



SPONSOR: Rep. Caulk  
& Sen. Bunting, Reps. Carey,  
Cathcart, Quillen, Price, Schroeder,  
West, Ewing, Sens. Adams, Cook,  
Simpson, Venable

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO.

FOR

HOUSE BILL NO. 94

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO THE NORTHEAST  
INTERSTATE DAIRY COMPACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend Title 3 of the Delaware Code by adding thereto a new chapter, designated as  
2 Chapter 32, which new chapter shall read as follows:

3                   “CHAPTER 32. NORTHEAST INTERSTATE DAIRY COMPACT.

4           § 3201. The State of Delaware to enter into Compact; provisions thereof.

5           The State of Delaware hereby enters into the Northeast Interstate Dairy Compact as set forth in  
6 this Section. The Compact shall take effect in accordance with Article VIII, § 20 of the Compact, subject  
7 to conditions imposed by the consent of the U. S. Congress. The text of the Compact is as follows:

8                   NORTHEAST INTERSTATE DAIRY COMPACT.

9                   Article I. Statement of Purpose, Findings and Declaration of Policy.

10          Section 1. Statement of purpose, findings and declaration of policy.

11          The purpose of this Compact is to recognize by constitutional prerequisite the interstate character  
12 of the Northeast Dairy Industry and to form an Interstate Commission for the Northeast region. The  
13 mission of the Commission is to take such steps as are necessary to assure the continued viability of dairy  
14 farming in the northeast and to assure consumers of an adequate, local supply of pure and wholesome milk.

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

19           The participating states further find that dairy farms are essential to the region's rural communities  
20 and character. The farms preserve open spaces, sculpt the landscape and provide the land base for a  
21 diversity of recreational pursuits. In defining the rural character of our communities and landscape, dairy  
22 farms also provide a major draw for our tourist industries.

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

27           Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and  
28 stability of the northeast dairy region. Historically, individual state regulatory action has been an effective  
29 emergency remedy available to farmers confronting a distressed market. The federal order system,  
30 implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices for  
31 dairy products, without preempting the power of states to regulate milk prices above the minimum levels so  
32 established. Based on this authority, each state in the region has individually attempted to implement at  
33 least one regulatory program in response to the current dairy industry crisis.

34           In today's regional dairy marketplace, cooperative rather than individual state action may address  
35 more effectively the market disarray. Under our constitutional system, properly authorized, states acting  
36 cooperatively may exercise more power to regulate interstate commerce than they may assert individually  
37 without such authority. For this reason, the participating states invoke their authority to act in common  
38 agreement, with the consent of Congress, under the Compact clause of the Constitution.

39           In establishing their constitutional regulatory authority over the region's fluid milk market by this  
40 Compact, the participating states declare their purpose that this Compact neither displace the federal order  
41 system nor encourage the merging of federal orders. Specific provisions of the Compact itself set forth this  
42 basic principle.

43           Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the  
44 Compact also contains a contingency provision should the federal order system be discontinued. In that  
45 event, the Interstate Commission is authorized to regulate the marketplace in replacement of the order  
46 system. This contingent authority does not anticipate such a change, however, and should not be so  
47 construed. It is only provided should developments in the market other than establishment of this Compact  
48 result in discontinuance of the order system.

## 49           Article II. Definitions and Rules of Construction.

### 50           Section 2. Definitions.

51           For the purposes of this Compact, and of any supplemental or concurring legislation enacted  
52 pursuant thereto, except as may be otherwise required by the context:

53                     (1) ‘Commission’ means the Commission established by this Compact.

54                     (2) ‘Compact; means this Interstate Compact.

55                     (3) ‘Region’ means the territorial limits of the states which are or become parties  
56 to this Compact.

57                     (4) ‘Participating State’ means a state which has become a party to this Compact  
58 by the enactment of concurring legislation.

59                     (5) ‘Regulated Area’ means any area within the region governed by and defined  
60 in regulations establishing a Compact over-order price or commission marketing order.

61                     (6) ‘Pool Plant’ means any milk plant located in a regulated area.

62                     (7) ‘Partially Regulated Plant’ means a milk plant not located in a regulated area  
63 but having class I distribution within such area, or receipts from producers located in  
64 such area. Commission regulations may exempt plants having such distribution or  
65 receipts in amounts less than the limits defined therein.

66                     (8) ‘Compact Over-Order Price’ means a minimum price required to be paid to  
67 producers for Class I milk established by the Commission in regulations adopted pursuant  
68 to §§ 9 and 10 of this Compact, which is above the price established in federal marketing  
69 orders or by state farm price regulation in the regulated area. Such price may apply

70 throughout the region or in any part of parts thereof as defined in the regulations of the  
71 Commission.

72 (9) 'Commission Marketing Order' means regulations adopted by the  
73 Commission pursuant to §§ 9 and 10 of this Compact in place of a terminated federal  
74 marketing order or state dairy regulation. Such order may apply throughout the region or  
75 in an part or parts thereof as defined in the regulations of the Commission. Such order  
76 may establish minimum prices for any or all classes of milk.

77 (10) 'Milk' means the lacteal secretion of cows and includes all skim, butterfat,  
78 or other constituents obtained from separation or any other process. The term is used in  
79 its broadest sense and may be further defined by the Commission for regulatory purposes.

80 (11) 'Class I Milk' means milk disposed of in fluid form or as a fluid milk  
81 product, subject to further definition in accordance with the principles expressed in §  
82 3(b).

83 (12) 'State Dairy Regulation' means any state regulation of dairy prices, and  
84 associated assessments, whether by statute, marketing order or otherwise.

### 85 Section 3. Rules of Construction.

86 (a) This Compact shall not be construed to displace existing federal milk  
87 marketing orders or state dairy regulation in the region but to supplement them. In the  
88 event some or all federal orders in the region are discontinued, the Compact shall be  
89 construed to provide the Commission the option to replace them with one or more  
90 Commission Marketing Orders pursuant to this Compact.

91 (b) This Compact shall be construed liberally in order to achieve the purposes  
92 and intent enunciated in § 1. It is the intent of this Compact to establish a basic structure  
93 by which the Commission may achieve those purposes through the application,  
94 adaptation and development of the regulatory techniques historically associated with milk  
95 marketing and to afford the Commission broad flexibility to devise regulatory  
96 mechanisms to achieve the purposes of this Compact. In accordance with this intent, the

technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the Commission may further define the terms used in this Compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

### Article III. Commission Established.

#### Section 4. Commission established.

There is hereby created a Commission to administer the Compact composed of delegations from each state in the region. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state.

Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by the Commission. Each state delegation shall be entitled to one vote in the conduct of the Commission's affairs.

#### Section 5. Voting requirements.

All actions taken by the Commission, except for the establishment or termination of an over-order price or Commission Marketing Order, and the adoption, amendment or rescission of the Commission's bylaws, shall be by majority vote of the delegations present. Establishment or termination of an over-order price or Commission Marketing Order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations

from the participating states shall constitute a quorum for the conduct of the Commission's business.

Section 6. Administration and Management.

(a) The Commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The Commission shall appoint an executive director and fix the duties and compensation of the executive director. The executive director shall serve at the pleasure of the Commission, and, together with the treasurer, shall be bonded in an amount determined by the Commission. The Commission may establish through its by-laws an Executive Committee composed of one member elected by each delegation.

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

(c) The Commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both Houses of the Legislature, and the head of the State Department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this Compact, the Commission shall have the power:

(1) To sue and be sued in any state or Federal Court;

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

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

(4) To borrow money and to issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the Commission as security therefor, subject to the provisions of § 18 of this Compact.

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

(6) To create and abolish such offices, employment, and positions as it deems necessary for the purposes of the Compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The Commission may also retain personal services on a contract basis.

#### Section 7. Rulemaking power.

In addition to the power to promulgate a Compact Over-Order Price or Commission Marketing Orders as provided by this Compact, the Commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this Compact.

#### Article IV. Powers of the Commission.

#### Section 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The Commission is hereby empowered to:

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

(2) Prepare and transmit to the participating states model dairy laws and regulations dealing with the inspection of farms and plants, sanitary codes, labels for dairy products and their imitations, standards for dairy products, license standards, producer security programs, and fair trade laws.

(3) Study and recommend to the participating states joint or cooperative programs of the administration of the dairy laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(4) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposiums or conferences designed to improve industry relations, or a better understanding of problems.

(5) Prepare and release periodic reports on activities and results of the Commission's efforts to the participating states.

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

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

(8) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the



financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

Section 9. Equitable farm prices.

(a) The powers granted in this section and § 10 shall apply only to the establishment of a Compact Over-Order Price, so long as Federal Milk Marketing Orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall authorize the Commission to establish one or more Commission Marketing Orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A Compact Over-Order Price established pursuant to this section shall apply only to Class I Milk. Such over-order price shall not exceed \$1.50 per gallon. Beginning in 1990, and using that year as a base, the foregoing \$1.50 per gallon maximum shall be adjusted annually by the rate of change in the consumer price index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the Commission may prescribe in regulations.

(c) A Commission Marketing Order shall apply to all classes and uses of milk.

(d) The Commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants and all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a Compact Over-Order Price or by one or more Commission Marketing Orders. Whenever such a price has been established by either type of regulation, the legal

obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulations and this Compact. Producer-handlers as defined in an applicable Federal Market Order shall not be subject to a Compact Over-Order Price. The Commission shall provide for similar treatment of producer-handlers under Commission Marketing Orders.

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

(f) When establishing a Compact Over-Order Price, the Commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producer to generate additional supplies of milk.

(g) The Commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the Compact. The Commission may reimburse other agencies for the reasonable cost of providing these services.

Section 10. Optional provisions for pricing order.

Regulations establishing a Compact Over-Order Price or a Commission Marketing Order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a Commission Marketing Order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the Commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I Milk.

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

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

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

(B) With respect to any Commission Marketing Order, as defined in § 2(9), which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I Milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a Compact Over-Order Price or against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the Compact Over-Order Price or Commission Marketing Order.

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

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

(9) Provisions requiring the payment by handlers of an assessment to cover the cost of the administration and enforcement of such order pursuant to Article VII, § 18(a).

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

(11) Other Provisions and requirements as the Commission may find are necessary or appropriate to effectuate the purposes of this Compact and to provide for the payment of fair and equitable minimum prices to producers.

#### Article V. Rulemaking Procedure.

##### Section 11. Rulemaking procedure.

Before promulgation of any regulations establishing a Compact Over-Order Price or Commission Marketing Order, including any provision with respect to milk supply under Section 9(f), or Amendment thereof, as provided in Article IV, the Commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by § 4 of the Federal Administrative Procedure Act, as amended (5 U. S. C. Section 553). In addition, the Commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a Compact Over-Order Price or a Commission Marketing Order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or Federal officials.

##### Section 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by § 4(B) of the Federal Administrative Procedure Act, as amended (5 U. S. C. Section 553(C)), the Commission shall make findings of fact with respect to:

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

(2) What level of prices will assure that producers receive a price sufficient to cover their cost of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

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

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in § 13.

Section 13. Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a Compact Over-Order Price or a Commission Marketing Order, including any provision with respect to milk supply under Section 9(f), is approved by producers. The Commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the Commission. The terms and conditions of the proposed order or amendment shall be described by the Commission in the ballot used in the conduct of the referendum. But the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relation thereto.

335 (b) An order or amendment shall be deemed approved by producers if the  
336 Commission determines that it is approved by at least two-thirds of the voting producers  
337 who, during a representative period determined by the Commission, have been engaged  
338 in the production of milk the price of which would be regulated under the proposed order  
339 or amendment.

340 (c) For purposes of any referendum, the Commission shall consider the approval  
341 or disapproval by any cooperative association of producers, qualified under the  
342 provisions of the Act of Congress of February 18, 1922, as amended, known as the  
343 Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for  
344 or advancing the interests of producers of such commodity, as the stockholders in, or  
345 under contract with, such cooperative association of producers, except as provided in  
346 subdivision (1) hereof and subject to the provisions of subdivisions (2) through (5)  
347 hereof.

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

351 (2) Any cooperative which is qualified to block vote shall, before  
352 submitting its approval or disapproval in any referendum, give prior written  
353 notice to each of its members as to whether and how it intends to cast its vote.  
354 The notice shall be given in a timely manner as established, and in the form  
355 prescribed, by the Commission.

356 (3) Any producer may obtain a ballot from the Commission in order to  
357 register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses the producer's approval or disapproval of the proposed order, shall notify the Commission as to the name of the cooperative of which the producer is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to insure that all milk producers are informed regarding a proposed order, the Commission shall notify all milk producers that an order is being considered and that each producer may register the producer's approval or disapproval, with the Commission either directly or through the producer's cooperative.

#### Section 14. Termination of over-order price or marketing order.

(a) The Commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this Article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this Compact.

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



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

## Article VI. Enforcement.

### Section 15. Records, reports, access to premises.

(a) The Commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this Compact. The Commission is authorized to examine the books and records of any regulated person relating to the person's milk business and for that purpose, the Commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the Commission officers, employees, or its agents pursuant to this Section shall be confidential and not subject to disclosure except to the extent that the Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this Compact Over-Order Price, a Compact Marketing Order, or other regulations of the Commission. The Commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (2) the publication by direction of the Commission of the name of any person violating any regulation of the Commission, together with a statement of the particular provisions violated by such person.

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

Section 16. Subpoena, hearings and judicial review.

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

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

(c) The District Courts of the United States in any district in which such handler is an inhabitant, or has the handler's principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within thirty days from the date of the entry of such ruling. Service of processing such proceedings may be had upon the commission by delivering to it a copy of the bill of complain, if the court determines that such ruling is not in accordance with law, it shall

remand such proceedings to the commission with directions either (1) to make sure ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its option, the law required. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the commission from obtaining relief pursuant to § 17. Any proceedings brought pursuant to § 17 (except where brought by way of counter claim in proceedings instituted pursuant to this Section) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

Section 17. Enforcement with respect to handlers.

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

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

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

(b) With respect to handlers, the Commission shall enforce the provisions of this compact, regulations establishing an over-order price, a Commission Marketing Order or other regulations adopted hereunder by:

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

455 (2) With the agreement of the appropriate state agency of a participating  
456 state, by referral to the state agency for enforcement by judicial or administrative  
457 remedy.

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

## 461 Article VII. Finance.

### 462 Section 18. Finance of start up and regular costs.

463 (a) To provide for its start-up costs, the Commission may borrow money  
464 pursuant to its general power under §6(d)(4). In order to finance the costs of  
465 administration and enforcement of this Compact, including payback of start-up costs, the  
466 Commission is hereby empowered to collect an assessment from each handler who  
467 purchases milk from producers within the region. If imposed, this assessment shall be  
468 collected on a monthly basis for up to one year from the date the Commission convenes,  
469 in an amount not to exceed 0.001% of the applicable federal market order blend price per  
470 hundred weight of milk purchased from producers during the period of the assessment.  
471 The initial assessment may apply to the projected purchases of handlers for the two-  
472 month period following the date the Commission convenes. In addition, if regulations  
473 establishing an over-order price or a compact marketing order are adopted, they may  
474 include an assessment for the specific purpose of their administration. These regulations  
475 shall provide for establishment of a reserve for the commissions ongoing operating  
476 expenses.

477 (b) The Commission shall not pledge the credit of any participating state or of  
478 the United States. Noted issued by the Commission and all other financial obligations

incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

Section 19. Audit and accounts.

(a) The Commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part o the annual report of the commission.

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

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

Article VIII. Entry into force; additional members and withdrawal.

Section 20. Entry into Force; Additional Members.

The Compact shall enter into force effective when enacted into law by any three states of the group of states composed of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, and when the consent of Congress has been obtained. This Compact shall also be open to states which are contiguous to any of the named states and open to states which are contiguous to participating states.

Section 21. Withdrawal from compact.

Any participating state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the Commission and the Governors of all participating states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Section 22. Severability.

If any part or provision of this Compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part of provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Compact.

Congress reserves the right to amend or rescind this interstate compact at any time.

§ 3202. The Delaware Delegation to the Northeast Interstate Dairy Compact.

(a) The Delaware delegation to the Northeast Interstate Dairy Compact Commission consists of the following five members, appointed by the Governor with the advice and consent of the Senate.

(1) Two dairy farmers who are actively engaged in the production of milk at the time of appointment;

(2) One dairy processor who is actively engaged in the production of milk at the time of appointment;

(3) Two consumers.

523 (b) The members of the delegation shall be selected to represent the diversity of  
524 the dairy interests and geographic representation of the State.

525 (c) (1) The term of a member is 4 years and begins on  
526 October 1 in the year in which the member is appointed.

527 (2) At the end of a term, a member continues to serve until a successor is  
528 appointed and qualifies.

529 (3) A member appointed after a term has begun serves only for the rest  
530 of the term and until a successor is appointed and qualifies.

531 (4) The terms of the members are staggered as required by the terms  
532 provided for members of the delegation on October 1, 2000.

533 (5) A member may serve no more than 3 consecutive terms.

534 (6) The Governor may remove a member for incompetence or  
535 misconduct.

536 (7) If a vacancy arises other than by the expiration of a term, the  
537 Governor shall appoint within 30 days a successor to serve the remainder of the  
538 term.

539 (8) Terms of the initial members of the Delaware delegation to the  
540 Northeast Interstate Dairy Compact Commission shall expires as follows:

541 a. one dairy member in 2004;

542 b. one consumer members and the dairy processor in 2003;

543 c. one dairy farmer in 2002; and

d. one consumer member in 2001.

(d) A member of the delegation may not receive compensation for serving on the delegation.

§ 3203. Duties of the Secretary of Agriculture.

(a) The Secretary of Agriculture may obtain information by lawful means pertaining to the dairy industry as necessary to carry out the purposes of this Chapter and the Northeast Interstate Dairy Compact. The information may be used by the Secretary, the Delaware delegation to the Commission and the Commission.

(b) the Secretary of Agriculture may adopt regulations necessary to carry out the purposes of this Chapter and the Northeast Interstate Dairy Compact.

§ 3204. Civil Penalties.

(a) A person may not violate a provision of this Chapter, the Northeast Interstate Dairy compact, or a regulation adopted under this Chapter.

(b) Instead of pursuing criminal charges provided in this Compact, the Secretary may impose on any person who violates this compact a civil penalty of:

(1) For a first violation for which a civil penalty is imposed, not more than \$500;

(2) For a second violation for which a civil penalty is imposed, not more than \$1,000; or

(3) for a third or subsequent violation for which a civil penalty is imposed, not more than \$2,000.

(c) Penalties collected by the Secretary under this section shall be deposited into the General Fund of the State.

(d) Each day that a violation continues is a separate violation.

(e) The Secretary shall adopt regulations necessary to carry out the provisions of this Section.

Section 3. This Act may not take effect until a similar act is passed by at least two of the other states listed in Article VIII, § 20 of the compact in § 3201 of the Agriculture Article as enacted by this Act, the United States



572 Congress consents to the compact, and the conditions imposed by that Consent have been met; that the other listed  
573 states are required to concur in this Act of the General Assembly of Delaware by the passage of similar Acts; that  
574 the United States congress is required to consent to this Act; that the Department of Legislative Services shall notify  
575 the appropriated officials of the listed states and the United States Congress of the passage of this Act; that the  
576 Department of Legislative Services shall notify the appropriate officials of the listed states and the United States  
577 Congress of the passage of this Act; and that upon the concurrence in this Act by at least two of the other listed  
578 states, consent by the United States congress and meeting of the conditions imposed by that consent the Governor of  
579 the State of Delaware shall issue a proclamation declaring this Act valid and effective and shall forward a copy of  
580 the proclamation to the Executive director of the Department of Legislative Services.

581           Section 4. this Act shall take effect October 2000.

#### SYNOPSIS

This bill enters the State of Delaware in the Northeast Interstate Dairy Compact and sets the initial terms of Delaware's delegation to the Compact Commission.