

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 380

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/17/19
PROPOSED HOUSE COMMITTEE SUBSTITUTE S380-PCS15405-TQf-33

Short Title: Reestablish NC Milk Commission.

(Public)

Sponsors:

Referred to:

March 28, 2019

A BILL TO BE ENTITLED

AN ACT TO REESTABLISH THE NORTH CAROLINA MILK COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 28B of Chapter 106 of the General Statutes is reenacted as it existed immediately before its repeal and reads as rewritten:

"Article 28B

"Regulation of Production, Distribution, etc., of Milk and Cream.

"§ 106-266.7. Milk Commission continued; membership; chairman; compensation; quorum; cooperation of other agencies; official acts; meetings; principal office.

(a) Establishment. – There is hereby ~~continued~~ reestablished a Milk Commission of the Department of ~~Commerce, Agriculture and Consumer Services.~~

(b) Membership. – ~~consisting~~ The Commission shall consist of 10 members, members as follows:

(1) ~~three of whom shall be~~ Three members appointed by the Governor, ~~four of whom shall be appointed by the General Assembly in accordance with G.S. 120-121 (two upon the recommendation of the President Pro Tempore of the Senate and two upon the recommendation of the Speaker of the House of Representatives) and three of whom shall be appointed by the Commissioner of Agriculture. Appointments by the General Assembly shall be in accordance with G.S. 120-121. The three members appointed by the Governor who shall be two public members and a person who operates a store or other establishment for the sale of fluid milk at retail for consumption off the premises.~~

(2) ~~The two~~ Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the ~~Senate~~ Senate, who shall be a Grade A producer, who primarily markets with a cooperative plant and whose primary interest is operating a dairy farm, and a public member.

(3) ~~The two~~ Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of ~~Representatives~~ Representatives, who shall be a dairy processor-distributor or an employee of a dairy processor-distributor, who primarily operates a proprietary plant, and a public member.

(4) ~~The three~~ Three members appointed by the Commissioner of ~~Agriculture~~ Agriculture, who shall be a dairy processor-distributor or an employee of a dairy processor-distributor who primarily operates a cooperative plant and a



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1 Grade A producer who primarily markets with a proprietary plant and whose
2 primary interest is operating a dairy farm, and a public member.

3 Appointments by the General Assembly shall be in accordance with G.S. 120-121. The public
4 members appointed pursuant to this subsection shall have no financial interest in, or be directly
5 or indirectly involved in, the production, processing or distribution of milk or products derived
6 therefrom.

7 ~~(c) Terms. – Of the Commission members appointed following March 27, 1975, the~~
8 ~~Commissioner of Agriculture shall appoint three for a term ending June 30, 1976, the Governor~~
9 ~~shall appoint three for a term ending June 30, 1977, the General Assembly shall appoint upon the~~
10 ~~recommendation of the Speaker of the House of Representatives one for a term ending June 30,~~
11 ~~1984 and one for a term ending June 30, 1985, and the General Assembly shall appoint upon the~~
12 ~~recommendation of the President of the Senate one for a term ending June 30, 1986, and one for~~
13 ~~a term ending June 30, 1987. Thereafter appointments~~ Appointments of Commission members
14 shall be made by the same appointing authorities for terms of four years, ending on June 30 of
15 the appropriate year: provided that subsequent appointments by the General Assembly upon the
16 recommendation of the Speaker of the House of Representatives shall be for terms of two years,
17 ending on June 30 of the appropriate year. Provided, however, that all members appointed
18 pursuant to this subsection year, as provided in this subsection. The following members shall be
19 appointed to terms ending on June 30 of odd-numbered years that follow by one year a year
20 evenly divisible by four:

- 21 (1) One public member and the operator of a store or other establishment for the
22 sale of fluid milk at retail for consumption off the premises appointed by the
23 Governor.
- 24 (2) The public members appointed by the General Assembly.
- 25 (3) The dairy processor-distributor primarily operating a proprietary plant or the
26 processor-distributor's employee appointed by the Commissioner of
27 Agriculture.

28 The remaining members shall be appointed to terms ending June 30 of odd-numbered years
29 that precede by one year a year evenly divisible by four. Members shall serve until either they
30 are reappointed and requalified or their successors are appointed and qualified.

31 ~~(d) Removal, Vacancies. – Any member of the Milk Commission may be removed for~~
32 ~~physical or mental incapacity, or for misfeasance or nonfeasance. In cases of removal from the~~
33 ~~Commission, the removal must be initiated by the person holding the office that originally made~~
34 ~~the appointment of such member, appointing authority for that member and subsequent~~
35 ~~appointments to fill such vacancies will be made in the normally prescribed manner for the~~
36 ~~remainder of the unexpired term by the person holding the office that originally made the~~
37 ~~appointment. appointing authority. If the office that originally made the appointment of the~~
38 ~~appointing authority is vacant, the successor to such office shall fill such vacancy. In case of~~
39 ~~death, resignation, disqualification, or other physical or mental incapacity which prevents a~~
40 ~~Commission member from performing his or her official duties prior to the expiration of his or~~
41 ~~her term of office, his the successor shall be appointed as provided in this subsection to fill out~~
42 ~~the unexpired term. Notwithstanding the above, persons appointed by the General Assembly may~~
43 ~~be removed by the General Assembly, and vacancies~~ Vacancies in appointments made by the
44 General Assembly shall be filled in accordance with G.S. 120-122.

45 ~~(b)(e) Chair. – At the first meeting of the Commission held after the effective date of this~~
46 ~~act, the Commission shall elect one of its members as its chairman to serve through June 30 of~~
47 ~~the next following year. Thereafter, at its first meeting held on or after July 1 of each year, the~~
48 ~~Commission shall elect one of its members to serve as chairman through June 30 of the next~~
49 ~~following year.~~

50 ~~(e)(f) Staff. – The Commission is hereby authorized and empowered to employ an~~
51 administrator and such other personnel, including but not limited to, the services of any agency

1 or agencies, either inside or outside the State, as may be deemed necessary in assembling
2 information on costs and other factors needed to carry out the provisions of this Article.

3 ~~(d)~~(g) Expenses. – Members of the Commission shall receive per diem and allowances as
4 provided in G.S. 138-5.

5 ~~(e)~~(h) Compensation. – The compensation of the administrator shall be set ~~according to~~
6 ~~law determined by the Office of State Human Resources.~~

7 ~~(f)~~(i) Funding of Commission Operations. – All sums required for the operation of the
8 Commission – salaries, per diem, and expenses – shall be paid out of special assessments
9 collected from producers and distributors as set forth in G.S. 106-266.11.

10 ~~(g)~~(j) Quorum. – Six members of the Commission shall constitute a quorum.

11 ~~(h)~~(k) Assistance From Other Agencies. – The Commission may call upon the
12 Commissioner of Agriculture, the Director of Agricultural Research, the Director of the
13 Agricultural Extension Service, or any other agency or department of the State for such
14 information or services as such agency or department can provide, and such agency or department
15 shall furnish such information or services, without ~~compensation therefor,~~ additional
16 compensation, as in its opinion is practicable.

17 ~~(i)~~(l) Enforcement of Article. – The Commission shall, subject to the limitations ~~herein~~
18 ~~contained of this Article and the rules and regulations of issued by the Commission,~~ enforce the
19 provisions of this Article; but no official act shall be taken, rule or regulation be promulgated, or
20 official order be made or enforced, with respect to the provisions of this Article without the due
21 approval of the Commission.

22 ~~(j)~~(m) Meetings. – The Commission shall, by rule or otherwise, fix the time for holding
23 regular meetings. The chairman, or any two members of the Commission, may at any time call a
24 special meeting of the Commission. Such call shall designate the time and place of the meeting,
25 and shall give not less than five days' written notice to each member by first-class mail or
26 electronic mail to the address designated for said member on the records of the Commission.
27 Notice of special meeting shall be signed by the person or persons calling the meeting and shall
28 give a brief description of the business to be considered at said meeting. ~~In addition, a special~~
29 ~~meeting~~ Special meetings of the Commission may be held at any time or place, either within or
30 without the State, with the unanimous consent of all members of the Commission.

31 ~~(k)~~(n) Principal Office. – The principal office of the Commission shall be in the City of
32 Raleigh, North Carolina, in ~~rooms~~ office space assigned by the Department of Administration.

33 **"§ 106-266.8. Powers of Commission.**

34 (a) General Powers. – The Commission is ~~hereby declared to be an instrumentality of the~~
35 State of North Carolina, vested with ~~power;~~ the following powers:

- 36 (1) To confer with the legally constituted authorities of other states ~~of and the~~
37 United States, with a view of securing a uniformity of milk control, with
38 respect to milk coming into the State ~~of North Carolina~~ and going out of the
39 ~~said~~ State in interstate commerce, with a view of accomplishing the purpose
40 of this Article, and to enter into a compact or compacts for ~~such a~~ uniform
41 system of milk control.
- 42 (2) To investigate all matters pertaining to the production, transportation,
43 processing, storage, distribution, and sale of milk for consumption in the State
44 of North Carolina.
- 45 (3) To supervise and regulate the production, transportation, processing, storage,
46 distribution, delivery and sale of milk for ~~consumption;~~ consumption in the
47 State; provided that nothing in this Article shall be interpreted as giving the
48 Commission any power to limit the quantity of milk that any producer can
49 produce nor the power to prohibit or restrict the admission of new producers.
- 50 (4) To classify milk on the basis of use or form; to adopt or approve base plans
51 for allocating classes of milk and to provide for the pooling on a market-wide

1 or statewide plan the total utilization of licensed distributors, or may assign
 2 base ~~and/or~~ and milk in order to obtain the highest utilization possible for
 3 producers ~~and/or~~ and associations of producers supplying milk to the market;
 4 and the Commission may provide for an equalization payment in order that
 5 producer milk will not be paid for in a lower class through the recombining
 6 of water and milk constituents.

7 ~~(4)~~(5) To act as mediator or arbiter in any controversial issue that may arise among
 8 or between milk producers and distributors as between themselves, or that
 9 may arise between them as groups.

10 ~~(5)~~(6) To cause examination into the business, books, and accounts of any milk
 11 producer, association of producers or milk distributors, their affiliates or
 12 subsidiaries; to issue subpoenas to milk producers, associations of producers,
 13 and milk distributors, and require them to produce their records, books, and
 14 accounts; to subpoena any other person from whom information is desired.

15 ~~(6)~~(7) To take depositions of witnesses within or without the State. Any member of
 16 the Commission or any employee of the Commission, so designated, may
 17 administer oaths to witnesses and sign and issue subpoenas.

18 ~~(7)~~(8) To make, adopt, and enforce all ~~rules, regulations~~ rules and orders necessary
 19 to carry out the purposes of this Article. Every ~~rule, regulation~~ rule and order
 20 of the Commission shall be ~~posted for inspection in the main office of the~~
 21 ~~Commission. A certified copy of all general administrative rules and~~
 22 ~~regulations or rules of practice and procedure shall be filed as required by~~
 23 ~~Chapter 150B of the General Statutes, and a certified copy thereof shall~~
 24 ~~likewise be mailed in a sealed envelope, with postage prepaid, to all licensed~~
 25 ~~distributors and associations of producers in the State. Such filing and mailing~~
 26 ~~made available on the Web site of the Commission. Compliance with this~~
 27 ~~subdivision shall constitute due and sufficient notice to all persons affected by~~
 28 ~~such rule, regulation or order. An order which applies only to a person or~~
 29 ~~persons named therein shall be served on the person or persons affected. An~~
 30 ~~order, herein required to be served, shall be served by personal delivery of a~~
 31 ~~certified copy, or by mailing a certified copy in a sealed envelope, with~~
 32 ~~postage prepaid, to each ~~person affected thereby,~~ affected person, or in the~~
 33 ~~case of a corporation, to any officer or agent of the corporation upon whom~~
 34 ~~legal process may be served.~~

35 ~~(8)~~(b) Specific Grants Do Not Impair or Qualify General Grants. – The operation and effect
 36 of any provision of this Article conferring a general power upon the Commission shall not be
 37 impaired or qualified by the granting to the Commission by this Article of a specific power or
 38 powers.

39 ~~(9)~~(c) Hearing Prior to Regulating Market. – The Commission shall not exercise its power
 40 in any market until a public hearing has been held for such market, and the Commission
 41 determines that it will be to the public interest ~~that it shall so to~~ exercise its power in such market.
 42 The Commission may, on its own motion, call such a hearing, and shall call such a hearing under
 43 the following circumstances:

44 (1) ~~upon~~ Upon the written application of a producers' association organized under
 45 the laws of the State, supplying in the judgment of the Commission, a
 46 substantial proportion of the milk consumed in such ~~market, but if~~ market. If
 47 no such producers' organization exists on said market, the Commission shall
 48 call such hearing upon the written application of producers supplying a
 49 substantial proportion of the milk consumed in said ~~market, and shall call such~~
 50 hearing market.

1 (2) ~~upon~~ Upon the written application of distributors, distributing a substantial
2 proportion of the milk consumed in such market.

3 ~~Such hearing~~ A hearing required by this subsection may be held at the time and place and
4 after such notice as the Commission may determine.

5 The Commission may withdraw the exercise of its powers from any market after a public
6 hearing has been held for such market, and the Commission determines that it will be to the
7 public interest to withdraw the exercise of its powers from such market.

8 (10) a.(d) Power to Set Prices. – The Commission may ~~fix~~ set prices to be paid
9 producers ~~and/or~~ and associations of producers by distributors in any market or markets, and may
10 also ~~fix~~ set different prices for different grades or classes of milk. ~~Notwithstanding the provisions~~
11 of G.S. 150B-59(a), such rules milk as provided in this subsection. Rules shall become effective
12 when approved by the Commission. The Commission shall ~~file any rule with the Director of the~~
13 Office of Administrative Hearings provide rules adopted to the Codifier of Rules within two
14 working days of its adoption by the Commission.

15 b.(1) The Commission, after investigation and public hearing and finding as a fact
16 that it is in the public interest, may ~~fix~~ set the maximum and minimum
17 wholesale and maximum retail prices to be charged for milk in any market
18 area by any person subject to this section and may ~~fix~~ set different prices for
19 different grades or classes of milk. The Commission may take into
20 consideration the type of service rendered, the quantity delivered and the cost
21 of the container.

22 e.(2) Prices ~~fixed~~ set under this ~~subdivision (10)~~ subsection shall not become
23 effective until 10 days after the mailing of notice of the action of the
24 Commission. Prices ~~fixed~~ set under ~~b above~~ subdivision (1) of this subsection
25 shall remain in effect for at least 30 days and until the Commission finds it is
26 in the public interest to remove said prices.

27 d.(3) In determining the reasonableness of prices to be paid or charged in any
28 market, the Commission shall be guided by the cost of production and
29 distribution, including compliance with all sanitary regulations in force in
30 such market or markets, necessary operating, processing, storage and delivery
31 charges, the prices of other foods and other commodities, and the welfare of
32 the general public. The Commission may adopt a formula incorporating such
33 of these economic factors as well as other pertinent economic factors relevant
34 to the production of milk which will determine automatically the prices to be
35 paid producers or associations of producers by distributors in any market or
36 markets, and then provide for the periodic automatic readjustment of such
37 prices according to the result obtained by the use of this formula. Public
38 hearings shall be held for adoption, or amendment of the formula itself, but
39 shall not be required for price adjustments which are made based upon use of
40 the formula.

41 e.(4) In establishing producer prices for milk moving into other states, the
42 Commission shall consider prevailing producer prices established by state or
43 federal authority in such states.

44 (e) Powers With Respect to Minimum Retail Price. – The Commission shall have no
45 authority to establish a minimum retail price for milk, except upon a determination after a public
46 hearing that the absence of a minimum retail price has caused or is about to cause a disruption in
47 the North Carolina milk market or some segment of the market that is likely to depress the
48 producer price or has caused or is likely to cause a substantial reduction in competition between
49 processor-distributors in an area, so as to adversely affect the public health and welfare that
50 requires an adequate supply of milk at reasonable and fair prices. The Commission may issue

1 emergency rules under Chapter 150B of the General Statutes to establish minimum retail prices
2 prior to public hearing.

3 The Commission in establishing any minimum retail price shall impose a minimum retail
4 price only for an area or political subdivision wherein the public interest as herein set forth
5 justifies a minimum retail price being set and shall be guided by the same factors used in
6 determining the reasonableness of prices as set forth in subdivision (d)(3) of this section. The
7 Commission shall periodically review all outstanding minimum retail price orders to ensure that
8 they do not remain in effect any longer than the public interest requires.

9 (f) Uniform System of Accounting. – The Commission shall prepare and adopt a system
10 of accounting designed to show, for each distributor of milk and milk products, under the
11 supervision of the Commission, the total purchases by any distributor of each grade or class of
12 milk; the total sales by each distributor and the revenue therefrom, for each grade or class of milk
13 and the quantity thereof. Such accounting system shall be designed to show total purchases
14 including the respective grades or classes of milk bought, as well as the total sales and the
15 respective classes or grades of milk sold.

16 Each distributor of milk and milk products under the supervision of the Commission shall
17 adopt and use the system of accounting adopted by the Milk Commission. The books and records
18 of each distributor shall be open to inspection by the Commission or its agents during regular
19 business hours and shall be audited by it at such regular intervals as shall be prescribed by the
20 Commission.

21 It shall be unlawful for any distributor to pay for milk upon any such basis of grade or class
22 lower than that upon which such milk is sold or used by the distributor. Nothing herein shall
23 prevent the sale of a grade or class of milk by a distributor as milk of a lower grade or class. It
24 shall be unlawful for any distributor to fail to use the system of accounting herein prescribed or
25 refuse to allow the same to be inspected or audited.

26 (11)(g) Licensing Power. – The Commission may require all distributors in any market
27 designated by the Commission to be licensed by the Commission for the purpose of carrying out
28 the provisions of this Article. One who purchases milk from a licensed distributor for the purpose
29 of retail sales shall not be required to be licensed hereunder. The Commission may decline to
30 grant a license, or may suspend or revoke a license already granted upon due notice and after a
31 hearing, whenever said applicant or licensee shall have violated the regulations adopted by the
32 Commission or failed to comply with the requirements of this ~~Article 28B~~, Article or upon any
33 of the following grounds:

34 a-(1) Where the distributor has failed to account and make payment for any milk
35 purchased or received on consignment or otherwise from a producer or
36 association of producers, or has, if a subdistributor, failed to account and make
37 payment for any milk purchased or received on consignment or otherwise
38 from a distributor; provided, however, that it be shown there was reasonable
39 cause for any such failure to account and make payment, and that ~~such~~ the
40 accounting and payment can and will be made promptly, the Commission
41 shall not suspend or revoke a license solely for such failure until a reasonable
42 opportunity has been afforded to make such accounting and payment.

43 b-(2) Where the applicant or distributor has made a general assignment for the
44 benefit of creditors, or has been adjudged a bankrupt or there has been entered
45 against ~~him~~ the applicant or distributor a judgment upon which an execution
46 remains wholly or partly unsatisfied, or where it is shown that the applicant or
47 distributor has insufficient financial responsibility, personnel or equipment
48 properly to conduct the milk business.

49 e-(3) Where the applicant or distributor has engaged in a course of action such as
50 to satisfy the Commission of an intent on his or her part to deceive or defraud
51 customers, producers or consumers.

1 ~~d.~~(4) Where the applicant or distributor has failed to maintain such records as are
2 required by the rules and regulations of the Commission or has failed to
3 furnish the statements or information required by the Commission under this
4 Article 28B or has kept false records or furnished false statements with respect
5 to such information.

6 ~~e.~~(5) Where the applicant or distributor has rejected, without reasonable cause, any
7 milk purchased from a producer, or has refused to accept, without either
8 reasonable cause or reasonable advance notice, milk delivered by or on behalf
9 of a producer in ordinary continuance of a previous course of dealing, except
10 when the contract has been lawfully terminated.

11 In any case where the Commission shall suspend a license, the Commission may, in its
12 discretion, accept from the licensee an offer in compromise of not less than fifty dollars (\$50.00)
13 and not more than five thousand dollars (\$5,000) as a penalty in lieu of such suspension, and
14 thereupon rescind the suspension. All receipts from such penalties shall be paid by the
15 Commission to ~~the State Treasurer for disposition in the same manner as assessments, as~~
16 ~~provided by G.S. 106-266.12. to the State Treasurer and placed in the Civil Fines and Forfeitures~~
17 Fund established pursuant to G.S. 115C-457.1. The Commission may classify licenses, and may
18 issue licenses to distributors to process or store or sell milk to a particular city or village or to a
19 market or markets within the State of North Carolina.

20 ~~(12)~~(h) Power of Entry. – Any member of the Commission, or any person designated for the
21 purpose, shall have access to, and may enter at all reasonable hours, all places where milk is
22 processed, stored, bottled or manufactured into food products. Any member of the Commission
23 or designated employee shall have the power to inspect and copy books and records in any place
24 within the State for the purpose of ascertaining facts to enable the Commission to administer this
25 Article. The Commission may combine such information for any market or markets and make it
26 public.

27 ~~(13)~~(i) Power to Define Market Area. – The Commission may define after a public hearing
28 ~~what shall constitute a natural market area a market area~~ and define and fix limits of the milk
29 shed or territorial area within which milk shall be produced to supply ~~any such a~~ market area:
30 ~~Provided, that producers, Producers,~~ producer-distributors or their successors now shipping milk
31 to any market may continue to do so until they voluntarily discontinue shipping to the designated
32 milk market.

33 ~~(14)~~(j) Reports. – Each licensee shall from time to time, as required by the Commission,
34 submit verified reports containing such information as the Commission may require.

35 **"§ 106-266.9. Distributors to be licensed; prices and practices of distributors regulated.**

36 No distributor in a market in which the provisions of this Article are in effect shall buy milk
37 from producers, or others, for sale within the State, or sell or distribute milk within the State,
38 unless such distributor is duly licensed under the provisions of this Article. It shall be unlawful
39 for a distributor to buy from or sell milk to a distributor who is not licensed as required by this
40 Article. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has
41 reason to believe that the milk has been previously dealt in, or handled, in violation of the terms
42 and provisions of this Article. No distributor shall violate the prices as established by or filed
43 with the Commission or offer any discounts or rebates without authority from the Commission;
44 and the Commission may prohibit such practices as it may deem to be contrary to the welfare of
45 the public and the dairy industry, such as the use of special prices or special inducements in any
46 form or any unfair trade practices in order to vary from the established prices. The Commission
47 may require each distributor to file with the Commission one complete schedule of ~~his~~the
48 distributor's wholesale and retail prices for each marketing area and may require each distributor
49 to charge ~~his~~the distributor's posted prices for all sales and to give 10 days' notice by certified
50 mail to the Commission and every licensed distributor in each marketing area affected prior to
51 the effective date of any changes in said posted prices. The requirements as to filing price

1 schedules shall not apply to retail stores the principal business of which is selling other than dairy
2 products and which do not maintain or control directly or indirectly a milk processing plant. The
3 Commission may prohibit a distributor from selling or offering for sale milk in any market or
4 county at prices less than the prices filed for the market or county in which such distributor's
5 processing or bottling plant is located, except in such cases as such sales may be made at a lower
6 price or prices in good faith to meet competition.

7 **"§ 106-266.10. Licenses for distributors and subdistributors.**

8 An application to the Commission for a license to operate as a distributor or subdistributor
9 shall be made by mail or otherwise within 30 days after the provisions of this Article become
10 effective in a market, and as to any distributor or subdistributor thereafter beginning business,
11 before such distributor or subdistributor shall begin such business therein. The application shall
12 be made on blanks furnished by the Commission for that purpose. Each distributor shall
13 cooperate with the Commission in seeing to it that its subdistributors are informed concerning,
14 and comply with, the provisions of this Article and the rules and regulations duly adopted by the
15 Commission.

16 **"§ 106-266.11. Annual budget of Commission; collection of monthly assessments.**

17 The Commission shall prepare an annual budget and shall collect the sums of money required
18 for this budget from ~~the distributors in the form of monthly assessments. The assessment so levied~~
19 ~~shall be fixed at a rate per hundredweight on the volume of all milk handled. The rate set shall~~
20 ~~not exceed one half of one percent (1/2%) of the Statewide blend price paid to all North Carolina~~
21 ~~producers during the previous calendar year for three and one half percent (3.5%) milk as~~
22 ~~computed by the North Carolina Milk Commission. One half of any such assessment shall be~~
23 ~~deducted from funds owed to a producer or any association of producers.~~the licensed distributors
24 in markets where the provisions of this Article are in operation. The expenses of the Commission,
25 including salaries and the per diem of such personnel as the Commission finds it necessary to
26 employ to properly carry out its functions under this chapter shall be met by an assessment of not
27 over five cents (5¢) per 100 pounds of milk and cream (converted to terms of milk) handled by
28 distributors, and not over five cents (5¢) per 100 pounds of milk and cream (converted to terms
29 of milk) sold by producers; these assessments to be the same per 100 pounds on producers and
30 distributors. The exact amount of each monthly or semimonthly assessment shall be determined
31 by the Commission as necessary to cover its expenses. All assessments shall be paid at the time
32 the distributors pay the producers for the milk. All officers and employees of the Commission,
33 who handle funds of the Commission or who sign or countersign checks upon such funds, shall
34 severally give bond in such amount and with such sureties as shall be determined by the
35 Commission. The cost of the bonds shall be paid by the Commission and the Commission shall
36 determine the amount and sufficiency of the bonds.

37 **"§ 106-266.12. Milk Commission Account; deductions by distributor from funds owed to**
38 **producer.**

39 ~~All receipts from assessments collected under this Article shall be paid by the Commission~~
40 ~~to the State Treasurer and shall be placed by the State Treasurer in a general fund to the credit of~~
41 ~~an account to be known as the "Milk Commission Account" and such an amount as may be~~
42 ~~necessary, and no more, is hereby appropriated out of this Milk Commission Account.~~The Milk
43 Commission Fund is created in the Department as a special fund. Revenue in the fund does not
44 revert at the end of the fiscal year, and interest and other investment income earned by the Fund
45 accrues to it. The Fund shall be used for the payment of all expenses incurred by the Commission
46 in administering and enforcing this Article. The Commission shall require a distributor to make
47 such deductions from funds owed to a producer as authorized by the producer.

48 **"§ 106-266.13. Injunctive relief.**

49 In the event of violation of any provisions of this Article, or order promulgated under the
50 provisions thereof, in addition to any other remedy, the Commission may apply to any court of
51 record in the State of North Carolina for relief by injunction, if necessary, to protect the public

1 interest without being compelled to allege or prove that any adequate remedy at law does not
2 exist.

3 **"§ 106-266.14. Penalties.**

4 Any person violating any provisions of this Article, or order promulgated under the
5 provisions thereof, or of any license issued by the Commission shall be guilty of a Class 1
6 misdemeanor, and each day during which such violation shall continue shall be deemed a
7 separate violation. Prosecutions for violations of this Article shall be instituted by the Attorney
8 General or otherwise, in any county or city of the State of North Carolina in which such violations
9 occur.

10 **"§ 106-266.15. Judicial review.**

11 Judicial review of the following may be had under Chapter 150B of the General Statutes:

- 12 (1) A rule, order, or regulation adopted by the Commission under this Article.
- 13 (2) A decision of the Commission under this Article to deny, suspend, revoke, or
14 refuse to transfer or reissue a license.
- 15 (3) An order of the Commission under this Article to ~~fix~~set or amend the price or
16 terms upon which milk may be bought or sold.

17 **"§ 106-266.16. Saving clause.**

18 No provisions of this Article shall apply or be construed to apply to foreign or interstate
19 commerce, except insofar as the same may be effective pursuant to the United States Constitution
20 and to the laws of the United States enacted pursuant thereto.

21 **"§ 106-266.17. Marketing agreements not to be deemed illegal or in restraint of trade;
22 conflicting laws.**

23 The making of marketing agreements between producers' cooperative marketing associations
24 and distributors and producer-distributors under the provisions of this Article shall not be deemed
25 a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or
26 ~~fix~~set prices arbitrarily nor shall the marketing contract or agreements between the association
27 and the distributors and producer-distributors, or any agreements authorized in this Article, be
28 considered illegal or in restraint of trade. All laws and clauses of laws in conflict with the
29 provisions of this Article are hereby repealed to the extent necessary for the full operation of this
30 Article. No provisions of this Article shall be deemed in conflict with Articles 28 ~~and 28A~~ of
31 Chapter 106 of the General Statutes. No provisions of this Article shall be deemed in conflict
32 with ~~the authority granted to local boards of health by G.S. 130-19, 130-20, 130-66, to make and~~
33 ~~enforce rules and regulations governing milk sanitation or with the authority granted to duty~~
34 ~~imposed upon the Secretary of the Department of Health and Human Services by G.S. 130-3~~
35 ~~G.S. 130A-5 to make sanitary and health inquiries and investigations.~~

36 **"§ 106-266.18. Limitations upon power of Commission.**

37 Nothing in this Article shall be interpreted as giving the Commission any power to limit the
38 quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission
39 of new producers, nor the power to restrict the marketing area of any producer, except as provided
40 in G.S. 106-266.8(3).

41 **"§ 106-266.19. Sale below cost to injure or destroy competition prohibited.**

42 The sale of milk by any distributor or producer-distributor or retailer below cost for the
43 purpose of injuring, harassing or destroying competition is hereby prohibited; and the offering
44 for sale of milk by a retailer at below-cost prices to induce the public to patronize ~~his~~the retailer's
45 store, or what is commonly known in the trade as using milk as a "loss leader" is also hereby
46 prohibited. However, milk may be sold below cost to meet competition if notice has been sent to
47 the Commission by registered or certified mail identifying the competitor or competitors. At
48 any hearing or trial on a complaint under this section, evidence of sale of milk by a distributor or
49 subdistributor or retailer below cost shall constitute prima facie evidence of the violation or
50 violations alleged, and the burden of rebutting the prima facie case thus made, by showing that
51 the same was justified in that it was not, in fact, made below cost or that it was not for the purpose

1 of injuring, harassing or destroying competition, or that it was sold below cost to meet
2 competition after notice has been sent to the Commission by registered or certified mail
3 identifying the competitor or competitors, or that it was not used as a "loss leader" or to induce
4 the public to patronize ~~his~~ the retailer's store, shall be upon the person charged with a violation
5 of this section. As used herein the term "cost" for a distributor or producer-distributor shall be
6 construed to mean the price paid for Grade A or Class I milk in the area where such sale is made
7 plus a reasonable allocation of processing and marketing expenses. For a retailer the term "cost"
8 shall be construed to mean the wholesale invoice price paid for Grade A or Class I milk in the
9 area where such sale is made, provided, however, in determining whether any sale has been made
10 in violation of this section, the Commission shall consider all discounts, rebates, gratuities or any
11 other matters which may have the effect of either directly or indirectly reducing the price paid by
12 the retailer involved. The prima facie case of a violation of this section, made by proof of sale
13 below cost, may be rebutted by proof of any of the following facts:

- 14 (1) The merchandise was damaged, or
- 15 (2) The milk was sold upon the final liquidation of a business, or
- 16 (3) The milk was sold to an organized charity or to a relief agency, or
- 17 (4) The milk was sold by an officer acting under the direction of any court."

18 **SECTION 2.** Notwithstanding G.S. 106-266.7, as reenacted and amended by this
19 act, the following five members of the Commission shall serve initial terms expiring June 30,
20 2021, and thereafter those seats shall be filled in the manner described in G.S. 106-266.7:

- 21 (1) One public member and the operator of a store or other establishment for the
22 sale of fluid milk at retail for consumption off the premises appointed by the
23 Governor.
- 24 (2) The public members appointed by the General Assembly.
- 25 (3) The dairy processor-distributor primarily operating a proprietary plant or the
26 processor-distributor's employee appointed by the Commissioner of
27 Agriculture.

28 The remaining members of the Commission shall be appointed to initial terms
29 expiring on June 30, 2023, and thereafter those seats shall be filled in the manner described in
30 G.S. 106-266.7.

31 **SECTION 3.** Notwithstanding G.S. 150B-21.1A(a), the North Carolina Milk
32 Commission re-created by this act may adopt emergency rules to carry out its powers and duties
33 for which adoption of rules would otherwise be required under Article 2A of Chapter 150B of
34 the General Statutes.

35 **SECTION 4.** This act is effective when it becomes law.