

# MAINE STATE LEGISLATURE

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(Governor's Bill)  
FIRST REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1587**

H. P. 1346

House of Representatives, April 27, 1979

The Committee on Agriculture suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Hobbins of Saco.

Cosponsors: Mrs. Post of Owl's Head, Mr. MacEachern of Lincoln and  
Mr. Stover of West Bath.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

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**AN ACT to Repeal the Control of Milk Prices at the Wholesale and Retail Levels.**

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

**Sec. 1. 7 MRSA c. 603, as amended, is repealed.**

**Sec. 2. 7 MRSA c. 604 is enacted to read:**

**CHAPTER 604**

**MILK COMMISSION**

**§ 2961. Definitions**

As used in this chapter, unless the context otherwise requires, the following words shall have the following meaning.

- 1. Books and records.** "Books and records" means books, records, accounts, memoranda or other data pertaining to the purchase and distribution of milk.
- 2. Commission.** "Commission" means the Maine Milk Commission.
- 3. Consumer.** "Consumer" means any person other than a milk dealer who purchases milk for fluid consumption.

4. 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 and subdealer, but shall not include a store or a school district.

5. Market. "Market" means any city, town or parts thereof of the State or 2 or more of the same or parts thereof designated by the commission as a natural marketing area.

6. Milk. "Milk" means whole milk from cows and cream, fresh, sour or storage; skimmed milk and buttermilk; irrespective of whether or not any such milk is flavored.

7. Person. "Person" means any individual, partnership, firm, corporation, association or other unit, and the State and all political subdivisions or agencies thereof, except state-owned and operated institutions.

8. Producer. "Producer" means any person who produces milk and sells his milk to dealers.

9. Producer-dealer. "Producer-dealer" means a dealer who produces a part or all of his milk or a person who produces milk and sells to a store.

10. Producer prices. "Producer prices" means the prices paid to Maine producers for milk.

11. Retail store. "Retail store" means a grocery store, dairy product store or any similar commercial establishment where milk is sold to consumers for consumption off the premises.

12. Store. "Store" means a grocery store, dairy product store, canteen, milk vending machine operator, milk dispensing operator or any similar commercial establishment or outlet or any other place where milk is sold to consumers for consumption off the premises where sold.

13. Subdealer. "Subdealer" means any person who does not process milk and who purchases milk from a dealer and sells such milk in the same containers in which he purchased it, but shall not include a store.

#### § 2962. Organization

The Maine Milk Commission, as heretofore established, shall consist of 5 members and at all times shall include within its membership the Commissioner of Agriculture, ex officio. None of the remaining 4 members of the commission, 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 from which he secures personal economic gain, 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 with respect to any such producer 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. The 4 members, other than the Commissioner of Agriculture, shall be appointed by the Governor and 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, 2, 3 and 4 years so that the terms of the members of the commission shall be staggered and the Governor shall designate the length of the initial term of each commissioner.

The members of the commission shall elect a chairman. With the approval of the commission, 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. Legal services and the services of experts in other lines shall be performed as far as possible by the existing state departments, including the Department of Agriculture, the Department of Human Services and the Department of Attorney General.

Any vacancy in the membership of the commission shall be filled by appointment by the Governor. 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. The cost of administration of the commission, including expenses and compensation of members, shall not exceed the amount of fees collected under this chapter.

The commission shall hold regular meetings on the 3rd Thursday of each calendar month. The chairman shall call special meetings of the commission whenever requested in writing by 2 or more members of the commission.

#### § 2963. Powers and duties

The commission shall have power to establish and change the minimum producer 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 regarding such prices. 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.

In administering this chapter, the commission shall have the power, pursuant to Title 5, chapter 375, to conduct hearings, subpoena and examine under oath, producers, dealers 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 may sign subpoenas and administer oaths to witnesses.

The commission may, pursuant to Title 5, chapter 375, 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 to obtain from them all necessary information. Every producer 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 and sale of milk. These accounts shall reasonably reflect, in such detail as the commission deems appropriate, income, expense, assets, liabilities and such other accounting entries as the commission deems necessary, to assist the commission in making its determinations as to minimum producer prices generally and as to all other matters pertinent to the proper performance of its duties. The rules and regulations of the commission shall also establish procedures to enable the commission to inspect the records, books and accounts of dealers and producers at their various offices and places of business at reasonable times.

#### § 2964. Interstate conferences and compacts

The commission shall have power to enter into compacts, with legally constituted milk commissions or similar authorities of any other states or of the United States of America to effect a uniformity in regulating and insuring an adequate supply of pure and wholesome milk to the inhabitants of this State, to provide uniform control of milk produced in this State and handled in interstate commerce and to exercise all the powers hereunder for such purpose as well as the following powers:

1. Hearings. To conduct joint investigations and hearings and to issue joint or concurrent orders;
2. Enforcement. To employ or designate a joint agent or agencies to enforce such orders or compacts;
3. Classification. To provide for classification of milk in accordance with the form in which it is used or moved with uniform minimum prices or methods of fixing such prices for each class;
4. Payments. To provide for payment to all producers and associations of producers delivering milk to dealers of uniform prices, subject to adjustments with the joint agent for location and butterfat content; and
5. Regulations. To make such joint regulations as may be incidental to the foregoing and not inconsistent therewith and as may be necessary to effectuate the powers mentioned in this section.

**§ 2965. Establishment of minimum producer prices**

1. **Commission powers; hearings.** The commission is vested with the power to establish and change, after investigation, the minimum prices to be paid to producers for milk produced within the State. The commission may conduct such public hearings prior to the establishing or changing of such minimum producers prices as it deems desirable. 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 may solicit oral and written testimony, under oath, at these hearings to determine whether the proposed minimum producer prices are just and reasonable.

2. **Considerations in establishing prices.** In establishing and changing minimum producer 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 the varying conditions in various marketing areas; prevailing prices in neighboring states; seasonal production and other conditions affecting producer costs in the milk industry, including a reasonable return to producer; and the public need for the establishment of milk prices at the lowest practicable levels. The minimum producer prices shall reflect the prevailing Class I and Class II prices in the New England federal market order region nearest to Maine, which, after investigation by the Maine Milk Commission, shall be adjusted as accurately as possible to actual costs of production in Maine.

3. **On premise sale exemption.** 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.

4. **Milk classifications.** 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.

5. **Schedule of prices.** Upon establishing 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 that market with a schedule of those prices and shall publish a schedule thereof in appropriate newspapers in that market. The order shall become effective in accordance with Title 5, chapter 375, and thereafter no dealer handling milk in that market shall buy or offer to buy milk for prices less than the scheduled minimum producer prices established for that market.

6. **Transportation charge schedule.** 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 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 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 schedule 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 the evidence, the schedule of charges filed shall be deemed reasonable.

7. **Unlawful practices.** It shall be unlawful for any person to engage in any practice destructive of the scheduled minimum producer 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.

8. **Milk produced out-of-state.** 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 purchase by dealers of milk within this State at a price less than the scheduled minimum producer price established according to usage in any given market shall be unlawful.

**§ 2966. Payment by dealers to producers**

Each dealer shall make payment to his producers of all sums due for products purchased or received no later than 30 days from the end of the calendar month in which delivery was made.

The license of any dealer who violates this section may be suspended or revoked in accordance with Title 5, chapter 375.

**§ 2967. 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 commission, unless duly licensed by the commission. 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 commission, shall make application to the commission for a license, which the commission is authorized to grant. No retailer shall sell or offer to sell milk in any market in the State which he has purchased in Maine from an unlicensed dealer.

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 commission.

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

The Administrative Court 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 the license.

Upon revocation or suspension of a license, it shall not be reissued until the commission shall determine upon application and hearing that the cause for revocation or suspension no longer exists and that the applicant is otherwise qualified.

#### § 2968. 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, or of importer of such milk into the State;

2. Use, location and market outlet. A record of the quantity of all milk sold, detailed as to use, location and market outlet; and

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, and shall pay his Maine producers the established minimum price for the classification of the milk according to its usage.

Each licensed dealer shall pay to the commission an annual license fee of \$1 and the sum of 3¢ per hundredweight 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. One and one-half cents per hundredweight may be deducted by dealers from amounts paid by them to producers of that milk, except that the milk farm-processed into cream for the manufacture of butter shall not be subject to such sums of 3¢ 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 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 the 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.

#### § 2969. Expenditure of funds

Moneys received pursuant to this chapter shall be paid forthwith to the Treasurer of State and shall be appropriated and used for the following purposes:

1. **Collection.** For the collection of all fees and assessments provided for by this chapter; and

2. **Administration.** For the cost of administering this chapter.

Moneys received through this chapter shall remain a continuing carrying account and shall not lapse.

#### § 2970. 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 commission, the Superior Court shall have jurisdiction upon complaint filed by the commission, or any person duly authorized to act as 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 commission. 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 commission, the court shall enter a decree perpetually enjoining the 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 commission or its authorized agent shall not be required to give or post a bond when making an application for an injunction under this section.

#### § 2971. Penalties

Whoever violates any of the provisions of this chapter or of any rule or order of the commission shall be guilty of a Class E crime.

#### STATEMENT OF FACT

The purpose of this bill is to eliminate the power of the Maine Milk Commission to set minimum wholesale and retail milk prices. It would permit wholesalers and retailers to sell milk at prices lower than the minimums now set by the Maine Milk Commission. The bill permits the commission to continue to regulate producer prices, that is prices payed to Maine farmers for milk.