

PART XIV. DAIRY INDUSTRY PROMOTION LAW

§4151. Short title

This Part may be cited as the "Dairy Industry Promotion Law".

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 2009, No. 24, §8L, eff. June 12, 2009.

§4152. Declaration of legislative findings and intent

A. The legislature finds that:

(1) The dairy industry is a paramount agricultural industry affecting the health and welfare of the citizens of this state.

(2) In order to insure the continuing availability of a sufficient quantity of pure and wholesome milk and other dairy products to the consumers of this state, it is essential that appropriate action be taken by the state to promote knowledge of the health giving qualities and dietary values of milk and other dairy products in order to encourage consumer attention to and demand for milk and other dairy products consistent with their importance and value.

B. It is therefore declared to be the legislative intent and the policy of this state to assist dairy producers and others in the dairy industry to more effectively promote the consumption of Louisiana milk and other Louisiana dairy products in order to assure a sufficient quantity of such products for Louisiana consumers.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 2009, No. 24, §8L, eff. June 12, 2009.

§4153. Definitions

As used in this Part, the following terms shall have the meanings ascribed to them in this Section:

(1) "Board" means the Dairy Industry Promotion Board established in R.S. 3:4154.

(2) "Commissioner" means the Louisiana commissioner of agriculture and forestry.

(3) "Dairy cooperative" means an association of producers organized for the mutual benefit of the producers doing business in Louisiana.

(4) "Dairy producer" or "producer" means any person who produces bulk milk in Louisiana for sale to a dairy cooperative, processor, or distributor.

(5) "Distributor" means a person, other than a processor, who sells dairy products to one or more retail establishments or home delivery routes located in Louisiana. The term "distributor" includes wholesale grocery and cooperative grocery associations.

(6) "Person" means any individual, partnership, corporation, cooperative association, government agency, or other business entity engaged in any of the activities regulated by this Part.

(7) "Processor" means a person who purchases milk solids, milk fats, or fluid milk components from a dairy producer or cooperative association, whether such producer or cooperative association is located within or outside of the state, for processing, or a person who purchases bulk milk for resale to a person who processes milk and other dairy products.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 1995, No. 356, §1; Acts 2009, No. 24, §8L, et seq.; Acts 2009, No. 24, §8L, et seq.; Acts 2010, No. 495, §1, eff. June 24, 2010.

§4154. Dairy Industry Promotion Board

A. The Dairy Industry Promotion Board is hereby created within the Department of Agriculture and Forestry and shall consist of nine members, eight of whom shall be appointed by the commissioner from two areas of the state as follows:

(1) State Area No. 1, comprising those parishes or portions of parishes that are located west of the Mississippi River, shall be represented by three members.

(2) State Area No. 2, comprising those parishes or portions of parishes that are located east of the Mississippi River, shall be represented by five members.

B.(1) For each appointed member of the board from each area, the Louisiana Farm Bureau Federation shall nominate two persons who are dairy producers from that area.

(2) For each appointed member of the board from each area in which the cooperative has membership, each dairy cooperative having a membership of at least twenty-five dairy producers in the state shall nominate two persons who are dairy producers from that area.

C. The ninth member of the board shall be the commissioner or his designee, who shall serve ex officio but with all of the powers, rights, duties, and privileges as all other members.

D. At the same time, in the same manner, and for the same term as provided for the appointment of the eight appointed members, the commissioner shall appoint one alternate for each member who shall be appointed from the same area and possess the same qualifications as the member for whom he is appointed as an alternate. When, for any reason, a member appointed from any area is unable to be present at any meeting of the board, the alternate appointed from his area shall serve in his place, and in such case, the alternate shall exercise all of the powers vested by law in the member, including the right to vote.

E. In the event that any producer member of the board ceases to be a dairy producer, that member shall not be eligible to continue membership on the board, his position shall be vacated, and the vacancy shall be filled as provided in Subsection I of this Section.

F. Each appointment by the commissioner shall be submitted to the Senate for confirmation.

G. Members shall serve terms concurrent with the commissioner making the appointment. Each organization authorized to make nominations for appointments to the board shall file a list of nominees with the commissioner no later than June thirtieth of the year of the commissioner's inauguration.

H. The commissioner shall make all appointments no later than thirty days following the last day of submission of lists of nominees. Whenever any organization authorized to make nominations for appointments to the board fails to submit a list of nominees within the time prescribed in this Section, the commissioner may make direct appointments to the board.

I. Within thirty days after a vacancy occurs, the commissioner shall appoint a nominee from the original list of nominees from the area in which the vacancy occurs to fill the vacancy.

J. Each appointee of the commissioner shall be an active dairy producer whose farm is located in the area which he represents.

K. Each member shall take and subscribe to the oath of office prescribed for state officials. Members shall serve until their successors are appointed and qualified.

L. Members shall be entitled to receive a per diem not to exceed forty dollars and to be reimbursed for mileage expenses in accordance with the travel regulations applying to state employees.

M. A majority of the membership shall constitute a quorum for the transaction of official business. All official actions of the board shall require an affirmative vote of a majority of the membership of the board.

N. The board shall be domiciled in Baton Rouge.

O. The board shall meet at least once during each quarter, but may meet more frequently upon the call of the chairman.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 1995, No. 356, §1; Acts 2008, No. 920, §1, eff. July 14, 2008; Acts 2009, No. 24, §8L, eff. June 12, 2009.

§4155. Officers and employees

A. At the first meeting of the board, the members shall elect from their membership a chairman, vice chairman, and such other officers as the board may deem advisable. Thereafter, officers shall be elected during the board's first regular meeting during the first quarter of each fiscal year.

B. The board, with the approval of the commissioner, may appoint a director and an assistant director who shall be in the unclassified service of the state.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 2009, No. 24, §8L, eff. June 12, 2009.

§4156. Powers and duties of the board

The board may:

- (1) Adopt rules and regulations for the administration of this Part. All rules shall be adopted in accordance with the Administrative Procedure Act.
- (2) Establish and impose assessments on the sale of milk solids, milk fats, and fluid milk component subject to the limitations contained in R.S. 3:4158 and R.S. 3:4159.
- (3) In cooperation with the commissioner, conduct referenda among dairy producers.
- (4) Appoint advisory groups composed of representatives from organizations, institutions, government, or businesses related to or interested in the welfare of the dairy industry.
- (5) Keep minutes, books, and records which accurately reflect all of its acts and transactions.
- (6) Accept grants, donations, contributions, or gifts from any source, but only if the use of such resources is not restricted in any manner which is deemed inconsistent with the purposes of this Part.
- (7) Prescribe forms and procedures for the reporting of purchases of milk solids, milk fats, and fluid milk components and the collection of assessments thereon.
- (8) Develop and implement advertising, promotional, or educational programs for the promotion of milk and other dairy products. No advertising, promotional, or educational program shall be directed toward increasing the sale of milk or other dairy products with reference to any private brand or trade name used by any processor of milk or dairy products. No advertising, promotional, or educational program for milk or other dairy products shall make use of any false or unwarranted claims in behalf of any products, or disparage the quality, value, sale, or use of any other agricultural commodity.
- (9) Enter into and execute advertising and other agreements which are necessary to promote the sale of Louisiana milk and other Louisiana dairy products on a state, regional, national, or foreign basis.
- (10) Conduct investigations into violations and alleged violations of the provisions of this Part.
- (11) Conduct hearings under the Administrative Procedure Act in order to make determinations with respect to any violation or alleged violation of this Part.
- (12) Impose penalties for any violation of the provisions of this Part, or rules and regulations adopted under the provisions of this Part, on the basis of findings made in an adjudicatory proceeding conducted in accordance with the Administrative Procedure Act.
- (13) Confer and cooperate with and enter into agreements with any other state or federal agency or other organization whose activities may be deemed beneficial to the purposes of this Part.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 2009, No. 24, §8L, eff. June 12, 2009; Acts 2010, No. 495, §1, eff. June 24, 2010.

§4157. Powers and duties of the commissioner

A. The commissioner shall administer and enforce the provisions of this Part in accordance with rules and regulations adopted by the board. In the administration and enforcement of this Part, the commissioner, or his duly authorized agent, may enter the premises of any dairy cooperative, processor, or distributor regulated under this Part and examine that person's books, accounts, and records for purposes of determining that the assessments required under this Part have been collected and transmitted to the commissioner.

B. The commissioner, or his duly authorized agent, shall collect the assessments authorized under this Part. The commissioner may retain a portion not to exceed three percent of the total assessments collected by him to defray the costs of collection of the assessments. The commissioner shall transfer the balance of the assessments collected by him to the board on a monthly basis.

C. The commissioner may sue on behalf of the board to collect any assessments or penalties for delinquent payment of assessments which are not paid over to the commissioner as required under this Part.

D. The commissioner shall appoint and employ all personnel necessary for the efficient and proper administration of this Part, except as provided in R.S. 3:4155(B).

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 2009, No. 24, §8L, eff. June 12, 2009; Acts 2010, No. 495, §1, eff. June 24, 2010.

§4158. Referendum

A. The assessment authorized in R.S. 3:4159 shall not be levied or collected unless and until the question of its imposition and the exact amount thereof has been submitted to and approved by a majority of eligible dairy producers voting in a referendum to be conducted as provided in this Section.

B. In establishing the initial assessment, the board shall consider the necessities of providing methods and means, including but not limited to advertising, promotional, and educational programs, public relations programs, and other promotional activities for maintaining and expanding existing markets and developing new markets, both domestic and foreign, for Louisiana milk and other Louisiana dairy products, and procedures for protecting the interests of Louisiana consumers by assuring an adequate supply of pure and wholesome Louisiana milk and other Louisiana dairy products.

C. When the board determines that a referendum shall be conducted among producers, and establishes a date for the referendum, the commissioner shall give notice of the referendum to the executive boards of each organization authorized to make nominations for appointments to the board at least thirty days prior to the date established by the board for the referendum. The commissioner shall prepare for the approval of the board an official list of all dairy producers eligible to vote in the referendum.

D. No dairy producer shall be entitled to vote in a referendum unless he has been actively engaged in the production of milk during the month immediately preceding the referendum. No producer shall be entitled more than one vote in a referendum.

E. The commissioner shall prepare for the approval of the board a ballot which shall permit the producer to cast his vote for or against the imposition of the assessment established by the board. The commissioner shall also prepare a voting packet and instructions for voting for each producer who is eligible to vote in the referendum. Such paraphernalia shall include a means for assuring the eligibility of each dairy producer voting in the referendum and shall be prepared in such form as may be necessary to assure the secrecy of each dairy producer's vote. The commissioner shall mail one ballot, a voting packet, and instructions for voting to each dairy producer eligible to vote in the referendum at least fifteen days prior to the date set by the board for the referendum. Each producer voting in the referendum shall return his ballot to the commissioner, properly sealed in the envelope contained in the voting packet. The envelope containing the ballot shall be postmarked no later than the date set for the referendum and shall be received by the commissioner no later than the date set for the tabulation of votes cast in the referendum. If any ballot is received by the commissioner after the tabulation of votes cast in the referendum, the ballot shall not be opened or counted but shall be preserved, sealed and intact, with the records of the referendum.

F. All ballots shall remain sealed until the first meeting of the board following the date of the referendum. The board shall meet as soon as possible, but no later than seven days after the date of the referendum, for the purpose of tabulating the votes cast in the referendum. All ballots shall be opened and tabulated by the board in an open session and the results of the tabulation shall be immediately promulgated. The commissioner shall notify the executive boards of each organization authorized to make nominations for appointments to the board of the results of the referendum. Any producer or representative of any organization authorized to make nominations for appointment to the board may attend the meeting and observe the tabulation of the votes cast in the referendum.

G. If the assessment is approved by a majority of the eligible dairy producers voting in the referendum, the assessment shall become effective on the tenth day following the date of the referendum.

H. Whenever an assessment is not approved by a majority of the dairy producers voting in the referendum, the matter shall not be submitted to a second vote of dairy producers for a period of at least one year following the referendum at which the issue was defeated.

I. The board shall not modify an assessment approved by a majority of dairy producers voting in a referendum for a period of at least one year following the referendum. At the expiration of one year after the referendum, the board may propose the modification of an assessment. No modification shall be effective unless

it is approved in a referendum conducted in accordance with the provisions of this Section.

J. The initial assessment established by the board and approved by dairy producers shall be effective for a period of three years. After the expiration of the initial three-year period, the assessment may be extended for an indefinite period of time in increments of five years each by ratification and approval of a majority of the dairy producers eligible to vote and voting in a referendum conducted in accordance with the provisions of this Section.

K. No producer shall be entitled to a refund of any assessment approved in a referendum held in accordance with the provisions of this Section.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 1995, No. 356, §1; Acts 2009, No. 24, §8L, et June 12, 2009; Acts 2010, No. 495, §1, eff. June 24, 2010.

§4159. Assessment

A. The board is hereby authorized to levy an assessment not to exceed ten cents per hundredweight, or equivalent thereof, on all milk solids, milk fats, or fluid milk components sold. The assessment shall be due and payable at the first point of sale. The assessment shall be paid by each dairy producer who sells milk solids, milk fats, or fluid milk components to dairy cooperative associations, processors, or distributors. No assessment shall be levied or collected until approved by a majority of dairy producers voting in a referendum conducted in accordance with R.S. 3:4158.

B. The assessment shall be collected by dairy cooperative associations. Each dairy cooperative shall deduct the assessment from the amount owed to the producer on his sale of milk solids, milk fats, or fluid milk components. Each dairy cooperative shall remit all assessments collected during each month to the commissioner no later than the twentieth day of the following month, together with such reports of purchases of dairy products as may be required by the board.

C. Each dairy cooperative shall keep full and complete records of all milk solids, milk fats, or fluid milk components purchased from producers, which shall be in such form and contain such information as the board by rule may prescribe and shall be preserved for a period of two years following the date of each purchase.

D. If the producer selling milk solids, milk fats, or fluid milk components is not a member of a dairy cooperative, or otherwise fails to pay the assessment, the assessment shall be collected by the processor or distributor making the first purchase of milk solids, milk fats, or fluid milk components. All processors or distributors purchasing milk solids, milk fats, or fluid milk components on which no assessment has been collected from the producer shall be liable for payment of the required assessment. Those processors or distributors shall collect the assessments, transmit the revenues to the commissioner, maintain the same record and in all other respects perform all duties imposed on dairy cooperative associations with respect to the collection of the assessments.

E. If the revenues resulting from the assessment are more than are reasonably required to meet the operational and promotional expenses of the board, the board, subject to the approval of the commissioner, may from time to time temporarily suspend collection of the assessments, in which event the commissioner shall notify all dairy cooperative associations, processors, and distributors of the period during which the suspension of the assessment shall be in effect. Upon the board's termination of any such suspension of assessment, the assessment shall be deducted, collected, and transmitted to the commissioner in the same manner as prior to the suspension.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 1995, No. 356, §1; Acts 2009, No. 24, §8L, et June 12, 2009; Acts 2010, No. 495, §1, eff. June 24, 2010.

§4160. Failure to pay assessment; penalty

A. Each dairy cooperative association, processor, or distributor who fails to file any report required by the board or to pay the assessment authorized in R.S. 3:4159 after approval in a referendum of dairy producers within the time prescribed by this Part shall forfeit to the commissioner the amount of the assessment plus a penalty of ten percent of the assessment due, plus one percent of the assessment due for each month, or fraction thereof, of delay after the due date for payment of the assessment.

B. The commissioner shall collect the penalties authorized by this Section, together with delinquent assessments, by any of the following methods:

- (1) By voluntary payment by the person liable.
- (2) By legal proceedings instituted in a court of competent jurisdiction.

(3) By seeking injunctive relief to enjoin any dairy cooperative association, processor, or distributor from owing such assessment or penalties from operating his business or engaging in business as a buyer of milk solid milk fats, or fluid milk components until the delinquent assessments or penalties have been paid.

C. Each person required to pay the assessments provided for in this Part who refuses to allow full inspection of his premises, or any books, records, or other documents relating to the liability of that person or who hinders in any way, delays or prevents an inspection shall be subject to penalties as provided in Subsection D of this Section.

D. The board may impose penalties not to exceed one thousand dollars per day for each day on which there occurs a violation of any of the provisions of this Part, or the rules and regulations adopted under the provisions of this Part. Penalties may be assessed only by a ruling of the board based on an adjudicatory hearing held in accordance with the Administrative Procedure Act.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 2009, No. 24, §8L, eff. June 12, 2009; Acts 2010, No. 495, §1, eff. June 24, 2010.

§4161. Disposition of assessments

A. All funds derived from assessments imposed under this Part shall be used for the operational and promotional expenses of the board. The board shall control its own funds subject to the budgetary review of the commissioner.

B. The board may select a bank for the deposit of its funds.

C. The board shall invest any surplus funds which may be available in interest-bearing accounts, securities, or other similar investments as may, in its sole discretion, be deemed appropriate by the board.

D. The board shall annually make a complete report of all of its expenditures during the preceding fiscal year to all organizations authorized to make nominations for appointments to the board.

Added by Acts 1983, No. 526, §1, July 8, 1983; Acts 1995, No. 356, §1; Acts 2009, No. 24, §8L, eff. July 12, 2009.

§4162. Confidentiality of information

Information which is obtained by any person pursuant to this Part is confidential and shall not be disclosed to any other person except to a person with the same right to obtain the information or any attorney employed to give legal advice upon it, or by any court order.

Added by Acts 1983, No. 526, §1, eff. July 8, 1983; Acts 2009, No. 24, §8L, eff. June 12, 2009.