

Assembly Bill No. 1854

CHAPTER 157

An act to amend and repeal Section 58889 of the Food and Agricultural Code, relating to milk.

[Approved by Governor July 11, 2002. Filed with
Secretary of State July 12, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1854, Ashburn. Milk marketing orders.

Existing law provides that the Secretary of the Department of Food and Agriculture may issue marketing orders which contain provisions for the establishment of plans for advertising any commodity grown in the state. Existing law also provides that the advertising and sales promotion plans for fluid milk may contain provisions to allocate funds for promotion of cheese and butter products. Existing law also requires the Department of Food and Agriculture to report to the Governor and the Legislature regarding the effectiveness of the fluid milk promotion plans.

This bill would provide that funds may be allocated for the promotion of ice cream products. This bill would also remove provisions requiring the department to report the effectiveness of the promotion plans to the Governor and Legislature.

Existing law provides that the provisions relating specifically to milk products would remain in effect until January 1, 2003.

This bill would remove the repeal date of these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 58889 of the Food and Agricultural Code, as amended by Section 1 of Chapter 912 of the Statutes of 1998, is amended to read:

58889. (a) A marketing order may contain provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for any commodity that is grown in this state, or for the prevention, modification, or removal of trade barriers that obstruct the free flow of any commodity to market. The secretary may prepare, issue, administer, and enforce plans for promoting the sale of any commodity.

(b) Any plan shall be directed toward increasing the sale of the commodity without reference to any private brand or trade name that is



used by any handler with respect to the commodity regulated by the marketing order, except the use of wine if other than private brands or private trade names are unavailable, and except that marketing orders that provide for the advertising and sales promotion of raisins, prunes, and walnuts may allow those plans to credit the pro rata assessment obligations of a handler with all or any portion of that handler's direct expenditures for the marketing promotion that may include private brand or trade name advertising performance allowances, sales promotions, couponing, and in-store promotion programs and materials.

(c) (1) Notwithstanding any provision of this section, any marketing order for fluid milk may contain in its advertising and sales promotion plan provisions to allocate funds for promotions of cheese, ice cream, or butter products made with California milk, including promotions in which brand or trade names are used, but only if the use is incidental to the promotion of the California milk product and not in direct promotion of the brand or trade name, and if the allocation of funds is made available on a nondiscriminatory basis to all retailers and manufacturers of butter, ice cream, or cheese utilizing milk produced in California. Permissible private brand or trade name marketing promotions may include advertising, performance allowances, sales promotions, couponing subject to Section 61375 and in-store promotion programs and materials, and other marketing communication tools.

(2) For purposes of this subdivision, "butter" means the product made by gathering the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of other milk constituents.

(3) This subdivision shall not become operative unless approved as set forth in subdivision (c) of Section 58993.

(d) No advertising or sales promotion program shall be issued by the secretary that makes use of false or unwarranted claims in behalf of any product, or disparages the quality, value, sale, or use of any other commodity.

SEC. 2. Section 58889 of the Food and Agricultural Code, as added by Section 2 of Chapter 912 of the Statutes of 1998, is repealed.

