

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4134

To establish a reserve fund to reimburse milk producers for losses incurred as a result of the bankruptcy of a milk handler that marketed raw milk from the producers, to provide funds for the reserve fund through an assessment on all milk handlers, and to establish a Board of Trustees to administer the reserve fund.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1994

Mr. GUNDERSON introduced the following bill; which was referred to the  
Committee on Agriculture

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## A BILL

To establish a reserve fund to reimburse milk producers for losses incurred as a result of the bankruptcy of a milk handler that marketed raw milk from the producers, to provide funds for the reserve fund through an assessment on all milk handlers, and to establish a Board of Trustees to administer the reserve fund.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Dairy Industry Security Reserve Fund Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
2 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Definitions.
- Sec. 3. Establishment of Dairy Industry Security Reserve Fund.
- Sec. 4. Establishment of Board of Trustees for Dairy Industry Security Reserve Fund.
- Sec. 5. Collection of assessments from milk handlers to fund Reserve Fund.
- Sec. 6. Submission and payment of claims of milk producers for nonpayment for milk shipments.
- Sec. 7. Preemption of State or local payment security programs.

3 **SEC. 2. DEFINITIONS.**

4 For purposes of this Act:

5 (1) BOARD.—The term “Board” means the  
6 Board of Trustees established under section 4 to ad-  
7 minister the Dairy Industry Security Reserve Fund.

8 (2) MILK.—The term “milk” means cow’s milk  
9 produced in the 48 contiguous States.

10 (3) MILK HANDLER.—The term “milk handler”  
11 means a person who receives or otherwise acquires  
12 milk in commerce before processing or who first  
13 processes milk for the purpose of marketing com-  
14 mercially milk or milk products.

15 (4) MILK PRODUCER.—The term “milk pro-  
16 ducer” means a person who produces milk in the 48  
17 contiguous States and markets such milk for com-  
18 mercial use.

19 (5) PROCESS.—The term “process” includes  
20 the pasteurization, clarification, or separation of  
21 milk or the addition of other ingredients or products

1 to milk, except that such term does not include sim-  
2 ply the cooling of milk or the commingling of milk  
3 with other milk.

4 (6) RESERVE FUND.—The term “Reserve  
5 Fund” means the Dairy Industry Security Reserve  
6 Fund established under section 3.

7 (7) SECRETARY.—The term “Secretary” means  
8 the Secretary of Agriculture.

9 **SEC. 3. ESTABLISHMENT OF DAIRY INDUSTRY SECURITY**  
10 **RESERVE FUND.**

11 (a) ESTABLISHMENT.—There is hereby established in  
12 the Department of Agriculture a fund to be known as the  
13 “Dairy Industry Security Reserve Fund”. Monies in the  
14 Reserve Fund shall be available only for the use of the  
15 Board.

16 (b) CONTENTS OF RESERVE FUND.—The Reserve  
17 Fund shall consist of the following:

18 (1) Amounts collected as assessments under  
19 section 5.

20 (2) Amounts collected by States before the date  
21 of the enactment of this Act and paid to the Reserve  
22 Fund on behalf of milk handlers subject to assess-  
23 ments.

24 (3) Amounts borrowed by the Board.

1           (4) Interest from investments made under sub-  
2           section (d).

3           (c) USE OF RESERVE FUND.—The Board may use  
4 monies in the Reserve Fund to pay—

5           (1) subject to section 4(f), the expenses in-  
6           curred by the Secretary or the Board in administer-  
7           ing this Act; and

8           (2) the claims of milk producers for milk  
9           shipped by the producers for which payment is not  
10          made on account of the bankruptcy under title 11,  
11          United States Code, of a milk handler.

12          (d) INVESTMENT AUTHORITY.—The Board may in-  
13          vest monies in the Reserve Fund in general obligations  
14          of the United States, in general obligations of a State or  
15          political subdivision of a State, in any interest bearing ac-  
16          count or certificate of deposit of a bank that is a member  
17          of the Federal Reserve System, or in obligations fully  
18          guaranteed as to principle and interest by the United  
19          States. The Secretary shall provide guidelines to the  
20          Board for the exercise of this investment authority.

21          (e) BORROWING AUTHORITY.—The Board may bor-  
22          row money for deposit into the Reserve Fund if the Board  
23          determines that amounts in the Reserve Fund are insuffi-  
24          cient to satisfy approved claims.

1 **SEC. 4. ESTABLISHMENT OF BOARD OF TRUSTEES FOR**  
2 **DAIRY INDUSTRY SECURITY RESERVE FUND.**

3 (a) ESTABLISHMENT.—There is hereby established a  
4 Board of Trustees to administer the Dairy Industry Secu-  
5 rity Reserve Fund, set and collect assessments under sec-  
6 tion 5 to provide funds for the Reserve Fund, pay claims  
7 made against the Reserve Fund, and perform such other  
8 duties as may be assigned to the Board by this Act or  
9 the Secretary.

10 (b) MEMBERSHIP.—

11 (1) APPOINTMENT OF MEMBERS.—The Board  
12 shall consist of nine members appointed by the Sec-  
13 retary as follows:

14 (A) One member selected from among milk  
15 producers whose farms are located in Region I.

16 (B) One member selected from among milk  
17 producers whose farms are located in Region II.

18 (C) One member selected from among milk  
19 producers whose farms are located in Region  
20 III.

21 (D) One member selected from among the  
22 officers or employees of milk handlers that are  
23 subject to the assessment under section 5 and  
24 the principal place of business of which is Re-  
25 gion I.

1           (E) One member selected from among the  
2 officers or employees of milk handlers that are  
3 subject to the assessment under section 5 and  
4 the principal place of business of which is Re-  
5 gion II.

6           (F) One member selected from among the  
7 officers or employees of milk handlers that are  
8 subject to the assessment under section 5 and  
9 the principal place of business of which is Re-  
10 gion III.

11           (G) Three members selected from among  
12 persons who are experts in financial investment  
13 or the staffing or administration of relevant  
14 Federal programs, as designated by the Sec-  
15 retary before the first solicitation of nominees  
16 under subsection (c).

17           (2) REGIONAL DISTRIBUTION.—For purposes of  
18 making regional appointments of members of the  
19 Board under paragraph (1), the 48 contiguous  
20 States shall be grouped into three regions as follows:

21           (A) Region I: Alabama, Arkansas, Con-  
22 necticut, Delaware, Florida, Georgia, Indiana,  
23 Kentucky, Louisiana, Maine, Maryland, Massa-  
24 chusetts, Mississippi, New Hampshire, New  
25 Jersey, New York, North Carolina, Ohio, Penn-

1           sylvania, Rhode Island, South Carolina, Ten-  
2           nessee, Texas, Vermont, Virginia, and West  
3           Virginia.

4           (B) Region II: Illinois, Iowa, Michigan,  
5           Minnesota, Missouri, North Dakota, South Da-  
6           kota, and Wisconsin.

7           (C) Region III: Arizona, California, Colo-  
8           rado, Idaho, Kansas, Montana, Nebraska, Ne-  
9           vada, New Mexico, Oklahoma, Oregon, Utah,  
10          Washington, and Wyoming.

11          (3) TERMS OF MEMBERS; VACANCIES.—Each  
12          member of the Board shall serve for a three-year  
13          term, except that the Secretary may stagger the  
14          terms of the initial members of the Board. A va-  
15          cancy on the Board shall be filled in the manner in  
16          which the original appointment is required to be  
17          made.

18          (4) COMPENSATION.—Members of the Board  
19          shall serve without pay, but shall receive a per diem  
20          for each day during which they are engaged in the  
21          actual performance of services on behalf of the  
22          Board and shall be reimbursed for expenses incurred  
23          in their service on the Board, including reasonable  
24          travel costs and out-of-pocket expenses when re-

1       quired to be away from their home or place of busi-  
2       ness in the service of the Board.

3           (5) REMOVAL FOR CAUSE.—The Secretary may  
4       remove any member of the Board for good cause  
5       shown.

6       (c) NOMINATION PROCESS.—

7           (1) APPOINTMENT FROM NOMINEES.—The Sec-  
8       retary shall appoint the members specified under  
9       subsection (b)(1) from nominees submitted pursuant  
10      to paragraph (2).

11          (2) SOLICITATION OF NOMINEES.—The Sec-  
12      retary shall begin the process of filling a particular  
13      position on the Board by soliciting the names of per-  
14      sons who are qualified to serve as a member of the  
15      Board in that position. The Secretary shall accept  
16      recommendations from persons who are qualified to  
17      serve as a member of the Board in that position or  
18      from organizations composed of such persons. The  
19      Secretary shall be the final judge of the qualifica-  
20      tions of persons to submit recommendations or to  
21      serve on the Board.

22          (3) LACK OF NOMINEES.—If nominees are not  
23      submitted pursuant to paragraph (2) for a particu-  
24      lar position on the Board, the Secretary may make

1 the appointment in such other manner as the Sec-  
2 retary may prescribe.

3 (d) BOARD PROCEDURES.—

4 (1) MEETINGS OF THE BOARD.—Within two  
5 months after the Secretary has appointed the initial  
6 Board, the Board shall convene for its initial meet-  
7 ing and elect officers and adopt written bylaws and  
8 rules of procedure to govern its meetings. Following  
9 the initial meeting, the Board shall meet at the call  
10 of the chairperson or as requested by the Secretary,  
11 but at least once every six months.

12 (2) QUORUM.—A quorum of the Board shall be  
13 five members.

14 (3) NOTICE TO SECRETARY; EX OFFICIO REP-  
15 RESENTATION.—The Board shall notify the Sec-  
16 retary in advance of each meeting of the Board. The  
17 Secretary, or a representative of the Secretary, may  
18 attend each meeting as a nonvoting ex officio mem-  
19 ber of the Board.

20 (4) CHAIRPERSON.—The members of the Board  
21 shall select one of the members to serve as the chair-  
22 person of the Board. The chairperson shall serve a  
23 one year term of office.

24 (e) STAFF.—The Board may employ or contract with  
25 outside entities for such persons as the Board considers

1 to be necessary to assist the Board to perform its duties  
2 under this Act. The Board shall define the duties of such  
3 persons in service to the Board and fix the compensation  
4 of such persons. At the request of the Board, the Sec-  
5 retary may assign, on a reimbursable basis, employees of  
6 the Department of Agriculture to assist the Board.

7 (f) ADMINISTRATIVE EXPENSES.—

8 (1) IN GENERAL.—The Board may incur and  
9 pay for administrative and other expenses related to  
10 the duties of the Board under this Act.

11 (2) LIMITATION.—Expenses incurred or paid by  
12 the Board during a fiscal year may not exceed five  
13 percent of the total amount in the Reserve Fund at  
14 the end of that fiscal year. The Secretary may waive  
15 this limitation for fiscal years before the Reserve  
16 Fund reaches the maximum capital contribution  
17 level specified in section 5.

18 (3) REIMBURSEMENT OF GOVERNMENT  
19 COSTS.—As one of the administrative expenses of  
20 the Board, the Board shall reimburse the Secretary  
21 for all costs incurred by the Secretary—

22 (A) to assist the Board in administering  
23 the Reserve Fund or in carrying out this Act;  
24 and

1 (B) in performing oversight of Board ac-  
2 tivities.

3 (g) GENERAL POWERS OF THE BOARD.—

4 (1) BYLAWS AND RULES.—The Board may  
5 adopt bylaws and issue rules and regulations govern-  
6 ing the manner in which its business may be con-  
7 ducted and the powers vested in it may be exercised.

8 (2) SUITS.—The Board may sue and be sued,  
9 complain and defend, in any court of law or equity,  
10 State or Federal. All suits of a civil nature at com-  
11 mon law or in equity to which the Board shall be a  
12 party shall be deemed to arise under the laws of the  
13 United States, and the United States district courts  
14 shall have original jurisdiction thereof, without re-  
15 gard to the amount in controversy, and the Board,  
16 in any capacity, without bond or security, may re-  
17 move any such action, suit, or proceeding from a  
18 State court to the United States district court for  
19 the district or division embracing the place where  
20 the same is pending by following any procedure for  
21 removal then in effect.

22 (3) INTERVENTION.—Upon timely application,  
23 the Board may raise and may appear and be heard  
24 on any issue in a bankruptcy case under title 11,

1 United States Code, in which a milk handler is the  
2 debtor.

3 (4) CONTRACT AUTHORITY.—The Board may  
4 enter into contracts and agreements as necessary in  
5 the conduct of its activities under this Act.

6 (5) MISCELLANEOUS AUTHORITIES.—The  
7 Board may exercise such other powers incidental to  
8 its performance of functions required or authorized  
9 for it under this Act.

10 (h) REPORTS.—The Board shall submit an annual  
11 report to the Secretary and Congress describing the activi-  
12 ties of the Board during the preceding fiscal year, expendi-  
13 tures from the Reserve Fund during that fiscal year, and  
14 the balance of the Reserve Fund at the end of that fiscal  
15 year and containing an estimate of anticipated expendi-  
16 tures from the Reserve Fund during the fiscal year in  
17 which the report is submitted.

18 **SEC. 5. COLLECTION OF ASSESSMENTS FROM MILK HAN-**  
19 **DLERS TO FUND RESERVE FUND.**

20 (a) IMPOSITION OF ASSESSMENT.—The Secretary  
21 shall require by order that each milk handler shall pay  
22 an assessment on all milk acquired by the milk handler  
23 and marketed for commercial use. In lieu of collecting an  
24 assessment from milk handlers in a State, the Board may  
25 accept payments from the State that—

1 (1) were collected before the date of the enact-  
2 ment of this Act; and

3 (2) are paid on behalf of milk handlers in  
4 amounts sufficient to cover the amounts that would  
5 be otherwise due from the milk handlers.

6 (b) EXCEPTIONS.—

7 (1) NONCOMMERCIAL PUBLIC HANDLERS.—The  
8 Board may exempt from paying an assessment those  
9 milk handlers that are noncommercial public users  
10 of milk, such as the Armed Forces, prisons, and  
11 schools.

12 (2) HANDLERS WHO ARE ALSO PRODUCERS.—  
13 A milk handler that is also a milk producer shall not  
14 be subject to an assessment if the milk handler only  
15 markets milk that is the handler's own production  
16 and such milk is produced through a single farming  
17 operation. In light of this exception, a milk handler  
18 that fails to pay an assessment may not submit a  
19 claim as a milk producer under section 6 for losses  
20 related to the handler's bankruptcy.

21 (c) AMOUNT OF ASSESSMENT.—The rate of assess-  
22 ment shall be established by the Board, except that the  
23 rate may not exceed two cents per hundredweight of milk.

24 (d) SUSPENSION OF ASSESSMENTS.—

1           (1) SUSPENSION REQUIRED.—The Board shall  
2 suspend the collection of assessments under this sec-  
3 tion whenever the unobligated balance in the Reserve  
4 Fund reaches \$30,000,000.

5           (2) REFUND OF EXCESS ASSESSMENTS.—If the  
6 unobligated balance in the Reserve Fund exceeds  
7 \$30,000,000 for three consecutive years, the Sec-  
8 retary shall refund the amount in excess of  
9 \$30,000,000 to all milk handlers that are in oper-  
10 ation as of the date the refund is declared and from  
11 which assessments were collected at any time.

12           (3) AMOUNT OF REFUND.—The amount to be  
13 paid as a refund to a milk handler referred to in  
14 paragraph (2) shall bear the same ratio to the total  
15 amount to be refunded as—

16                   (A) the total amount of assessments that  
17 would have been collected from that milk han-  
18 dler during the 12-month period preceding the  
19 refund, if not for the suspension of assessments  
20 under paragraph (1); bears

21                   (B) to the total amount of assessments  
22 that would have been so collected during that  
23 period from all milk handlers referred to in  
24 paragraph (2).

25           (e) COLLECTION AND ENFORCEMENT.—

1           (1) COLLECTION.—Assessments under this sec-  
2           tion shall be collected and remitted on a monthly  
3           basis to the Board for deposit in the Reserve Fund.  
4           The Secretary shall issue an order prescribing the  
5           manner in which assessments are to be collected and  
6           remitted. The Secretary shall oversee the collection  
7           of assessments using the audit system provided  
8           under Federal milk marketing orders issued under  
9           section 8c of the Agricultural Adjustment Act (7  
10          U.S.C. 608c), reenacted with amendments by the  
11          Agricultural Marketing Agreement Act of 1937.

12          (2) PENALTIES.—If a milk handler fails to  
13          remit the assessments required under this section or  
14          fails to comply with such requirements for record-  
15          keeping or otherwise as are required by the Board  
16          to carry out this section, the milk handler shall be  
17          liable to the Secretary for a civil penalty in an  
18          amount that is—

19                 (A) in the case of an unintentional viola-  
20                 tion, not less than \$500 but not more than  
21                 \$5,000; and

22                 (B) in the case of an intentional violation,  
23                 not less than \$10,000 but not more than  
24                 \$100,000.

1           (3) ENFORCEMENT.—The Secretary may en-  
2           force this section in the courts of the United States.

3           (f) EFFECT ON PRODUCER PRICES.—Assessments  
4           collected under this section shall not—

5           (1) reduce the prices paid under the Federal  
6           milk marketing orders issued under section 8c of the  
7           Agricultural Adjustment Act (7 U.S.C. 608c), reen-  
8           acted with amendments by the Agricultural Market-  
9           ing Agreement Act of 1937; or

10          (2) be deducted from the amounts that milk  
11          handlers must pay to milk producers for milk sold  
12          to a milk handler.

13   **SEC. 6. SUBMISSION AND PAYMENT OF CLAIMS OF MILK**  
14                   **PRODUCERS FOR NONPAYMENT FOR MILK**  
15                   **SHIPMENTS.**

16          (a) BOARD DETERMINATION OF ELIGIBILITY.—The  
17          Board shall determine the eligibility of a milk producer  
18          to receive a payment from the Reserve Fund on account  
19          of the bankruptcy under title 11, United States Code, of  
20          a milk handler.

21          (b) SUBMISSION OF CLAIM.—To apply for a payment  
22          from the Reserve Fund, a milk producer shall submit a  
23          claim to the Board in such form and containing such in-  
24          formation as the Board may require in order to evaluate

1 the claim. The information required by the Board shall  
2 include the following:

3 (1) The name of the milk handler the bank-  
4 ruptcy of which has resulted in the nonpayment to  
5 the milk producer for milk supplied by the milk pro-  
6 ducer.

7 (2) The name of the State in which the milk  
8 handler is licensed.

9 (3) The number of days of milk shipments for  
10 which the milk producer has not been paid on ac-  
11 count of the bankruptcy.

12 (4) The quantity of milk involved in those ship-  
13 ments.

14 (5) The amount of the payments due to the  
15 milk producer for those shipments that has not been  
16 paid.

17 (c) ELIGIBILITY CRITERIA.—Payments may be made  
18 by the Board on a claim submitted under this section only  
19 in the case of the bankruptcy of a milk handler that is  
20 licensed by a State and only with respect to milk produced  
21 by a milk producer after the date of the enactment of this  
22 Act.

23 (d) AMOUNT OF PAYMENT.—The total amount paid  
24 by the Board under this section to a milk producer on  
25 an approved claim shall be equal to 80 percent of the total

1 amount due to the milk producer and not paid on account  
2 of the bankruptcy for shipments of milk by the milk pro-  
3 ducer occurring during the period—

4 (1) beginning on the date of the first shipment  
5 for which the milk producer is not paid; and

6 (2) ending 31 days after that date.

7 (e) PARTIAL PAYMENTS.—If monies in the Reserve  
8 Fund are insufficient to make payments under this section  
9 in a lump sum, the Board may pay approved claims on  
10 a pro rata basis while funds are generated through assess-  
11 ments under section 5 to permit payment of the total  
12 amount of the approved claims.

13 **SEC. 7. PREEMPTION OF STATE OR LOCAL PAYMENT SECU-**  
14 **RITY PROGRAMS.**

15 The provisions of this Act preempt any State or local  
16 law or regulation with respect to the prompt payment of  
17 milk producers for milk sold to milk handlers subject to  
18 this Act, regardless of whether the State or local program  
19 is in the form of—

20 (1) a reserve fund funded by milk handlers to  
21 reimburse milk producers for losses incurred as a re-  
22 sult of the bankruptcy of a milk handler subject to  
23 this Act;

24 (2) a statutory trust established for the benefit  
25 of milk producers; and

- 1           (3) any similar payment security requirements,
- 2           including surety bonds, letters of credit, pledges of
- 3           assets, and cash deposits.

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HR 4134 IH—2