

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 846

H. P. 700

House of Representatives, February 28, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Connolly of Portland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT to Abolish the Maine Milk Commission, the Maine Dairy Council, and the Maine Milk Tax Committee, to Transfer Certain Functions of the Maine Milk Commission to the Commissioner of Agriculture, to Provide for the Monitoring of Butterfat and Bacteria Tests of Dairy Products, to Establish Unit Pricing of Consumer Commodities and to Establish Open Dating of Food.

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

Sec. 1. 7 MRSA c. 106 is enacted to read:

CHAPTER 106  
UNIT PRICING

§ 1101. Title

This chapter shall be known and may be cited as the "Maine Unit Pricing Law."

§ 1102. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Agriculture or his duly authorized agents.

2. Consumer commodity. "Consumer commodity" means any food, drug, device or cosmetic and other article, product or commodity of any other kind or class, including drugs sold only by prescription:

A. Which are customarily produced for sale to retail sales agencies or instrumentalities for consumption by individuals, for use by individuals for purposes of personal care or in the performance of services ordinarily rendered in or around the household; and

B. Which usually are consumed or expended in the course of such consumption or use.

3. Unit price. "Unit price" of a consumer commodity means the retail price of a consumer commodity expressed in terms of the retail price of such commodity per such unit of weight, measure or count as the commissioner designates, computed to the nearest whole cent or fraction thereof as the commissioner designates.

#### § 1103. Consumer information required

1. Disclosure of unit price required. Every person who sells, offers for sale or exposes for sale at retail any aluminum foil, bread, carbonated soft drinks, cereals, cooking oils, dog or cat food, facial tissues, fish, fowl, fruits, grains, meats, napkins, plastic food wrapping, vegetables, waxed paper or other consumer commodity designated by the commissioner shall disclose to the consumer the unit price of the consumer commodity as provided in this chapter.

2. Disclosure of total price required. Every person who sells, offers for sale or exposes for sale at retail any consumer commodity shall disclose to the consumer the total price of the consumer commodity as provided in this chapter.

#### § 1104. Means of disclosure

Persons subject to the requirements of section 1103 shall disclose the unit price and total price to consumers in one or more of the following appropriate ways:

1. Sign or list bearing price information. If the consumer commodity is so located that it is not conspicuously visible to the consumer, or if the consumer commodity is so located that the price information if displayed in accordance with subsection 2 would not be conspicuously visible to the consumer, by a sign or list bearing the price information, conspicuously placed near the point of procurement; or

2. Stamp, tag or label. By attachment of a stamp, tag or label directly adjacent to the consumer commodity, on the shelf on which the commodity is displayed, or by stamping or affixing the price information on the commodity itself; or

3. Regulations. In accordance with regulations promulgated by the commissioner.

#### § 1105. Advertising

No advertisement to aid, promote or assist directly or indirectly in the sale of any consumer commodity subject to the provisions of section 1103, sub-

section 1, shall state the total price of such commodity unless it also states the unit price of such commodity.

§ 1106. Commissioner's powers

1. Designations; exemption; prescription; promulgation. The commissioner shall:

A. Designate by regulation those consumer commodities in addition to the consumer commodities specifically enumerated in section 1103, subsection 1, as to which display of the unit price shall be required, upon a determination that such display will be in the best interests of consumers;

B. Designate by regulation the unit of weight, measure or count in terms of which the unit price of each consumer commodity shall be expressed, provided that no designated unit shall be such as to require persons subject to section 1103, subsection 1, to measure any consumer commodity solely for the purpose of complying with section 1103, subsection 1;

C. Designate by regulation whether the unit price of each consumer commodity subject to section 1103, subsection 1, shall be expressed to the nearest whole cent or to an appropriate fraction thereof;

D. Exempt by regulation classes of retail establishments from any or all requirements of this chapter upon a determination that, because sales of consumer commodities regulated by this chapter are purely incidental to the business of such classes of retail establishments, compliance with this chapter is impracticable and unnecessary for adequate protection of consumers;

E. Prescribe by regulation means for the disclosure of price information upon determination that they are more effective than those prescribed in section 1104; and

F. Promulgate any other regulations necessary to effectuate this chapter in accordance with the best interests of consumers.

§ 1107. Exceptions

The requirements of this chapter shall not apply to:

1. Certain retail sales agencies or instrumentalities. Retail sales agencies or instrumentalities which during the immediately preceding calendar year had gross revenues of less than \$500,000 or which are owned and operated by one owner and members of his immediate family. Except that where 2 or more sales agencies or instrumentalities are parts of the same company, and the company-wide gross revenues totaled \$1,000,000 or more during the immediately preceding calendar year, the sales agencies and instrumentalities of such company shall not be exempt from this chapter;

2. Sale of consumer commodity for use or consumption on premises. A sale of a consumer commodity for use or consumption on the premises where sold.

### § 1108. Penalties

A person who violates this chapter shall be fined not more than \$1,000.

Sec. 2. 7 MRSA § 2951, sub-§ 2 is repealed and the following enacted in place thereof:

2. Commissioner. "Commissioner" means the Commissioner of Agriculture.

Sec. 3. 7 MRSA § 2952, as last amended by PL 1973, c. 758, § 2, is repealed.

Sec. 4. 7 MRSA § 2953 is amended to read:

### § 2953. Powers and duties

The ~~commission~~ commissioner shall have power to supervise, regulate and control the purchasing, distribution and 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~~ The ~~commission~~ commissioner in administering this chapter shall adopt such policies as are consistent with the promotion of marketing programs which progressively eliminate those conditions in the milk industry necessitating the present law. ~~The commission shall co-operate with the Commissioner of Agriculture and with representatives of the industry in devising marketing programs to implement such policies~~ In administering this chapter, ~~it~~ he 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 this chapter and ~~any member of the commission~~ the commissioner may sign subpoenas and administer oaths to witnesses. ~~Any member of the commission~~ The commissioner or ~~its~~ his representatives 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 ~~commission~~ commissioner to administer this chapter. The ~~commission~~ commissioner may adopt, promulgate and enforce all rules and orders necessary to carry out this chapter.

The ~~commission~~ commissioner or his representative may act as mediator or arbitrator to settle any controversy or issue among or between producers, dealers and consumers, any of whom may petition the ~~commission~~ commissioner in writing to change prices or conditions in any market area.

Sec. 5. 7 MRSA § 2953-A, as enacted by PL 1965, c. 463, is repealed.

Sec. 6. 7 MRSA § 2954, as last amended by PL 1973, c. 758, § 7, is repealed and the following enacted in place thereof:

### § 2954. Price fixing

The commissioner or his representative shall hold meetings on the 3rd Thursday of each calendar month, and shall appoint a time at each meeting

when any producer, dealer or consumer may present complaints or suggestions for the betterment of the conditions of trade and shall endeavor to effect amicable reconciliation of differences which exist between the various milk interests, and such other meetings as are necessary to properly supervise and control the industry. The commissioner is vested with power to establish and change, after investigation and public hearing, the minimum prices to be paid to producers by dealers for milk received, purchased, stored, manufactured, processed, sold, distributed or otherwise handled within the State. The commissioner shall fix and establish after investigation and public hearing, of which due notice has been given by publishing at least 7 days prior to said hearing in appropriate newspapers, the minimum prices to be paid to producers by dealers for milk received, purchased, stored, manufactured, processed, sold, distributed or otherwise handled within the State.

Sales by producers of raw milk produced and sold to consumers on the premises of the producer are excluded from this chapter in respect to such sales.

The commissioner in his discretion may waive public hearing when the sole change to be made in minimum prices paid to producers by dealers is to conform with orders of any federal agency, duly authorized by law to determine prices.

Prices paid to producers by dealers so fixed 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, seasonal production and other conditions affecting the costs of production, transportation and marketing in the milk industry, including a reasonable return to the producer.

The commissioner shall also take into due consideration the prevailing Boston City Plant prices for each classification of milk as established by Federal Marketing Order No. 1.

Upon fixing 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 commissioner 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 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 producer prices established for that market.

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 commissioner with a copy to each affected producer, at least 30 days prior to the proposed effective date. Any interested producer or any organization representing producers may petition the commissioner at any time to review the reasonableness of any such schedule of transportation charges, and the commissioner 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.

The minimum prices established for sales of milk by producers to dealers may, if such sales are made by bulk tank, be increased by such amounts per hundredweight as may be determined by the commissioner. Violation of this paragraph shall be sufficient cause for the Commissioner of Agriculture to revoke or withhold a dealer's license.

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 commissioner 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. 7. 7 MRSA § 2955, as last amended by PL 1973, c. 303, § 3, is further amended to read:

#### § 2955. Licenses

No dealer shall buy milk from producers or others for sale or shall process, distribute, sell or offer to sell milk in any market in the State designated by the ~~commissioner~~ commissioner unless duly licensed by the ~~commissioner~~ commissioner. No license shall be required of any person who produces or sells milk for consumption only on the premises of the producer or seller. Each person, before engaging in the business of a dealer in any market designated by the ~~commissioner~~ commissioner, shall make application to the ~~commissioner~~ commissioner for a license, which the ~~commissioner~~ commissioner is authorized to grant.

The license year shall commence on January 1st and end December 31st following. Application for a license shall be made on a form prescribed by the ~~commissioner~~ commissioner.

Licenses required by this chapter shall be in addition to any other license required by law.

The Administrative Court Judge as designated in Title 5, chapters 301 to 307 may, upon proper evidence, decline to grant a license or may suspend or revoke a license already granted upon due notice and after hearing. Violation of this chapter or of any order, rule or regulation made, or conviction of violating any other law or regulation of the State relating to the production, distribution and sale of milk, shall be sufficient cause to suspend, revoke or withhold such license.

Upon revocation or suspension of a license, it shall not be reissued until the ~~commissioner~~ commissioner shall determine upon application and hearing

that the cause for such revocation or suspension no longer exists, and that the applicant is otherwise qualified.

Sec. 8. 7 MRSA § 2956, as last amended by PL 1971, c. 128, § 2, is further amended to read:

§ 2956. Records and fees

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

1. **Names and addresses of producers of 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~~ commissioner 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~~ commissioner an annual license fee of \$1. ~~and the sums of 5c 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 5c per hundredweight~~

Dealers shall file reports ~~together with the prescribed hundredweight fees~~ with the ~~commission~~ commissioner at ~~its~~ his 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.

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 fees as provided,  $\frac{1}{2}$  pint of cream shall be considered the equivalent of one quart of milk.

Sec. 9. 7 MRSA § 2957, as last amended by PL 1971, c. 594, § 13, is repealed.



Sec. 10. 7 MRSA § 2958 is repealed.

Sec. 11. 7 MRSA § 2959 is amended to read:

§ 2959. Injunctions

In addition to any other remedy set forth in this chapter for the enforcement of this chapter or any rule, regulation, order or decision of the ~~commissioner~~ ~~commissioner~~, the Superior Court shall have jurisdiction upon complaint filed by the ~~commissioner~~ ~~commissioner~~, or any person duly authorized to act for the ~~commissioner~~ ~~commissioner~~, including but not limited to its executive secretary to restrain or enjoin any person from committing any act prohibited by this chapter or prohibited by any rule, regulation, order or decision of the ~~commissioner~~ ~~commissioner~~. If it is established upon hearing that the person charged has been or is committing any act declared to be unlawful by this chapter or is in violation of any rule, regulation, order or decision of the ~~commissioner~~ ~~commissioner~~, the court shall enter a decree perpetually enjoining said person from further commission of such act or actions. In case of violation of any injunction issued under this section, the court shall summarily try and punish the person for contempt of court. The existence of other civil or criminal remedies shall be no defense to this proceeding. The ~~commissioner~~ ~~commissioner~~ or its his authorized agent shall not be required to give or post a bond when making an application for an injunction under this section.

Sec. 12. 7 MRSA § 2960 is amended to read:

§ 2960. Penalties

Whoever violates any of the provisions of this chapter or of any rule or order of the ~~commissioner~~ ~~commissioner~~ shall be punished by a fine of not more than ~~\$100~~ \$1,000 or by imprisonment for not more than 11 months, or by both.

Sec. 13. 7 MRSA § 3101, first ¶, is amended by adding a new sentence at the end to read:

The commissioner shall monitor all testing of butterfat and bacteria content of milk, cream, butter and all other dairy products, substitutes therefor, or imitations thereof.

Sec. 14. 22 MRSA § 2155, sub-§ 10 is enacted to read:

10. Sale of food when date has passed. Selling, offering to sell, or displaying for sale any packaged food which bears a date on the label or in labeling, pursuant to regulations issued under section 2157, subsection 11, if such date has passed, unless:

A. The food is clearly identified as a food as to which the date specified on the package or label has passed; and

B. The food is separated from other packaged foods as to which the date specified on the label or in labeling have not passed.

Sec. 15. 22 MRSA § 2157, sub-§ 12 is enacted to read:

12. Open dating. If the label or labeling bears any information regarding the dating of the food, unless such information is in accordance with regulations which shall be promulgated by the Commissioner of Agriculture in accordance with the best interests of consumers. Regulations promulgated under this subsection shall:

A. Identify, upon a finding by the Commissioner of Agriculture of need to prevent violations of this Act, those foods or classes of food with respect to which date information must be provided, or those characteristics of a food or class of foods which necessitate the providing of date information;

B. Require the processor of a food, with respect to which the commissioner has made a finding that date information is necessary, to place on the package or label of such food the date by which the processor recommends that:

(1) Such food be sold at retail for consumption (sell date), or

(2) Such food be used or consumed (use date);

C. Require that the date consisting of a day, month and year, be stated on the package or label in a clear and conspicuous manner and in such form as will enable the consumer readily to identify the day or date, without reference to any decoding information;

D. Require that the date be accompanied by a statement or phrase which clearly states whether the date expressed is a sell date or a use date;

E. Require a statement of the storage conditions recommended by the processor, if such storage conditions differ from ordinary room temperature;

F. Prohibit a processor of any food with respect to which the commissioner has made a finding that date information is necessary from placing on a label or in labeling of such food any other information which may appear to the ordinary consumer to represent a sell date or a use date; and

G. Prohibit a processor of any food with respect to which the commissioner has not made a finding that date information is necessary from placing on the label or in labeling of such food any date information, unless such information is expressed in a manner consistent with the requirements of paragraphs A to F.

Sec. 16. 36 MRSA §§ 4501-4504 are repealed.

Sec. 17. 36 MRSA § 4505, as last amended by PL 1969, c. 213, § 1, is repealed.

Sec. 18. 36 MRSA § 4506, as last amended by PL 1969, c. 213, § 2, is repealed.

Sec. 19. 36 MRSA §§ 4507 and 4508 are repealed.

Sec. 20. 36 MRSA § 4509, as last amended by PL 1969, c. 213, § 3, is repealed.

**Sec. 21.** 36 MRSA § 4510 is repealed.

**Sec. 22.** 36 MRSA § 4511, as amended by PL 1971, c. 594, § 18, is repealed.

**Sec. 23.** 36 MRSA § 4512 is repealed.

**Sec. 24. Appropriation.** There is appropriated from the General Fund to the Department of Agriculture, the sum of \$148,154 to carry out the purposes of this Act. The breakdown shall be as follows:

	1975-76	1976-77
AGRICULTURE, DEPARTMENT OF		
Personal Services	(5) \$58,985	(5) \$58,978
All Other	11,523	12,850
Capital Expenditures	5,818	—
	<hr/> \$76,326	<hr/> \$71,828

**Referendum; effective date.** This Act shall take effect 90 days after the adjournment of the Legislature only for the purpose of presenting it to the legal voters of the State of Maine at a special state-wide election to be held on the Tuesday following the first Monday of November following the passage of this Act.

The aldermen of the cities, the selectmen of the towns and the assessors of the several plantations of this State are empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives at a special state-wide election on the Tuesday following the first Monday of November following the passage of this Act, to give in their votes upon the acceptance or rejection of the foregoing Act, and the question shall be:

“Shall ‘AN Act to Abolish the Maine Milk Commission, the Maine Dairy Council and the Maine Milk Tax Committee; to Transfer Certain Functions of the Maine Milk Commission to the Commissioner of Agriculture; to Provide for the Monitoring of Butterfat and Bacteria Tests of Dairy Products; to Establish Unit Pricing of Consumer Commodities and to Establish Open Dating of Food’ become law?”

The inhabitants of said cities, towns and plantations shall indicate by a cross or check mark placed within a square upon their ballots their opinion of the same, those in favor of acceptance voting “Yes” and those opposed to acceptance voting “No” and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and return made to the office of the Secretary of State in the same manner as votes for Governor and Members of the Legislature, and the Governor and Council shall review the same and if it shall appear that a majority of the inhabitants voting on the question are in favor of said Act, the Governor shall forthwith make known the fact by his proclamation and the Act shall thereupon become effective April 30, 1976.

**Secretary of State shall prepare ballots.** The Secretary of State shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing Act, accompanied by a copy thereof.

#### STATEMENT OF FACT

The purpose of this legislation is to permit a referendum on the question of abolishing the Maine Milk Commission, the Maine Dairy Council and the Maine Milk Tax Committee and instituting unit pricing and open dating.