

MAINE STATE LEGISLATURE

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O N E - H U N D R E D T H L E G I S L A T U R E

Legislative Document

No. 1202

H. P. 867

House of Representatives, February 2, 1961

Referred to Committee on Agriculture. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Walker of Brownfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT Creating the Maine Milk Dealers' Bonding Law.

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 32, §§ 99-A to 99-M, additional. Chapter 32 of the Revised Statutes is amended by adding 13 new sections to be numbered 99-A to 99-M, to read as follows:

"Maine Milk Dealers" Bonding Law.

Sec. 99-A. Title. Sections 99-A to 99-M shall be known as the "Maine Milk Dealers' Bonding Law."

Sec. 99-B. Enforcing official. Sections 99-A to 99-M shall be administered by the Commissioner of Agriculture, hereinafter in sections 99-A to 99-M referred to as the "commissioner".

Sec. 99-C. Definitions: When used in sections 99-A to 99-M, the following terms shall have the meanings indicated in this section unless a different meaning is clearly required by the context:

I. Commissioner. "Commissioner" shall mean the Commissioner of Agriculture or his authorized agents.

II. Dealer. "Dealer" shall mean any person who purchases milk from a producer, for resale or manufacture, and any person who receives milk from a producer on consignment for the purpose of sale or manufacture.

III. Milk. "Milk" shall mean fluid milk and cream.

IV. Producer. "Producer" shall mean any person who produces milk and sells or delivers the same to dealers as defined in subsection II.

Sec. 99-D. Dealers required to be licensed. No dealer shall transact business in this State unless duly licensed by the commissioner. The license period shall be from January 1st to December 31st.

Sec. 99-E. License applications. An application for a license, or for renewal of a license, to do business as a dealer shall be made to the commissioner upon such form as he may prescribe. No license shall be issued to take effect sooner than 60 days after the date of filing such application with the commissioner, nor sooner than 60 days after the date of filing any bond required of the applicant by sections 99-F and 99-G, whichever shall be later. Each application shall be accompanied by a license fee of \$5. The applicant shall state such information in regard to his business or proposed business as is required by the commissioner, upon such form as he prescribes. Such information may include: The nature of the business to be conducted; the full name and address of the person applying; if the application is a copartnership, the full name and address of each member shall be stated; if the applicant is an association or corporation, the names and addresses of all officers and directors shall be stated; the location at which the business is to be conducted and the location or areas in which such business is to be operated; the financial condition of the applicant; a showing that he has complied and will comply with sections 99-A to 99-M and all orders, rulings, regulations or directions issued hereunder; the quantity of milk purchased or received from producers during the 12 months preceding the date of such application, or for such lesser period as the applicant may have engaged in business as a dealer, together with the aggregate amount paid or due producers therefor; applicants who are not engaging in business as dealers at the time of application, or who have reason to expect material expansion of their business over the preceding year, may be required to estimate the quantity of milk expected to be purchased or received from producers during the effective period of the license applied for, together with the estimated amount payable to producers therefor; such other facts with respect to the applicant's business as may be required by the commissioner pursuant to sections 99-A to 99-M.

Sec. 99-F. Bond required as pre-requisite to license. The applicant shall file with the commissioner, at least 60 days prior to the effective date of the license sought, a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this State, in the sum of not less than \$100 nor more than \$300,000. The commissioner may accept, in lieu of such surety bond, a personal bond secured by cash deposits or such other securities as are denominated legal investments for Maine savings banks. Either such bond shall be on a form prescribed or approved by the commissioner, shall be payable to the commissioner in his official capacity, and shall be conditioned on full and prompt payment for all milk received or purchased from producers by the applicant during the effective period of the license sought. Dealers purchasing or receiving no more than an average of 250 quarts of milk daily from producers, during the dealer's month of highest volume as determined by the commissioner, shall be exempted from this section.

Sec. 99-G. Amount of bond. Such bond shall be in an amount $1\frac{1}{2}$ times the value of the total amount of milk so received or purchased by such dealer during his calendar month of largest volume of the year preceding the date of

application. In any case, where the commissioner determines that prior business of the applicant is not fairly indicative of his probable volume of business during the effective period of the license sought, the commissioner may require such bond to be in an amount $1\frac{1}{2}$ times the value of the total amount of milk which it appears probable to the commissioner that such applicant will receive or purchase from producers during the calendar month of largest volume anticipated within the effective period of the license sought. It shall be the responsibility of the applicant to secure the commissioner's determination of the amount of the bond to be filed by him, at least 60 days prior to the effective date of the license sought.

Sec. 99-H. Issuance of license; additional requirements. Upon full compliance with sections 99-E to 99-G and all rules, regulations and determinations made by the commissioner to implement the same, a dealer's license shall be issued to the applicant. At any time, in his discretion, the commissioner may require any such licensee to file additional statements of the business transacted by him in the State, and if the commissioner deems it necessary for the protection of producers, may require such licensee to file additional bond conditioned as provided. Failure of the dealer to supply such additional statements or bond, when required, shall entitle the commissioner to suspend his dealer's license until such time as the commissioner's requirements are complied with.

Sec. 99-I. Payments to producers for products. At least as often as semi-monthly, each dealer shall make payment to his producers of all sums due for products purchased or received during the preceding semimonthly period.

Sec. 99-J. Nonpayment; forfeiture of bond. When, for the period of 10 days after the date fixed by law for payment of the several amounts due his producers and without their consent, any dealer shall fail to pay his producers their due for milk theretofore delivered by them, such dealer, by reason of such nonpayment shall be in default as to all producers whose accounts shall then remain unpaid, and the bond provided for shall be forfeited to the extent of all sums then due from such dealer to his several producers in this State, and by nature of such default, the conditions of such bond shall be deemed to be broken.

Sec. 99-K. Proceedings for recovery on bond. Upon his determination that the conditions of any such bond have been defaulted, whether occasioned on his own notice or the written complaint of a producer, the commissioner shall give reasonable notice to all affected producers, by publication or otherwise as he may deem proper, to filed verified claims, fixing a reasonable time within which such claims shall be filed. The commissioner shall examine each claim so filed and shall determine and certify the amount due thereon. He may bring an action on the defaulted bond in his own name, in his official capacity, and for the benefit of all the producers of the defaulting dealer in this State to whom such dealer may be indebted at the time such proceedings are instituted. For the purposes of such action, the commissioner's certificate of the amount due producers shall be prima facie evidence of the facts therein stated. If the recovery on the bond is not sufficient to pay all claims filed and established, the amount recovered shall be prorated among the claimants.

Sec. 99-L. Penalty. A person who shall transact business as a milk dealer in this State, without being licensed to do so, shall be punished by a fine of not more than \$25 for the first offense and not more than \$50 for the second and each subsequent offense. Each day's transaction of business shall constitute a separate violation.

Sec. 99-M. Powers of commissioner. In the administration of sections 99-A to 99-M, the commissioner shall have power to conduct hearings, subpoena and examine under oath dealers with their records, books and accounts and any other person from whom information may be desired to carry out the purposes and intent of said sections, and the commissioner personally, or his deputy, may sign subpoenas and administer oaths to witnesses. The commissioner, or his duly authorized agent, may enter at all reasonable hours all places where milk is being received, processed, stored or otherwise handled and shall have access to all books and records relating to milk for the purpose of ascertaining facts to enable the commissioner to administer said sections. The commissioner may adopt, promulgate and enforce all rules, regulations and orders necessary to carry out said sections.'

STATEMENT OF FACTS

The production, sale and distribution of milk and allied products in this State are attended with unusual and important conditions and practices, unique to the milk industry, and affecting producers, dealers and consumers of milk; and, after due investigation of such conditions and practices, the following legislative findings of fact with respect thereto are hereby made:

- (1) Milk is the most necessary human food, vital for promotion of the public health; the health and growth of children are particularly dependent upon a constant and wholesome supply thereof. Since milk is a most fertile field for the growth of bacteria, its production and distribution have been attended by more costly sanitary requirements than those of any other food.
- (2) Milk consumers are not assured of a constant and sufficient supply of pure, wholesome milk when the high cost of maintaining sanitary conditions of production and high standards of purity is not returned to the producer in the form of regular and uninterrupted payment for all milk produced. Therefore, public health is menaced when, by reason of financial difficulties or otherwise, milk dealers fail to pay producers for milk theretofore produced.
- (3) The highly perishable nature of milk, and the expensive equipment needed for its safe and sanitary storage and transportation, require that it be delivered by the producer immediately after its production, and usually at or near the location of its production. The producer, therefore, must often accept any market at any price.
- (4) Unpredictable variations in fluid consumption of milk, and seasonal variations in its production, constantly create surpluses in excess of fluid requirements; which surpluses are normally diverted by milk dealers into other uses at lower prices. Hence the value and ultimate use of milk produced cannot be determined until the dealer has sold such milk in fluid form or has disposed of it in surplus outlets; furthermore, only the dealers have convenient facilities for accurately

weighing and testing milk. Thus, prior and often exclusive knowledge of the value and ultimate destination of milk is in the possession of the dealer. The producers' lack of control over their market is aggravated by the trade custom of dealers in paying weeks after delivery, which often keeps producers obligated to continue delivery in order to receive payment for previous sales. Hence, milk producers do not possess the freedom of contract necessary to secure for themselves the uninterrupted payment needed to meet high costs of sanitary production and to ensure an adequate and regular supply of pure and wholesome milk.

The above and attendant conditions and practices pertain to and exist in a paramount industry upon which the health and welfare of the inhabitants of this state are dependent. In the exercise of the state police power to protect and promote the public health and welfare, and to prevent inequitable fraud and imposition upon producers, such conditions and practices require control and regulation of payments to producers for their product as a matter affecting the public health and interest.