

By: Homer

H.B. No. 2913

A BILL TO BE ENTITLED

AN ACT

relating to the Southern Dairy Compact; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 6, Agriculture Code, is amended by adding Chapter 182 to read as follows:

CHAPTER 182. SOUTHERN DAIRY COMPACT

Sec. 182.001. DEFINITIONS. In this chapter:

(1) "Compact" means the Southern Dairy Compact.

(2) "Compact commission" means the Southern Dairy Compact Commission established by Section 4, Article III, of the compact.

(3) "Delegate" means a member of the delegation from this state to the Southern Dairy Compact Commission as set forth in Section 4, Article III, of the compact.

Sec. 182.002. DELEGATES; QUALIFICATIONS. (a) The commissioner shall appoint one delegate to this state's delegation to the compact commission to serve at the pleasure of the commissioner. The commissioner may appoint himself or herself as the delegate under this subsection. If the commissioner appoints a person other than the commissioner as a delegate, the commissioner's appointee must be an employee of the department, preferably an employee with experience with milk marketing and stabilization. The delegate serving under this subsection shall

1 serve as chair of the delegation from this state.

2 (b) The governor shall appoint four delegates to this  
3 state's delegation to the compact commission as follows:

4 (1) two delegates who must be dairy farmers engaged in  
5 the production of milk at the time of appointment or reappointment;

6 (2) one delegate who must be a dairy processor engaged  
7 in the production of milk at the time of appointment or  
8 reappointment; and

9 (3) one delegate who must be a consumer  
10 representative.

11 (c) Each delegate must be a resident and registered voter of  
12 this state.

13 (d) A delegate is not an officer of this state by virtue of  
14 holding the position of delegate.

15 Sec. 182.003. TERMS; REMOVAL; VACANCY. (a) Each delegate  
16 serves a term of four years.

17 (b) Each delegate shall serve from the date of appointment  
18 until a successor is appointed and qualified.

19 (c) An individual, including the commissioner serving as a  
20 delegate, may not serve more than three consecutive terms as a  
21 delegate.

22 (d) A delegate may be removed for cause.

23 Sec. 182.004. EFFECTIVE DATE OF COMPACT; SUNSET PROVISION.

24 (a) The compact shall become effective when:

25 (1) the governor has executed the compact on behalf of  
26 this state and has filed a verified copy of the compact with the  
27 secretary of state;



1 industry is an essential agricultural activity of the South. Dairy  
2 farms, and associated suppliers, marketers, processors, and  
3 retailers, are an integral component of the region's economy.  
4 Their ability to provide a stable, local supply of pure, wholesome  
5 milk is a matter of great importance to the health and welfare of  
6 the region.

7 The participating states further find that dairy farms are  
8 essential and they are an integral part of the region's rural  
9 communities. The farms preserve land for agricultural purposes and  
10 provide needed economic stimuli for rural communities.

11 By entering into this compact, the participating states  
12 affirm that their ability to regulate the price which southern  
13 dairy farmers receive for their product is essential to the public  
14 interest. Assurance of a fair and equitable price for dairy farmers  
15 ensures their ability to provide milk to the market and the vitality  
16 of the southern dairy industry, with all the associated benefits.

17 Recent dramatic price fluctuations, with a pronounced  
18 downward trend, threaten the viability and stability of the  
19 southern dairy region. Historically, individual state regulatory  
20 action had been an effective emergency remedy available to farmers  
21 confronting a distressed market. The federal order system,  
22 implemented by the Agricultural Marketing Agreement Act of 1937,  
23 establishes only minimum prices paid to producers for raw milk,  
24 without preempting the power of states to regulate milk prices  
25 above the minimum levels so established.

26 In today's regional dairy marketplace, cooperative, rather  
27 than individual state action, is needed to more effectively address

1 the market disarray. Under our constitutional system, properly  
2 authorized states acting cooperatively may exercise more power to  
3 regulate interstate commerce than they may assert individually  
4 without such authority. For this reason, the participating states  
5 invoke their authority to act in common agreement, with the consent  
6 of the United States Congress, under the compact clause of the  
7 United States Constitution.

8 In establishing their constitutional regulatory authority  
9 over the region's fluid milk market by this compact, the  
10 participating states declare their purpose that this compact  
11 neither displace the federal order system nor encourage the merging  
12 of federal orders. Specific provisions of the compact itself set  
13 forth this basic principle.

14 Designed as a flexible mechanism able to adjust to changes in  
15 a regulated marketplace, the compact also contains a contingency  
16 provision should the federal order system be discontinued. In that  
17 event, the interstate commission is authorized to regulate the  
18 marketplace in replacement of the order system. This contingent  
19 authority does not anticipate such a change, however, and should  
20 not be so construed. It is only provided should developments in the  
21 market other than establishment of this compact result in  
22 discontinuance of the order system.

23 ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

24 Sec. 2. DEFINITIONS. For the purposes of this compact, and  
25 of any supplemental or concurring legislation enacted pursuant  
26 thereto, except as may be otherwise required by the context:

27 (1) "Class I milk" means milk disposed of in fluid form

1 or as a fluid milk product, subject to further definition in  
2 accordance with the principles expressed in Section 3(b) of this  
3 compact.

4 (2) "Commission" means the Southern Dairy Compact  
5 Commission established by this compact.

6 (3) "Commission marketing order" means regulations  
7 adopted by the commission pursuant to Sections 9 and 10 of this  
8 compact in place of a terminated federal marketing order or state  
9 dairy regulation. Such order may apply throughout the region or in  
10 any part or parts thereof as defined in the regulations of the  
11 commission. Such order may establish minimum prices for any or all  
12 classes of milk.

13 (4) "Compact" means this interstate compact.

14 (5) "Compact over-order price" means a minimum price  
15 required to be paid to producers for Class I milk established by the  
16 commission in regulations adopted pursuant to Sections 9 and 10 of  
17 this compact, which is above the price established in federal  
18 marketing orders or by state farm price regulation in the regulated  
19 area. Such price may apply throughout the region or in any part or  
20 parts thereof as defined in the regulations of the commission.

21 (6) "Milk" means the lacteal secretion of cows and  
22 includes all skim, butterfat, or other constituents obtained from  
23 separation or any other process. The term is used in its broadest  
24 sense and may be further defined by the commission for regulatory  
25 purposes.

26 (7) "Partially regulated plant" means a milk plant not  
27 located in a regulated area but having Class I distribution within

1 such area. Commission regulations may exempt plants having such  
2 distribution or receipts in amounts less than the limits defined  
3 therein.

4 (8) "Participating state" means a state which has  
5 become a party to this compact by the enactment of concurring  
6 legislation.

7 (9) "Pool plant" means any milk plant located in a  
8 regulated area.

9 (10) "Region" means the territorial limits of the  
10 states which are parties to this compact.

11 (11) "Regulated area" means any area within the region  
12 governed by and defined in regulations establishing a compact  
13 over-order price or commission marketing order.

14 (12) "State dairy regulation" means any state  
15 regulation of dairy prices, and associated assessments, whether by  
16 statute, marketing order, or otherwise.

17 Sec. 3. RULES OF CONSTRUCTION. (a) This compact shall not  
18 be construed to displace existing federal milk marketing orders or  
19 state dairy regulation in the region but to supplement them. In the  
20 event some or all federal orders in the region are discontinued, the  
21 compact shall be construed to provide the commission the option to  
22 replace them with one or more commission marketing orders pursuant  
23 to this compact.

24 (b) This compact shall be construed liberally in order to  
25 achieve the purposes and intent enunciated in Section 1 of this  
26 compact. It is the intent of this compact to establish a basic  
27 structure by which the commission may achieve those purposes

1 through the application, adaptation, and development of the  
2 regulatory techniques historically associated with milk marketing  
3 and to afford the commission broad flexibility to devise regulatory  
4 mechanisms to achieve the purposes of this compact. In accordance  
5 with this intent, the technical terms which are associated with  
6 market order regulation and which have acquired commonly understood  
7 general meanings are not defined herein, but the commission may  
8 further define the terms used in this compact and develop  
9 additional concepts and define additional terms as it may find  
10 appropriate to achieve its purposes.

11 ARTICLE III. COMMISSION ESTABLISHED

12 Sec. 4. COMMISSION ESTABLISHED. There is hereby created a  
13 commission to administer the compact, composed of delegations from  
14 each state in the region. The commission shall be known as the  
15 Southern Dairy Compact Commission. A delegation shall include not  
16 less than three nor more than five persons. Each delegation shall  
17 include at least one dairy farmer who is engaged in the production  
18 of milk at the time of appointment or reappointment, and one  
19 consumer representative. Delegation members shall be residents and  
20 voters of, and subject to such confirmation process as is provided  
21 for in, the appointing state. Delegation members shall serve no  
22 more than three consecutive terms with no single term of more than  
23 four years and be subject to removal for cause. In all other  
24 respects, delegation members shall serve in accordance with the  
25 laws of the state represented. The compensation, if any, of the  
26 members of a state delegation shall be determined and paid by each  
27 state, but their expenses shall be paid by the commission.



1       Sec. 5. VOTING REQUIREMENTS. All actions taken by the  
2 commission, except for the establishment or termination of an  
3 over-order price or commission marketing order, and the adoption,  
4 amendment, or rescission of the commission's bylaws shall be by  
5 majority vote of the delegations present. Each state delegation  
6 shall be entitled to one vote in the conduct of the commission's  
7 affairs. Establishment or termination of an over-order price or  
8 commission marketing order shall require at least a two-thirds vote  
9 of the delegations present. The establishment of a regulated area  
10 which covers all or part of a participating state shall require also  
11 the affirmative vote of that state's delegation. A majority of the  
12 delegations from the participating states shall constitute a quorum  
13 for the conduct of the commission's business.

14       Sec. 6. ADMINISTRATION AND MANAGEMENT. (a) The commission  
15 shall elect annually from among the members of the participating  
16 state delegations a chairperson, a vice-chairperson, and a  
17 treasurer. The commission shall appoint an executive director and  
18 fix his or her duties and compensation. The executive director  
19 shall serve at the pleasure of the commission, and, together with  
20 the treasurer, shall be bonded in an amount determined by the  
21 commission. The commission may establish through its bylaws an  
22 executive committee composed of one member elected by each  
23 delegation.

24       (b) The commission shall adopt bylaws for the conduct of its  
25 business by a two-thirds vote and shall have the power by the same  
26 vote to amend and rescind these bylaws. The commission shall  
27 publish its bylaws in convenient form with the appropriate agency

1 or officer in each of the participating states. The bylaws shall  
2 provide for appropriate notice to the delegations of all commission  
3 meetings and hearings and of the business to be transacted at such  
4 meetings or hearings. Notice also shall be given to other agencies  
5 or officers of participating states as provided by the laws of those  
6 states.

7 (c) The commission shall file an annual report with the  
8 secretary of agriculture of the United States, and with each of the  
9 participating states by submitting copies to the governor, both  
10 houses of the legislature, and the head of the state department  
11 having responsibilities for agriculture.

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

14 (1) to sue and be sued in any state or federal court;

15 (2) to have a seal and alter the same at pleasure;

16 (3) to acquire, hold, and dispose of real and personal  
17 property by gift, purchase, lease, license, or other similar  
18 manner, for its corporate purposes;

19 (4) to borrow money and to issue notes, to provide for  
20 the rights of the holders thereof and to pledge the revenue of the  
21 commission as security therefore, subject to the provisions of  
22 Section 18 of this compact;

23 (5) to appoint such officers, agents, and employees as  
24 it may deem necessary and prescribe their powers, duties, and  
25 qualifications; and

26 (6) to create and abolish such offices, employments,  
27 and positions as it deems necessary for the purposes of the compact

1 and provide for the removal, term, tenure, compensation, fringe  
2 benefits, pension, and retirement rights of its officers and  
3 employees. The commission may also retain personal services on a  
4 contract basis.

5 Sec. 7. RULEMAKING POWER. In addition to the power to  
6 promulgate a compact over-order price or commission marketing  
7 orders as provided by this compact, the commission is further  
8 empowered to make and enforce such additional rules and regulations  
9 as it deems necessary to implement any provisions of this compact,  
10 or to effectuate in any other respect the purposes of this compact.

11 ARTICLE IV. POWERS OF THE COMMISSION

12 Sec. 8. POWERS TO PROMOTE REGULATORY UNIFORMITY,  
13 SIMPLICITY, AND INTERSTATE COOPERATION. The commission is hereby  
14 empowered to:

15 (1) Investigate or provide for investigations or  
16 research projects designed to review the existing laws and  
17 regulations of the participating states, to consider their  
18 administration and costs, and to measure their impact on the  
19 production and marketing of milk and their effects on the shipment  
20 of milk and milk products within the region.

21 (2) Study and recommend to the participating states  
22 joint or cooperative programs for the administration of the dairy  
23 marketing laws and regulations and to prepare estimates of cost  
24 savings and benefits of such programs.

25 (3) Encourage the harmonious relationships between  
26 the various elements in the industry for the solution of their  
27 material problems. Conduct symposia or conferences designed to

1 improve industry relations or a better understanding of problems.

2 (4) Prepare and release periodic reports on activities  
3 and results of the commission's efforts to the participating  
4 states.

5 (5) Review the existing marketing system for milk and  
6 milk products and recommend changes in the existing structure for  
7 assembly and distribution of milk which may assist, improve, or  
8 promote more efficient assembly and distribution of milk.

9 (6) Investigate costs and charges for producing,  
10 hauling, handling, processing, distributing, selling, and for all  
11 other services performed with respect to milk.

12 (7) Examine current economic forces affecting  
13 producers, probable trends in production and consumption, the level  
14 of dairy farm prices in relation to costs, the financial conditions  
15 of dairy farmers, and the need for an emergency order to relieve  
16 critical conditions on dairy farms.

17 Sec. 9. EQUITABLE FARM PRICES. (a) The powers granted in  
18 this section and Section 10 of this compact shall apply only to the  
19 establishment of a compact over-order price, so long as federal  
20 milk marketing orders remain in effect in the region. In the event  
21 that any or all such orders are terminated, this article shall  
22 authorize the commission to establish one or more commission  
23 marketing orders, as herein provided, in the region or parts  
24 thereof as defined in the order.

25 (b) A compact over-order price established pursuant to this  
26 section shall apply only to Class I milk. Such compact over-order  
27 price shall not exceed \$1.50 per gallon at Atlanta, Georgia;

1 however, this compact over-order price shall be adjusted upward or  
2 downward at other locations in the region to reflect differences in  
3 minimum federal order prices. Beginning in 1990, and using that  
4 year as a base, the foregoing \$1.50 per gallon maximum shall be  
5 adjusted annually by the rate of change in the Consumer Price Index  
6 as reported by the Bureau of Labor Statistics of the United States  
7 Department of Labor. For purposes of the pooling and equalization  
8 of an over-order price, the value of milk used in other use  
9 classifications shall be calculated at the appropriate class price  
10 established pursuant to the applicable federal order or state dairy  
11 regulation, and the value of unregulated milk shall be calculated  
12 in relation to the nearest prevailing class price in accordance  
13 with and subject to such adjustments as the commission may  
14 prescribe in regulations.

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

17 (d) The commission is hereby empowered to establish a  
18 compact over-order price for milk to be paid by pool plants and  
19 partially regulated plants. The commission is also empowered to  
20 establish a compact over-order price to be paid by all other  
21 handlers receiving milk from producers located in a regulated area.  
22 This price shall be established either as a compact over-order  
23 price or by one or more commission marketing orders. Whenever such  
24 a price has been established by either type of regulation, the legal  
25 obligation to pay such price shall be determined solely by the terms  
26 and purpose of the regulation without regard to the situs of the  
27 transfer of title, possession, or any other factors not related to

1 the purposes of the regulation and this compact. Producer-handlers  
2 as defined in an applicable federal market order shall not be  
3 subject to a compact over-order price. The commission shall  
4 provide for similar treatment of producer-handlers under  
5 commission marketing orders.

6 (e) In determining the price, the commission shall consider  
7 the balance between production and consumption of milk and milk  
8 products in the regulated area, the costs of production including,  
9 but not limited to, the price of feed, the cost of labor, including  
10 the reasonable value of the producer's own labor and management,  
11 machinery expense, and interest expense, the prevailing price for  
12 milk outside the regulated area, the purchasing power of the  
13 public, and the price necessary to yield a reasonable return to the  
14 producer and distributor.

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

21 (g) The commission shall whenever possible enter into  
22 agreements with state or federal agencies for exchange of  
23 information or services for the purpose of reducing regulatory  
24 burden and cost of administering the compact. The commission may  
25 reimburse other agencies for the reasonable cost of providing these  
26 services.

27 Sec. 10. OPTIONAL PROVISIONS FOR PRICING ORDER.

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

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

7 (2) with respect to a commission marketing order only,  
8 provisions establishing or providing a method for establishing  
9 separate minimum prices for each use classification prescribed by  
10 the commission, or a single minimum price for milk purchased from  
11 producers or associations of producers;

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

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

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

1           (A) With respect to regulations establishing a  
2 compact over-order price, the commission may establish one  
3 equalization pool within the regulated area for the sole purpose of  
4 equalizing returns to producers throughout the regulated area.

5           (B) With respect to any commission marketing  
6 order, as defined in Section 2(3) of this compact, which replaces  
7 one or more terminated federal orders or state dairy regulation,  
8 the marketing area of now separate state or federal orders shall not  
9 be merged without the affirmative consent of each state, voting  
10 through its delegation, which is partly or wholly included within  
11 any such new marketing area.

12           (6) provisions requiring persons who bring Class I  
13 milk into the regulated area to make compensatory payments with  
14 respect to all such milk to the extent necessary to equalize the  
15 cost of milk purchased by handlers subject to a compact over-order  
16 price or commission marketing order. No such provisions shall  
17 discriminate against milk producers outside the regulated area.  
18 The provisions for compensatory payments may require payment of the  
19 difference between the Class I price required to be paid for such  
20 milk in the state of production by a federal milk marketing order or  
21 state dairy regulation and the Class I price established by the  
22 compact over-order price or commission marketing order;

23           (7) provisions specially governing the pricing and  
24 pooling of milk handled by partially regulated plants;

25           (8) provisions requiring that the account of any  
26 person regulated under the compact over-order price shall be  
27 adjusted for any payments made to or received by such persons with



1 respect to a producer settlement fund of any federal or state milk  
2 marketing order or other state dairy regulation within the  
3 regulated area;

4 (9) provisions requiring the payment by handlers of an  
5 assessment to cover the costs of the administration and enforcement  
6 of such order pursuant to Section 18(a), Article VII, of this  
7 compact;

8 (10) provisions for reimbursement to participants of  
9 the Women, Infants and Children Special Supplemental Food Program  
10 of the United States Child Nutrition Act of 1966; and

11 (11) other provisions and requirements as the  
12 commission may find are necessary or appropriate to effectuate the  
13 purposes of this compact and to provide for the payment of fair and  
14 equitable minimum prices to producers.

15 ARTICLE V. RULEMAKING PROCEDURE

16 Sec. 11. RULEMAKING PROCEDURE. Before promulgation of any  
17 regulations establishing a compact over-order price or commission  
18 marketing order, including any provision with respect to milk  
19 supply under Section 9(f) of this compact, or amendment thereof, as  
20 provided in Article IV of this compact, the commission shall  
21 conduct an informal rulemaking proceeding to provide interested  
22 persons with an opportunity to present data and views. Such  
23 rulemaking proceeding shall be governed by Section 4, federal  
24 Administrative Procedure Act (5 U.S.C. Section 553), as amended.  
25 In addition, the commission shall, to the extent practicable,  
26 publish notice of rulemaking proceedings in the official register  
27 of each participating state. Before the initial adoption of

1 regulations establishing a compact over-order price or a commission  
2 marketing order and thereafter before any amendment with regard to  
3 prices or assessments, the commission shall hold a public hearing.  
4 The commission may commence a rulemaking proceeding on its own  
5 initiative or may in its sole discretion act upon the petition of  
6 any person including individual milk producers, any organization of  
7 milk producers or handlers, general farm organizations, consumer or  
8 public interest groups, and local, state, or federal officials.

9 Sec. 12. FINDINGS AND REFERENDUM. In addition to the  
10 concise general statement of basis and purpose required by Section  
11 4(b), federal Administrative Procedure Act (5 U.S.C. Section 553  
12 (c)), as amended, the commission shall make findings of fact with  
13 respect to:

14 (1) whether the public interest will be served by the  
15 establishment of minimum milk prices to dairy farmers under Article  
16 IV of this compact;

17 (2) the level of prices that will assure that  
18 producers receive a price sufficient to cover their costs of  
19 production and will elicit an adequate supply of milk for the  
20 inhabitants of the regulated area and for manufacturing purposes;

21 (3) whether the major provisions of the order, other  
22 than those fixing minimum milk prices, are in the public interest  
23 and are reasonably designed to achieve the purposes of the order;  
24 and

25 (4) whether the terms of the proposed regional order  
26 or amendment are approved by producers as provided in Section 13 of  
27 this compact.

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

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

19       (c) For purposes of any referendum, the commission shall  
20 consider the approval or disapproval by any cooperative association  
21 of producers, qualified under the provisions of the Act of Congress  
22 of February 18, 1922, as amended, known as the Capper-Volstead Act,  
23 bona fide engaged in marketing milk, or in rendering services for or  
24 advancing the interests of producers of such commodity, as the  
25 approval or disapproval of the producers who are members or  
26 stockholders in, or under contract with, such cooperative  
27 association of producers, except as provided in Subdivision (1) of

1 this subsection and subject to the provisions of Subdivisions (2)  
2 through (5) of this subsection.

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

6 (2) Any cooperative which is qualified to block vote  
7 shall, before submitting its approval or disapproval in any  
8 referendum, give prior written notice to each of its members as to  
9 whether and how it intends to cast its vote. The notice shall be  
10 given in a timely manner as established and in the form prescribed  
11 by the commission.

12 (3) Any producer may obtain a ballot from the  
13 commission in order to register approval or disapproval of the  
14 proposed order.

15 (4) A producer who is a member of a cooperative which  
16 has provided notice of its intent to approve or not to approve a  
17 proposed order, and who obtains a ballot and with such ballot  
18 expresses his approval or disapproval of the proposed order, shall  
19 notify the commission as to the name of the cooperative of which he  
20 or she is a member, and the commission shall remove such producer's  
21 name from the list certified by such cooperative with its corporate  
22 vote.

23 (5) In order to ensure that all milk producers are  
24 informed regarding a proposed order, the commission shall notify  
25 all milk producers that an order is being considered and that each  
26 producer may register his approval or disapproval with the  
27 commission either directly or through his or her cooperative.

1       Sec. 14. TERMINATION OF OVER-ORDER PRICE OR MARKETING  
2 ORDER. (a) The commission shall terminate any regulations  
3 establishing an over-order price or commission marketing order  
4 issued under this article whenever it finds that such order or price  
5 obstructs or does not tend to effectuate the declared policy of this  
6 compact.

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

16       (c) The termination or suspension of any order or provision  
17 thereof shall not be considered an order within the meaning of this  
18 article and shall require no hearing but shall comply with the  
19 requirements for informal rulemaking prescribed by Section 4,  
20 federal Administrative Procedure Act (5 U.S.C. Section 553), as  
21 amended.

22                                   ARTICLE VI. ENFORCEMENT

23       Sec. 15. RECORDS, REPORTS, ACCESS TO PREMISES. (a) The  
24 commission may by rule and regulation prescribe recordkeeping and  
25 reporting requirements for all regulated persons. For purposes of  
26 the administration and enforcement of this compact, the commission  
27 is authorized to examine the books and records of any regulated

1 person relating to his or her milk business, and for that purpose,  
2 the commission's properly designated officers, employees, or  
3 agents shall have full access during normal business hours to the  
4 premises and records of all regulated persons.

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

21 (c) No officer, employee, or agent of the commission shall  
22 intentionally disclose information, by inference or otherwise,  
23 which is made confidential pursuant to this section. Any person  
24 violating the provisions of this section shall, upon conviction, be  
25 subject to a fine of not more than \$1,000 or to imprisonment for not  
26 more than one year, or both, and shall be removed from office. The  
27 commission shall refer any allegation of a violation of this

1 section to the appropriate state enforcement authority or the  
2 United States Attorney.

3 Sec. 16. SUBPOENA, HEARINGS, AND JUDICIAL REVIEW. (a) The  
4 commission is hereby authorized and empowered by its members and  
5 its properly designated officers to administer oaths and issue  
6 subpoenas throughout all signatory states to compel the attendance  
7 of witnesses and the giving of testimony and the production of other  
8 evidence.

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

18 (c) The district courts of the United States in any district  
19 in which such handler is an inhabitant, or has his principal place  
20 of business, are hereby vested with jurisdiction to review such  
21 ruling, provided a complaint for that purpose is filed within 30  
22 days from the date of the entry of such ruling. Service of process  
23 in such proceedings may be had upon the commission by delivering to  
24 it a copy of the complaint. If the court determines that such  
25 ruling is not in accordance with law, it shall remand such  
26 proceedings to the commission with directions either (1) to make  
27 such ruling as the court shall determine to be in accordance with

1 law, or (2) to take such further proceedings as, in its opinion, the  
2 law requires. The pendency of proceedings instituted pursuant to  
3 this subsection shall not impede, hinder, or delay the commission  
4 from obtaining relief pursuant to Section 17 of this compact. Any  
5 proceedings brought pursuant to Section 17 of this compact, except  
6 where brought by way of counterclaim in proceedings instituted  
7 pursuant to this section, shall abate whenever a final decree has  
8 been rendered in proceedings between the same parties, and covering  
9 the same subject matter, instituted pursuant to this section.

10 Sec. 17. ENFORCEMENT WITH RESPECT TO HANDLERS. (a) Any  
11 violation by a handler of the provisions of regulations  
12 establishing an over-order price or a commission marketing order,  
13 or other regulations adopted pursuant to this compact, shall:

14 (1) Constitute a violation of the laws of each of the  
15 signatory states. Such violation shall render the violator subject  
16 to a civil penalty in an amount as may be prescribed by the laws of  
17 each of the participating states, recoverable in any state or  
18 federal court of competent jurisdiction. Each day such violation  
19 continues shall constitute a separate violation.

20 (2) Constitute grounds for the revocation of a license  
21 or permit to engage in the milk business under the applicable laws  
22 of the participating states.

23 (b) With respect to handlers, the commission shall enforce  
24 the provisions of this compact, regulations establishing an  
25 over-order price, a commission marketing order, or other  
26 regulations adopted hereunder by:

27 (1) commencing an action for legal or equitable relief



1 brought in the name of the commission in any state or federal court  
2 of competent jurisdiction; or

3 (2) referral to the state agency for enforcement by  
4 judicial or administrative remedy with the agreement of the  
5 appropriate state agency of a participating state.

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

10 ARTICLE VII. FINANCE

11 Sec. 18. FINANCE OF START-UP AND REGULAR COSTS. (a) To  
12 provide for its start-up costs, the commission may borrow money  
13 pursuant to its general power under Section 6(d)(4) of this  
14 compact. In order to finance the costs of administration and  
15 enforcement of this compact, including payback of start-up costs,  
16 the commission is hereby empowered to collect an assessment from  
17 each handler who purchases milk from producers within the region.  
18 If imposed, this assessment shall be collected on a monthly basis  
19 for up to one year from the date the commission convenes, in an  
20 amount not to exceed \$.015 per hundredweight of milk purchased from  
21 producers during the period of the assessment. The initial  
22 assessment may apply to the projected purchases of handlers for the  
23 two-month period following the date the commission convenes. In  
24 addition, if regulations establishing an over-order price or a  
25 compact marketing order are adopted, they may include an assessment  
26 for the specific purpose of their administration. These  
27 regulations shall provide for establishment of a reserve for the

1 commission's ongoing operating expenses.

2 (b) The commission shall not pledge the credit of any  
3 participating state or of the United States. Notes issued by the  
4 commission and all other financial obligations incurred by it shall  
5 be its sole responsibility and no participating state or the United  
6 States shall be liable therefor.

7 Sec. 19. AUDIT AND ACCOUNTS. (a) The commission shall keep  
8 accurate accounts of all receipts and disbursements, which shall be  
9 subject to the audit and accounting procedures established under  
10 its rules. In addition, all receipts and disbursements of funds  
11 handled by the commission shall be audited yearly by a qualified  
12 public accountant and the report of the audit shall be included in  
13 and become part of the annual report of the commission.

14 (b) The accounts of the commission shall be open at any  
15 reasonable time for inspection by duly constituted officers of the  
16 participating states and by any persons authorized by the  
17 commission.

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

22 ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND

23 WITHDRAWAL

24 Sec. 20. ENTRY INTO FORCE; ADDITIONAL MEMBERS. The compact  
25 shall enter into force effective when enacted into law by any three  
26 states of the group of states composed of Alabama, Arkansas,  
27 Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi,

1 North Carolina, Oklahoma, South Carolina, Tennessee, Texas,  
2 Virginia, and West Virginia and when the consent of the United  
3 States Congress has been obtained.

4 Sec. 21. WITHDRAWAL FROM COMPACT. Any participating state  
5 may withdraw from this compact by enacting a statute repealing the  
6 same, but no such withdrawal shall take effect until one year after  
7 notice in writing of the withdrawal is given to the commission and  
8 the governors of all other participating states. No withdrawal  
9 shall affect any liability already incurred by or chargeable to a  
10 participating state before the time of such withdrawal.

11 Sec. 22. SEVERABILITY. If any part or provision of this  
12 compact is adjudged invalid by any court, such judgment shall be  
13 confined in its operation to the part or provision directly  
14 involved in the controversy in which such judgment shall have been  
15 rendered and shall not affect or impair the validity of the  
16 remainder of this compact. In the event the United States Congress  
17 consents to this compact subject to conditions, said conditions  
18 shall not impair the validity of this compact when said conditions  
19 are accepted by three or more compacting states. A compacting state  
20 may accept the conditions of the United States Congress by  
21 implementation of this compact.

22 SECTION 2. Section 12.020, Agriculture Code, is amended by  
23 amending Subsection (a) and adding Subsection (c-1) to read as  
24 follows:

25 (a) If a person violates a provision of this code described  
26 by Subsection (c) or (c-1) [~~of this section~~] or a rule or order  
27 adopted by the department under a provision of this code described

1 by Subsection (c) or (c-1) [~~of this section~~], the department may  
2 assess an administrative penalty against the person as provided by  
3 this section.

4 (c-1) The department may assess an administrative penalty  
5 of not more than \$500 against a person who violates Chapter 182.

6 SECTION 3. This Act takes effect September 1, 2003.