulations adopted  
28 thereunder without being compelled to allege or prove  
29 that an adequate remedy of law does not exist.

#### ARTICLE VII. FINANCE.

##### §18. FINANCE OF START-UP AND REGULAR COSTS.

1 (a) To provide for its start-up costs, the commission  
2 may borrow money pursuant to its general power under  
3 section six, subdivision (d), paragraph four. In order to  
4 finance the costs of administration and enforcement of  
5 this compact, including payback of start-up costs, the  
6 commission is hereby empowered to collect an assessment  
7 from each handler who purchases milk from producers  
8 within the region. If imposed, this assessment shall be  
9 collected on a monthly basis for up to one year from the  
10 date the commission convenes, in an amount not to exceed  
11 \$.015 per hundredweight of milk purchased from  
12 producers during the period of the assessment. The initial  
13 assessment may apply to the projected purchase of  
14 handlers for the two-month period following the date the  
15 commission convenes. In addition, if regulations  
16 establishing an over-order price or a compact marketing  
17 order are adopted, they may include an assessment for the  
18 specific purpose of their administration. These  
19 regulations shall provide for establishment of a reserve for  
20 the commissioner's ongoing operating expenses.

21 (b) The commission shall not pledge the credit of a  
22 participating state or of the United States. Notes issued by  
23 the commission and all other financial obligations  
24 incurred by it, shall be its sole responsibility and no  
25 participating state or the United States shall be liable  
26 therefor.

##### §19. AUDIT AND ACCOUNTS.

1 (a) The commission shall keep accurate accounts of all  
2 receipts and disbursements, which shall be subject to the  
3 audit and accounting procedures established under its  
4 rules. In addition, all receipts and disbursements of funds

5 handled by the commission shall be audited yearly by a  
6 qualified public accountant and the report of the audit  
7 shall be included in and become part of the annual report  
8 of the commissioner.

9 (b) The accounts of the commission shall be open at  
10 any reasonable time for inspection by duly constituted  
11 officers of the participating states and by any persons  
12 authorized by the commission.

13 (c) Nothing contained in this article shall be construed  
14 to prevent commission compliance with laws relating to  
15 audit or inspection of accounts by or on behalf of any  
16 participating state or of the United States.

#### **ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL.**

##### **§20. ENTRY INTO FORCE; ADDITIONAL MEMBERS.**

1 The compact shall enter into force effective when  
2 enacted into law by any three states of the group of states  
3 composed of Alabama, Arkansas, Florida, Georgia,  
4 Kentucky, Louisiana, Maryland, Mississippi, North  
5 Carolina, Oklahoma, South Carolina, Tennessee, Texas,  
6 Virginia and West Virginia and when the consent of  
7 Congress has been obtained.

##### **§21. WITHDRAWAL FROM COMPACT.**

1 Any participating state may withdraw from this  
2 compact by enacting a statute repealing the same, but no  
3 such withdrawal shall take effect until one year after notice  
4 in writing of the withdrawal is given to the commission  
5 and the governors of all other participating states. No  
6 withdrawal shall affect any liability already incurred by or  
7 chargeable to a participating state prior to the time of such  
8 withdrawal.

##### **§22. SEVERABILITY.**

1 If any part or provision of this compact is adjudged  
2 invalid by any court, such judgment shall be confined in  
3 its operation to the part or provision directly involved in  
4 the controversy in which such judgment shall have been  
5 rendered and shall not affect or impair the validity of the

6 remainder of this compact. In the event Congress  
7 consents to this compact subject to conditions, said  
8 conditions shall not impair the validity of this compact  
9 when said conditions are accepted by three or more  
10 compacting states. A compacting state may accept the  
11 conditions of Congress by implementation of this  
12 compact.

**§19-11C-2. Compact administrator.**

1 The compact administrator of this state is the  
2 commissioner of agriculture. The duties of the compact  
3 administrator are deemed a regular part of the duties of  
4 his office.

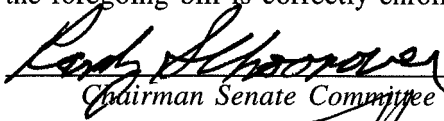
**§19-11C-3. Appointment of delegation.**

1 There shall be five delegates from this state to the  
2 compact commission, and these delegates shall be  
3 appointed by the commissioner of agriculture. At least  
4 one of the delegates shall be a dairy farmer who is  
5 engaged in the production of milk at the time of  
6 appointment or reappointment, at least one delegate shall  
7 be a consumer representative, one delegate shall be a  
8 processor, one delegate shall be a retailer representative  
9 from a border county and one delegate at large.  
10 Delegates shall serve for a term of four years. Vacancies  
11 in the state delegation will be filled in the same manner as  
12 the appointment of delegates, and shall be for the term of  
13 the position vacated.

**§19-11C-4. Effective date.**

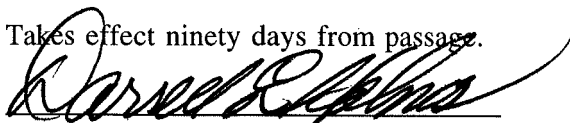
1 This article shall become effective at such time as a  
2 majority of the contiguous states have passed legislation  
3 permitting that state to become a participating state and  
4 the consent of Congress has been obtained.

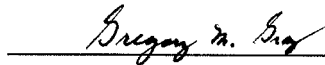
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

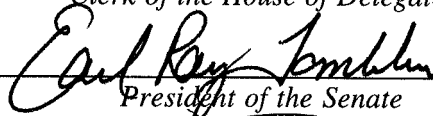
  
Chairman Senate Committee

  
Chairman House Committee

Originating in the House.

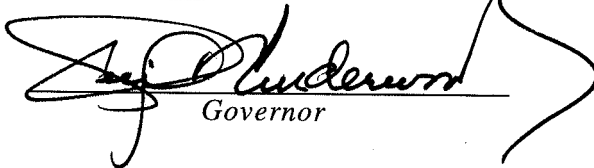
Takes effect ninety days from passage.  
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 20th  
day of March, 1998.

  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/18/98

Time 2:41pm