



SENATE BILL 380: Reestablish NC Milk Commission.

2019-2020 General Assembly

Committee:	House Agriculture	Date:	July 31, 2019
Introduced by:	Sens. Wells, Hise, Daniel	Prepared by:	Chris Saunders
Analysis of:	PCS to Second Edition S380-CSTQf-33		Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) to Senate Bill 380 would reestablish the North Carolina Milk Commission (Commission), which would be authorized to regulate the production and sale of milk in the State, including by setting prices to be paid to producers, setting maximum and minimum retail prices for milk, and requiring milk distributors to be licensed by the Commission.*

BACKGROUND: The North Carolina Milk Commission was established in 1953 and was repealed in 2004.

North Carolina is covered by the Appalachian federal milk marketing order, which also includes South Carolina and parts of Virginia, Tennessee, Georgia, West Virginia, Kentucky, and Indiana. Federal milk marketing orders impose classified pricing based on the end use of milk and set minimum prices to be paid to milk producers by milk handlers. Federal milk marketing orders do not regulate milk producers, restrict milk production, guarantee milk producers a market for their milk, set a fixed price for milk, or set a maximum price for milk.

BILL ANALYSIS:

Section 1 of the PCS would reenact the North Carolina Milk Commission within the Department of Agriculture and Consumer Services. The Commission would have all of the following powers:

- To confer with other states and the federal government with respect to milk moving in and out of North Carolina in interstate commerce, and to enter into milk compacts.
- To investigate, supervise, and regulate matters related to production, transportation, processing, storage, distribution, and sale of milk in the State. However, the Commission would not have the power to limit the quantity of milk that any producer can produce nor the power to prohibit or restrict the admission of new producers.
- To classify milk on the basis of use or form, to adopt or approve base plans for allocating classes of milk, and to provide for an equalization payment such that producer milk will not be paid for in a lower class through the recombining of water and milk constituents.
- To mediate disputes among or between milk producers and distributors.
- To examine the books and records of milk producers or distributors.
- To take depositions of witnesses.

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- To adopt and enforce rules and orders necessary to carry out the statutory powers of the Commission.
- To set prices to be paid to producers by distributors in any market or markets. The Commission may set different prices for different grades or classes of milk. The following limitations would apply:
 - The Commission, after investigation and public hearing, may set the maximum and minimum wholesale prices and maximum retail prices to be charged for milk in any market area, including different prices for different grades of milk.
 - Set prices may not become effective until 10 days after the mailing of notice of action of the Commission. The set prices must remain in effect for at least 30 days.
 - In determining the reasonableness of prices to be paid or charged in any market, the Commission must be guided by the cost of production and distribution, necessary operating, processing, storage and delivery charges, the prices of other foods and other commodities, and the welfare of the general public.
 - In establishing producer prices for milk moving into other states, the Commission must consider prevailing producer prices established by state or federal authority in such states.
- To establish a minimum retail price for milk upon a determination after a public hearing that the absence of a minimum retail price has caused or is about to cause a disruption in the North Carolina milk market or some segment of the market that is likely to depress the producer price, or has caused or is likely to cause a substantial reduction in competition between processor-distributors in an area, so as to adversely affect the public health and welfare that requires an adequate supply of milk at reasonable and fair prices.
 - In establishing any minimum retail price, the Commission must impose a minimum retail price only for an area or political subdivision where the public interest justifies a minimum retail price being set. The Commission must periodically review all outstanding minimum retail price orders to ensure that they do not remain in effect any longer than the public interest requires.
- To require all distributors in any market designated by the Commission to be licensed by the Commission. A person who purchases milk from a licensed distributor for retail sale is not required to be licensed. The Commission may decline to grant a license, or may suspend or revoke a license already granted, if an applicant or licensee has violated Commission rules or the statutes related to the Commission, or in several other specific circumstances. In any case where the Commission elects to suspend a license, the Commission may accept an offer in compromise of not less than \$50.00 and not more than \$5,000.00.
- To enter at all reasonable hours all places where milk is processed, stored, bottled or manufactured into food products, and to inspect or copy books and records in those places.
- To define and fix limits of the milk shed or territorial area within which milk shall be produced to supply a market area, after a public hearing.
- To require submission of verified reports by each licensee.

The Commission would not be allowed to exercise its powers in any market until a public hearing has been held for that market and the Commission determines that the exercise of its powers in that market is

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in the public interest. The Commission may call a hearing on its own motion, but would be required to call a hearing in the following situations:

- Upon the written application of a producers' association supplying a substantial proportion of the milk consumed in a particular market.
- Upon the written application of distributors, distributing a substantial proportion of the milk consumed in a particular market.

The Commission must prepare and adopt a uniform system of accounting to show, for each distributor of milk and milk products under the supervision of the Commission, the total purchases by any distributor of each grade or class of milk; the total sales by each distributor; and the revenue from those sales, for each grade or class of milk and the quantity thereof. It would be unlawful for any distributor to pay for milk upon any basis of grade or class lower than that upon which the milk is sold or used by the distributor.

An unlicensed distributor in a market where the provisions of this act are in effect would be prohibited from buying milk from producers, or others, for sale within the State, or sell or distribute milk within the State. No distributor may sell or handle milk that the distributor has reason to believe has previously been sold or handled in violation of the provisions of this act.

This section would also impose an assessment of not more than five cents per 100 pounds of milk and cream handled by distributors and not more than five cents of per 100 pounds of milk and cream sold by producers. The assessment would be to pay the expenses of the Commission, including salaries and the per diem of such personnel as the Commission finds it necessary to employ to properly carry out its functions. This section would also create the Milk Commission Fund in the Department of Agriculture and Consumer Services as a special fund, to be used for the payment of all expenses incurred by the Commission in administering and enforcing this act.

This section would allow the Commission to apply for injunctive relief for violations of this act or rules adopted by the Commission, and would make violation of this act or Commission rules a Class 1 misdemeanor. Each day during which a violation continues would be deemed a separate violation.

Marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this act would be deemed not to be a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or set prices arbitrarily.

The following acts would be prohibited:

- The sale of milk by any distributor or producer distributor or retailer below cost for the purpose of injuring, harassing or destroying competition.
- The offering for sale of milk by a retailer at below cost prices to induce the public to patronize the retailer's store. However, milk may be sold below cost to meet competition if notice has been sent to the Commission by registered or certified mail identifying the competitor or competitors.

Section 2 of the PCS would stagger the terms of the members of the Commission.

Section 3 would allow the Commission to adopt emergency rules.

EFFECTIVE DATE: This act would be effective when it becomes law.