

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 825

H. P. 642

House of Representatives, February 26, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Rollins of Dixfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to the Maine Dairy and Nutrition Council.

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

Sec. 1. 7 MRSA § 1, first sentence, as last repealed and replaced by PL 1973, c. 788, § 29, is amended to read:

The Department of Agriculture, as heretofore established and hereinafter in this Title called the "department," shall be maintained for the improvement of agriculture and the advancement of the interests of husbandry, and shall consist of the Commissioner of Agriculture, hereafter in this Title called the "commissioner," appointed by the Governor with the advice and consent of the Council, to serve a term coterminous with the Governor subject to removal from the office for cause by the Governor and Council, and the following as heretofore created and established: The Maine Dairy and Nutrition Council Committee, the Maine Milk Commission, the Maine Potato Commission, the Seed Potato Board, Milk Tax Committee, the Soil and Water Conservation Commission, the Harness Racing Commission and the Board of Veterinary Examiners.

Sec. 2. 7 MRSA § 2, last ¶, as last amended by PL 1973, c. 95, § 2, is amended to read:

The commissioner does not have authority to exercise or interfere with the exercise of any discretionary statutory authority granted to the following, which authority shall be exclusively within the specific board, bureau, agency, commission, committee or other governmental unit: The Maine Dairy and Nutrition Council Committee, the Maine Milk Commission, the Seed Potato Board, the Harness Racing Commission, Milk Tax Committee, the Maine

Potato Commission, the Soil and Water Conservation Commission and the Board of Veterinary Examiners.

Sec. 3. 7 MRSA § 2956, 3rd ¶, as last amended by PL 1971, c. 128, § 1, is amended to read:

Each licensed dealer shall pay to said commission an annual license fee of \$1 and the sums of ~~5¢~~ 2¢ 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¢~~ 2¢ per hundredweight.

Sec. 4. 7 MRSA § 2957, 2nd ¶, as amended by PL 1971, c. 594, § 13, is repealed.

Sec. 5. 7 MRSA § 2958 is repealed.

Sec. 6. 36 MRSA c. 708 is enacted to read:

CHAPTER 708

MAINE DAIRY AND NUTRITION COUNCIL TAX

§ 4521. Purpose

The Legislature finds that the optimal health of the citizens of the State of Maine may be more fully achieved by providing guidance in nutrition and nutrition education based on the concept of a balanced diet, including milk and its products in accordance with scientific recommendations, and that the interests of all the people of Maine will be protected by strengthening and preserving the dairy.

§ 4522. Definitions

As used in this chapter, unless the context otherwise requires, the following words shall have the following meanings:

1. Dealer. "Dealer" means any person who purchases or receives milk for sale as the consignee or agent of a producer, or handles for sale, shipment, storage or processing within the State and shall include a producer-dealer, a subdealer or a store;

2. Milk. "Milk" means cows' milk, fluid and whole, skimmed milk, low fat milk and buttermilk, irrespective of whether or not any such milk is flavored. It shall also include cream in the proportion that one quart of cream shall be considered the equivalent of 4 quarts of milk;

3. Producer. "Producer" means any person who produces milk and sells said milk to a dealer;

4. Producer-dealer. "Producer-dealer" means a dealer who himself produces a part or all of his milk or a person who produces milk and sells to a grocery store or dairy products store or similar commercial establishment;

5. Nutrition. "Nutrition" means the application of the science and art of human nutrition;

6. Nutrition education. "Nutrition education" means helping and educating people in the selection of food for the primary purpose of nourishing their bodies in health throughout the life cycle; and in extending and teaching knowledge of food and nutrition principles and the application of these principles.

§ 4523. Organization

The Maine Dairy and Nutrition Council is hereby established within the Department of Agriculture and shall consist of the following 5 members: The Commissioner of Agriculture, 2 producers and 2 dealers to be appointed by the Commissioner of Agriculture on recommendation of the various producer and dealer associations, individuals or unorganized groups of producers and dealers in the State. Each appointed member shall serve for 2 years or until his successor is duly appointed and qualified. In case of a vacancy caused by death, resignation or otherwise, the vacancy shall be filled by the commissioner for the unexpired period of the term. The members of the council shall elect a chairman. The commissioner may employ such personnel for the council as he deems necessary, subject to the Personnel Law. Members of the council 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 Executive Council. The cost of administration of said council, including expenses and compensation of members, shall not exceed the amount of taxes collected under this chapter. The council shall be furnished a suitable office in the State Capitol together with all necessary equipment and supplies therefor.

§ 4524. Taxes

There is levied and imposed on the dealer a tax of 3¢ per hundredweight on all milk produced, purchased or imported for sale within this State. Milk exported shall not be subjected to tax.

Each dealer purchasing milk and paying or becoming liable to pay the tax imposed by this section may charge and collect from the producer a tax at the rate of 1½¢ per hundredweight to be deducted from purchase price of all milk received or so purchased by such dealer.

In case the same milk is handled by more than one dealer, the first dealer within the State dealing in or handling said milk shall be deemed to be the milk dealer within the meaning of this section. For the purpose of computing taxes as provided, one quart of cream shall be considered the equivalent of 4 quarts of milk.

All taxes imposed and collected under this chapter shall be in addition to any other taxes legally imposed or collected under any other provision of the law of the State now or hereafter in force. Moneys received through this chapter shall remain a continuing carrying account and shall not lapse.

§ 4525. Dealer may deduct tax

Producer-dealers shall pay a tax of 3¢ per hundredweight on all milk produced and sold other than to a dealer.

§ 4526. Application for certificate; no activity until certificate issued

Each dealer shall file an application with the State Tax Assessor, on forms prescribed and furnished by the State Tax Assessor, which shall contain the name under which such dealer is transacting business within the State, the place or places of business and location of said dealer's plants. The State Tax Assessor will then issue a certificate to the dealer and no dealer shall receive or sell any milk until such certificate is furnished as required by this section. Such certificate shall remain in force until surrendered or revoked. Every dealer who shall cease to receive or sell milk shall surrender such certificate to the State Tax Assessor.

Any dealer who shall receive or sell any milk without a currently valid dealer's certificate may be enjoined from further receiving or selling any milk until he has acquired such a certificate. Jurisdiction is granted to the Superior Court to hear such cases and to enter such orders and decrees as the nature of the case may be.

§ 4527. Determination of tax by Tax Assessor

If any dealer, whether the holder of a certificate or not, shall neglect or refuse to make and file any report as required by section 4528 or shall file an incorrect or fraudulent report, the State Tax Assessor shall determine, after an investigation, the tax liability of such dealer for any particular month or months and the State Tax Assessor shall assess the tax due the State, giving notice of such assessment to the dealer liable therefor and make demand upon him for payment thereof.

In any action or proceeding for the collection of the milk tax, the assessment by the State Tax Assessor of the tax due to the State shall constitute prima facie evidence of the claim of the State and the burden of proof shall be upon the dealer to show the assessment was incorrect.

§ 4528. Reports; payment of tax

Each dealer shall keep as part of his permanent records a record of all purchases, sales and shipments of milk, which records shall be open for inspection at all times, and every dealer shall, on or before the 20th day of each month, render a report to the State Tax Assessor stating the quantity of milk received by him during the preceding calendar month. Every dealer who is a producer-dealer shall include in such report the quantity of milk produced and sold by him other than to a dealer, except that upon application to the State Tax Assessor, dealers who sell less than 100 quarts of milk per day may be permitted by the Tax Assessor to file reports quarterly upon the 20th day of the month following the quarter. Such reports shall be on forms to be furnished by the State Tax Assessor and shall contain such further information as the State Tax Assessor shall prescribe. On the filing of the report, each dealer shall pay to the State Tax Assessor a tax at the rate of 3¢ per hundredweight upon all milk so reported. The State Tax Assessor shall pay over all receipts from such tax to the Treasurer of State daily.

A dealer under this law may with authorization of the State Tax Assessor file a combined milk tax and Dairy and Nutrition Council tax return.

§ 4529. Inspections

The State Tax Assessor or his duly authorized agent shall have authority to enter any place of business of any dealer and to inspect any books and records of any dealer for the purpose of determining what milk is taxable under this chapter or for the purpose of determining the truth or falsity of any statement or return made by any dealer and he shall have authority to delegate such power to the Commissioner of Agriculture or his agents.

§ 4530. Appropriations of moneys received

Moneys received through this chapter by the Treasurer of State shall be appropriated and used for the following purposes:

1. Collection and enforcement. For the collection of the tax provided by section 4524 and the enforcement of this chapter;
2. Balance of funds. The remaining sum shall be used for such purposes as are defined in section 4521 or for carrying out this chapter.

The committee may cooperate with similar committees in other states and is authorized to pay to a New England committee such part of its receipts as it deems for the best interests of the dairy industry of Maine.

§ 4531. Penalties; civil action to collect tax; jurisdiction

Any dealer of milk who shall make any false or fraudulent report or return required by this chapter, or who shall evade or violate any of the provisions of this chapter, shall be punished by a fine of not more than \$500. Whenever any dealer shall fail to pay any tax due under this chapter within the time limited, the Attorney General shall enforce payment of such tax by civil action against such dealer for the amount of such tax, either in the Superior Court in and for the county or the District Court in the division in which such dealer has his residence or established place of business or in the Superior Court of Kennebec County.

Whenever any dealer shall fail to pay any tax due, or shall fail to file any report at the time it is required to be filed for 2 consecutive reporting periods, the State Tax Assessor may revoke the dealer's certificate of such dealer. Such revocation shall become effective upon notice to the dealer. Any dealer aggrieved by such revocation may apply in writing, within 15 days after notice thereof, to the State Tax Assessor for a hearing, setting forth the reasons for the hearing, and the manner of relief sought. Upon receipt of such application, the Tax Assessor shall set a time and place for such hearing and give the dealer 10 days' notice thereof. After such hearing the Tax Assessor may make such order as may appear to him just and lawful and shall give notice by furnishing a copy of such order to the applicant. Any dealer aggrieved by such order of the Tax Assessor may appeal therefrom within 20 days after notice of such order to the Superior Court. The appellant shall, when the appeal is taken, give the State Tax Assessor or his

duly authorized representative written notice of the appeal with a copy of the complaint stating the reasons for the appeal. Pending judgment of the court, the order of the State Tax Assessor shall remain in full force and effect. Any notice required to be given by the State Tax Assessor under this section may be given in hand or by registered mail.

Sec. 7. Legislative intent. It is the intent of the Legislature that the Maine Dairy Council Committee be renamed the Maine Dairy and Nutrition Council and that such renaming have no effect whatever upon the persons who are serving on the Maine Dairy Council Committee on the effective date of this Act or upon their terms of office; and such persons shall on the effective date of this Act become the members of the Maine Dairy and Nutrition Council.

FISCAL NOTE

There are no new or increased taxes involved with this legislation.

STATEMENT OF FACT

This bill changes the name of the present Maine Dairy Council Committee and clarifies its responsibility for nutritional education. The bill further provides that that portion of the present tax assessed on milk produce for sale in this State, presently paid to the work of this present Maine Dairy Council Committee, be paid to the State Tax Assessor for the work of the Maine Dairy and Nutrition Council.