

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-471)
107TH LEGISLATURE

COMMITTEE AMENDMENT "A" to H.P. 208, L.D. 267, Bill, "AN ACT to Repeal Milk Control Prices at the Retail Level."

Amend said Bill by striking out everything after the enacting clause and inserting in place thereof the following:

'Sec. 1. 7 MRSA §2952, as last amended by PL 1973, c. 758, is repealed and the following enacted in place thereof:

§2952. Organization

The Maine Milk Commission, as heretofore established in the Department of Agriculture, shall consist of 4 members as follows: The Commissioner of Agriculture, ex officio as a nonvoting member, and 3 public members with background and experience in such areas as accounting, economics, utility regulation or business administration. None of the 3 public members of the commission shall, at the time of appointment or while serving as a member of the commission, and no employee of the commission shall, have any official business, other than retail purchasers of milk, or professional connection or relation with or hold any interest or stock or securities in, any producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission; nor shall any member or employee of the commission render any professional or other service against any such producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission or be a member of a firm which shall render any such service.

All members of the commission shall be residents of the State. They shall be appointed by the Governor with the advice and consent of the Council and shall be subject to removal for cause. Members of the commission shall serve for a term of 4 years and until their successors have been duly appointed and qualified, except that in the first instance, the initial terms shall be for one, (two) and (three) years so that the terms of the members of the commission shall be staggered. No commission member shall serve more than 2 successive terms.

The members of said commission shall elect a chairman from among its public members. The Commissioner of Agriculture may employ, subject to the Personnel Law, a secretary and such officers, clerks, assistants and other employees as shall be deemed necessary. The commission may employ such expert, professional or other assistance as the commission deems necessary except that legal services to the commission shall be provided by the Department of the Attorney General. The services of experts in other areas shall be performed as far as possible by the existing state departments.

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Any vacancy in the membership of said commission shall be filled by appointment by the Governor, with the advice and consent of the Council. Members of the commission shall be allowed actual traveling and other necessary expenses incurred in the performance of their duties and each member shall receive a per diem compensation for the time actually spent in the performance of his duties, such compensation to be determined by the Governor and Council. The cost of administration of said commission, including expenses and compensation of members, shall not exceed the amount of fees collected under this chapter. The commission shall be furnished a suitable office in a state-owned office building with all necessary equipment and supplies to carry out the duties of said commission.

The commission shall hold regular meetings at least quarterly each year or more often if the commission or the chairman deems it essential to carry out the duties established by this chapter.

The commission shall present an annual report to the Legislature by January 15th of each year which shall include, but is not limited to, the following: a statistical description and explanation of all milk commission minimum price changes made in the previous year and the reasons for the price changes, a statistical description and explanation of minimum price changes made by the Federal Order Market or Markets in New England and by any other agency or association that effects minimum price changes in New England milk prices, a breakdown of all funds by use expended by the commission for the preceding fiscal year, and a general description of the financial health of Maine producers and dealers.

Sec. 2. 7 MRS A §2953 is repealed and the following enacted

in place thereof:
§2953. Powers and duties

The commission shall have the power to establish and change the minimum wholesale and retail prices for the sale of milk within the State, in such a manner as to supplement such supervision and regulations as are now imposed by existing statutes or by lawful ordinances or rules and regulations of the several cities and towns of the State. The commission shall have no power to modify, add to or annul any sanitary regulations imposed by any state or municipal authority or to compel pasteurization in any market area.

Not less than once every (three) years the commission shall conduct independent studies of the economics and practices of the milk industry in order to assist the commission in establishing minimum prices.

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In administering this chapter, the commission shall have the power to conduct hearings, subpoena and examine under oath, producers, dealers, stores or other persons whose activities are subject to the jurisdiction of the commission and their officers, agents and representatives, together with their records, books and accounts, and any other person from whom the commission requires information in order to carry out the purposes and intent of this chapter. Any member of the commission, and any employee designated by the commission, may sign subpoenas and administer oaths to witnesses.

The commission may adopt, promulgate and enforce all rules, regulations and orders necessary to carry out this chapter.

To enable the commission to perform its duties, the commission shall have the power to inquire into the management of the businesses of the producers, dealers and stores, to obtain from them all necessary information. Every producer, dealer and store shall keep and render to the commission, at such times and in such manner and form as shall be prescribed by the rules and regulations of the commission, accounts of all business transacted which is related to the production, purchasing, processing, sale or distribution of milk. Such accounts shall reasonably reflect, in detail as the commission deems appropriate, income, expense, assets, liabilities and any other accounting entries as the commission deems necessary. Accounts of dealers shall reflect container costs, distribution costs, and all other costs deemed necessary by the commission. The rules and regulations of the commission shall also establish procedures to enable the commission to inspect the records, books and accounts of dealers, producers and stores at their various offices and places of business at reasonable times.

Sec. 3. 7 MRSA §2954, as last amended by PL 1973, c. 758, §7, is repealed and the following enacted in place thereof:

§2954. Establishment of minimum prices
Public hearings.

1. /The commission is vested with the power to establish and change, after investigation and public hearing, the minimum wholesale and retail prices to be paid to producers, dealers, and stores for milk received, purchased, stored, manufactured, processed, distributed or otherwise handled within the State. The commission shall hold a public hearing prior to the establishing or changing of such minimum prices; /Provided, however, that the commission may waive the requirement of a public hearing when the only changes to be made in the minimum prices are to conform with the orders of any federal or other agency duly authorized by law to establish or negotiate producer prices. Due notice of such public hearing shall be given by publishing such notice at least 7 days prior to the hearing in appropriate newspapers. The commission shall hold such a public hearing not

less frequently than once every 12 months to determine whether the minimum wholesale and retail prices then established should be changed. In addition to the data received through the implementation of the information-gathering procedures of its rules and regulations as a basis for its determinations, the commission shall solicit and seek to receive oral and written testimony at such hearings to determine whether the minimum wholesale and retail prices then established should be changed and whether the proposed minimum wholesale and retail prices are just and reasonable.

At each public hearing held by the Maine Milk Commission to receive information in regard to minimum prices, no less than 30 minutes nor more than 60 minutes shall be provided to members of the general public in attendance at the hearing to present testimony. Members of the general public shall present testimony without being required to be sworn, and such testimony shall be recorded by the commission.

Conditions affecting price.

2. In establishing and changing minimum wholesale and retail prices, the prices so established shall be just and reasonable taking into due consideration the public health and welfare and the insuring of an adequate supply of pure and wholesome milk to the inhabitants of this State under varying conditions in various marketing areas; prevailing prices in neighboring states, seasonal production and other conditions affecting the costs of production; transportation and marketing in the milk industry; including a reasonable return to producer, dealer and store; taking into consideration the public need for the establishment of retail milk prices at the lowest practicable levels.

Minimum wholesale-retail prices.

3. Minimum wholesale prices established for payment to dealers and minimum retail prices established for payment by consumers shall be based exclusively on direct processing costs and shall not include packaging, container, advertising or distribution costs.

A. The minimum wholesale prices paid to producers shall be based on the prevailing Class I price in southern New England and a premium which, after investigation by the Maine Milk Commission, shall reflect as accurately as possible, transportation costs for grain and other imported goods for the production of milk from Boston to a point or points in Maine as determined by the Maine Milk Commission.

B. The minimum wholesale prices paid to dealers shall be based on the average of the 5 lowest cost solvent Maine dealers who receive, process and package milk within the State of Maine, and who pay the Maine minimum producers prices as determined by the Maine Milk Commission in accordance with section 2953.

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C. The minimum retail prices established for payment by consumers shall be based on the minimum wholesale price paid to dealers and a rate of return deemed just and reasonable by the Maine Milk Commission.

Raw milk sales.

4. The minimum price provisions of this chapter shall not apply to sales by producers of raw milk produced and sold to consumers on the premises of the producers.

Milk classifications.

5. The commission is vested with power to establish and change, after investigation and public hearing, classifications of milk according to its various usages, and shall specify to what classification the prices established under this chapter shall apply.

Schedule to be published.

6. Upon establishing said minimum prices in any market which shall apply to the various classifications of milk and which may vary in the several market areas of the State, the commission shall furnish all dealers registered in said market with a schedule of such prices, and shall publish a schedule thereof in appropriate newspapers in said market. Such order shall become effective in accordance with Title 5, chapters 301 to 307 and thereafter no dealer, store or other person handling milk in such market shall buy or offer to buy, sell or offer to sell milk for prices less than the scheduled minimum prices established for that market.

Transportation to dealer.

7. Any dealer may deduct an allowance for transportation from the producer's farm to the dealer's dairy plant pursuant to a reasonable schedule of charges filed with the commission, with a copy of each affected producer, at least 30 days prior to the proposed effective date. Any interested producer or any organization representing producers may petition the commission at any time to review the reasonableness of any such schedule of transportation charges, and the commission is empowered to suspend proposed schedules pending hearing, and, after hearing, to disapprove and reject any schedules, then pending or theretofore in effect, found to be unreasonable, or, after hearing, to approve any such schedules found to be reasonable or to establish any new schedules deemed to be reasonable. It shall be incumbent upon the dealer to substantiate the reasonableness of the schedule of the transportation charges filed; and in the absence of said evidence, the schedule of charges filed shall be deemed unreasonable.

Prohibitions.

8. It shall be unlawful for any person to engage in any practice destructive of the scheduled minimum prices for milk established under this chapter for any market, including but not limited to any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity. In addition to any penalty otherwise provided by law, the commission after notice and hearing may prohibit any such practice, and any person feeling himself aggrieved by any order of the commission issued under this chapter may appeal to the Superior Court.

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Out-of-state milk regulated.

9. Whenever milk produced outside the State becomes a subject of regulation by the State in the exercise of its police powers, this chapter shall apply and the powers of the commission shall attach. After any such milk so produced shall come within the jurisdiction of this State, any sale of such milk within this State at a price less than the scheduled minimum price established in any given market shall be unlawful.

Sec. 4. 7 MRSA §2956, as last amended by PL 1971, c. 128, §2, is repealed and the following enacted in place thereof:

§2956. Records and fees

All dealers in any market designated by the commission shall keep the following records:

1. Names and addresses of producers or milk dealers. A record of the quantity of all milk received or produced, detailed as to location and as to names and addresses of producers or milk dealers from whom received;
2. Use, location and market outlet. A record of the quantity of all milk sold, detailed as to use, location and market outlet;
3. Other records and information. Such other records and information in such form and at such times as the commission may deem necessary for the proper enforcement of this chapter.

Each dealer shall furnish his producers a statement of the amount of milk purchased, the price per hundredweight or quart, the total amount paid for each pay period, the itemized deductions for transportation and other services, the percentages of milk in each classification and the butterfat test when weight and test method of payment is used.

Each licensed dealer shall pay to said commission an annual license fee of \$1 and the sum of 5¢ per hundredweight as monthly payments, based on quantity of milk purchased or produced in any market area, or purchased or produced in an uncontrolled area and sold in any market area. Two and one-half cents per hundredweight may be deducted by dealers from amounts paid by them to producers of such milk, except that the milk, farm-processed into cream for the manufacture of butter shall not be subject to such sums of 5¢ per hundredweight.

Dealers shall file reports together with the prescribed hundredweight fees with the commission at its office in Augusta not later than the 20th of the following month, on forms provided for this purpose, of all matters on account of which a record is required to be kept and such other information or facts as may be pertinent and material within the scope of the purposes of this chapter, except that dealers who sell less than 100 quarts of milk per day may file reports and pay the prescribed hundredweight fees every 3 months.

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In case the same milk is handled by more than one dealer, the first dealer within the State dealing or handling said milk shall be deemed to be the milk dealer within the meaning of this section. For the purpose of computing fees as provided, 1/2 pint of cream shall be considered the equivalent of one quart of milk.

Sec. 5. Effective date. The Maine Milk Commission established by this Act shall assume its duties on November 1, 1975.'

Statement of Fact

The intent of this amendment is to establish a minimum floor pricing mechanism that is scientifically formulated and based on the lowest cost firms in the State. The amendment also changes the composition of the Maine Milk Commission in order to create a commission with the expertise to carry out the provisions of the amendment.

Reported by the Majority of the Committee on Agriculture.

Reproduced and distributed under the direction of the Clerk of the House.
5/26/75

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