

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document **No. 1935**

Initiated Bill 3 House of Representatives, February 3, 1982
Transmitted to the Clerk of the House of the 110th Maine Legisla-
ture by the Secretary of State on February 2, 1982. On Motion of Repre-
sentative Mitchell of Vassalboro referred to the Committee on Agricul-
ture. 2,000 ordered printed and sent up for concurrence.
EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-TWO

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

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Sec. 1. 7 MRSA c. 603, as amended, is repealed.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

§2971. Definitions

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

1 1. Books and records. "Books and records" means
2 books, records, accounts, memoranda or other data pertaining
3 to the purchase and distribution of milk.

4 2. Commission. "Commission" means the Maine Milk Com-
5 mission.

6 3. Consumer. "Consumer" means any person other than a
7 milk dealer who purchases milk for fluid consumption.

8 4. Dealer. "Dealer" means any person who purchases or
9 receives milk for sale as the consignee or agent of a pro-
10 ducer, or handles for sale, shipment, storage or processing
11 within the State and includes a producer-dealer and
12 subdealer, but does not include a store.

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

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

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

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

26 9. Producer-dealer. "Producer-dealer" means a dealer
27 who produces a part or all of his milk himself or a person
28 who produces milk and sells to a grocery store, dairy prod-
29 ucts store or similar commercial establishment.

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

32 11. Retail store. "Retail store" means a grocery
33 store, dairy product store or any similar commercial estab-
34 lishment where milk is sold to consumers for consumption off
35 the premises.

36 12. Store. "Store" means a grocery store, dairy
37 product store, canteen, milk vending machine operator, milk
38 dispensing operator or any similar commercial establishment

1 or outlet or any other sale where milk is sold to consumers
2 for consumption off the premises where sold.

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

7 §2972. Organization

8 The Maine Milk Commission, as heretofore established,
9 shall consist of 5 members and at all times shall include
10 within its membership the Commissioner of Agriculture, Food
11 and Rural Resources, ex officio. In addition to the limita-
12 tions of Title 5, section 18, none of the remaining 4 mem-
13 bers of the commission may at the time of appointment or
14 while serving as a member of the commission, and no employee
15 of the commission may have any official business, other than
16 retail purchases of milk, or professional connection or
17 relation with, or hold any interest or stock or securities
18 in, any producer, dealer, store or other person whose activ-
19 ities are subject to the jurisdiction of the commission; nor
20 shall any member or employee of the commission render any
21 professional or other service against any such producer or
22 other person whose activities are subject to the jurisdic-
23 tion of the commission or be a member of a firm which shall
24 render any such service.

25 All members of the commission shall be residents of the
26 State. The 4 members, other than the Commissioner of Agri-
27 culture, Food and Rural Resources, shall be appointed by the
28 Governor and shall serve for a term of 4 years and until
29 their successors have been duly appointed and qualified,
30 except that in the first instance, the initial terms shall
31 be for one, 2, 3 and 4 years so that the terms of the mem-
32 bers of the commission shall be staggered.

33 The members of the commission shall elect a chairman.
34 With the approval of the commission, the Commissioner of
35 Agriculture, Food and Rural Resources may employ, subject to
36 the Personnel Law, a secretary and such officers, clerks,
37 assistants and other employees as shall be deemed necessary.
38 The commission may employ such expert, professional or other
39 assistance as the commission deems necessary. Legal ser-
40 vices and the services of experts in other lines shall be
41 performed as far as possible by the existing state depart-
42 ments, including the Department of Agriculture, Food and
43 Rural Resources, the Department of Human Services and the
44 Department of the Attorney General.

1 Any vacancy in the membership of the commission shall
2 be filled by appointment by the Governor. Members of the
3 commission shall be allowed actual traveling and other
4 necessary expenses incurred in the performance of their
5 duties and each member shall receive a per diem compensation
6 for the time actually spent in the performance of his
7 duties, that compensation to be determined by the Governor.
8 The cost of administration of the commission, including
9 expenses and compensation of members, shall not exceed the
10 amount of fees collected under this chapter. The commission
11 shall be furnished a suitable office in the State Capitol,
12 together with all necessary equipment and supplies therefor.

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

17 §2973. Powers and duties

18 The commission shall have power to establish and change
19 the minimum producer prices for the sale of milk within the
20 State, in such a manner as to supplement such supervision
21 and regulations as are now imposed by existing statutes or
22 by lawful ordinances or rules and regulations of the several
23 cities and towns of the State regarding those prices. The
24 commission shall have no power to modify, add to or annul
25 any sanitary regulations imposed by any state or municipal
26 authority or to compel pasteurization in any market area.

27 In administering this chapter, the commission shall
28 have the power to conduct hearings, subpoena and examine
29 under oath, producers, dealers or other persons whose activ-
30 ities are subject to the jurisdiction of the commission and
31 their officers, agents and representatives, together with
32 their records, books and accounts, and any other person from
33 whom the commission requires information in order to carry
34 out the purposes and intent of this chapter. Any member of
35 the commission, and any employee designated by the commis-
36 sion, may sign subpoenas and administer oaths to witnesses.

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

40 To enable the commission to perform its duties, the
41 commission shall have the power to inquire into the manage-
42 ment of the businesses of the producers to obtain from them
43 all necessary information. Every producer shall keep and

1 render to the commission, at such times and in such manner
2 and form as shall be prescribed by the rules and regulations
3 of the commission, accounts of all business transacted which
4 is related to the production and sale of milk. These ac-
5 counts shall reasonably reflect, in such detail as the com-
6 mission deems appropriate, income, expense, assets, liabili-
7 ties and such other accounting entries as the commission
8 deems necessary, to assist the commission in making its
9 determinations as to minimum producer prices generally and
10 as to all other matters pertinent to the proper performance
11 of its duties. The rules and regulations of the commission
12 shall also establish procedures to enable the commission to
13 inspect the records, books and accounts of dealers and pro-
14 ducers at their various offices and places of business at
15 reasonable times.

16 §2974. Interstate conferences and compacts

17 The commission shall have power to enter into compacts,
18 subject to congressional approval, with legally constituted
19 milk commissions or similar authorities of other states or
20 of the United States to effect a uniformity in regulating
21 and insuring an adequate supply of pure and wholesome milk
22 to the inhabitants of this State, to provide uniform control
23 of milk produced in this State and handled in interstate
24 commerce and to exercise all the powers under this section
25 for that purpose as well as the following powers:

26 1. Hearings. To conduct joint investigations and
27 hearings and to issue joint or concurrent orders;

28 2. Enforcement. To employ or designate a joint agent
29 or agencies to enforce orders or compacts;

30 3. Classification. To provide for classifications of
31 milk in accordance with the form in which it is used or
32 moved with uniform minimum prices or methods of fixing those
33 prices for each class;

34 4. Payments. To provide for payment to all producers
35 and associations of producers delivering milk to dealers of
36 uniform prices, subject to adjustments with the joint agent
37 for location and butterfat content; and

38 5. Regulations. To make such joint regulations as may
39 be incidental to the foregoing and not inconsistent thereto
40 and as may be necessary to effectuate the powers set out in
41 this section.

1 §2975. Establishment of minimum producer prices

2 1. Commission powers; hearings. The commission is
3 vested with the power to establish and change, after inves-
4 tigation and public hearing, the minimum prices to be paid
5 to producers for milk produced within the State. The com-
6 mission shall hold a public hearing prior to the establish-
7 ing or changing of the minimum prices. The commission may
8 waive the requirement of a public hearing when the only
9 changes to be made in the minimum prices are to conform with
10 the orders of any federal or other agency duly authorized by
11 law to establish or negotiate producer prices. Due notice of
12 the public hearing shall be given by publishing a notice as
13 provided in the Maine Administrative Procedure Act, Title 5,
14 chapter 375. The commission shall hold such a public hear-
15 ing not less frequently than once every 12 months to deter-
16 mine whether the minimum producer prices then established
17 should be changed. In addition to the data received through
18 the implementation of the information gathering procedures
19 of its rules and regulations as a basis for its determina-
20 tions, the commission shall solicit and seek to receive oral
21 and written testimony at the hearings to determine whether
22 the minimum producer prices then established should be
23 changed and whether the proposed minimum prices are just and
24 reasonable.

25 2. Considerations in establishing prices. In estab-
26 lishing and changing minimum producer prices, the prices so
27 established shall be just and reasonable taking into due
28 consideration the public health and welfare and the insuring
29 of an adequate supply of pure and wholesome milk to the
30 inhabitants of this State under the varying conditions in
31 various marketing areas; prevailing prices in neighboring
32 states; seasonal production and other conditions affecting
33 producer costs in the milk industry, including a reasonable
34 return to producers; taking into consideration the public
35 need for the establishment of milk prices at the lowest
36 practicable levels. The minimum producer prices shall be
37 based on the prevailing Class I and Class II prices in
38 southern New England and, after investigation by the Maine
39 Milk Commission, shall reflect as accurately as possible the
40 increased costs of production.

41 3. On-premises sale exemption. The minimum price
42 provisions of this chapter do not apply to sales by pro-
43 ducers of raw milk produced and sold to consumers on the
44 premises of the producers.

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

6 5. Schedule of prices. Upon establishing minimum pro-
7 ducer prices in any market which apply to the various clas-
8 sifications of milk and which may vary in the several market
9 areas of the State, the commission shall furnish all dealers
10 registered in the market with a schedule of the prices and
11 shall publish a schedule thereof in appropriate newspapers
12 in the market. This order shall become effective in accor-
13 dance with the Maine Administrative Procedure Act, Title 5,
14 chapter 375, and thereafter no dealer handling milk in that
15 market may buy or offer to buy milk for prices less than the
16 scheduled minimum producer prices established for that
17 market.

18 6. Transportation charge schedule. Any dealer may
19 deduct an allowance for transportation from the producer's
20 farm to the dealer's dairy plant pursuant to a reasonable
21 schedule of charges filed with the commission, with a copy
22 to each affected producer, at least 30 days prior to the
23 proposed effective date. Any interested producer or any
24 organization representing producers may petition the commis-
25 sion at any time to review the reasonableness of any such
26 schedule of transportation charges, and the commission is
27 empowered to suspend proposed schedules pending hearing and,
28 after hearing, to disapprove and reject any schedules then
29 pending or theretofore in effect, found to be unreasonable
30 or, after hearing, to approve any such schedule found to be
31 reasonable or to establish any new schedules deemed to be
32 reasonable. It shall be incumbent upon the dealer to sub-
33 stantiate the reasonableness of the schedule of the trans-
34 portation charges filed; and in the absence of that evi-
35 dence, the schedule of charges filed shall be deemed unrea-
36 sonable.

37 7. Unlawful practices. It is unlawful for any person
38 to engage in any practice destructive of the scheduled mini-
39 imum producer prices for milk established under this chapter
40 for any market, including but not limited to any discount,
41 rebate, gratuity, advertising allowance or combination price
42 for milk with any other commodity. In addition to any pen-
43 alty otherwise provided by law, the commission, after notice
44 and hearing, may prohibit any such practice, and any person
45 feeling himself aggrieved by any order of the commission
46 issued under this chapter may appeal to the Superior Court.

1 8. Milk produced outside the State. Whenever milk
2 produced outside the State becomes a subject of regulation
3 by the State in the exercise of its police powers, this
4 chapter shall apply and the powers of the commission shall
5 attach. After any such milk so produced shall come within
6 the jurisdiction of this State, any purchase by dealers of
7 that milk within this State at a price less than the sched-
8 uled minimum producer price established according to usage
9 in any given market is unlawful.

10 §2976. Payment by dealers to producers

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

15 The license of any dealer who violates this section may
16 be suspended or revoked in accordance with the Maine Admin-
17 istrative Procedure Act, Title 5, chapter 375.

18 §2977. Licenses

19 No dealer may buy milk from producers or others for
20 sale or may process, distribute, sell or offer to sell milk
21 in any market in the State designated by the commission,
22 unless duly licensed by the commission. No license is re-
23 quired of any person who produces or sells milk for consump-
24 tion only on the premises of the producer or seller. Each
25 person, before engaging in the business of a dealer in any
26 market designated by the commission, shall make application
27 to the commission for a license, which the commission is
28 authorized to grant. No retailer may sell or offer to sell
29 milk in any market in the State which he has purchased in
30 Maine from an unlicensed dealer.

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

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

36 The Administrative Court as designated in the Maine
37 Administrative Procedure Act, Title 5, chapter 375 may, upon
38 proper evidence, decline to grant a license or may suspend
39 or revoke a license already granted upon due notice and
40 after hearing. Violation of this chapter or of any order,
41 rule or regulation made, or conviction of violating any

1 other law or regulation of the State relating to the produc-
2 tion, distribution and sale of milk, shall be sufficient
3 cause to suspend, revoke or withhold the license.

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

9 §2978. Records and fees

10 1. Records. All dealers in any market designated by
11 the commission shall keep the following records:

12 A. A record of the quantity of all milk received or
13 produced, detailed as to location and as to names and
14 addresses of producers or milk dealers from whom
15 received, or of the importer of that milk into the
16 State;

17 B. A record of the quantity of all milk sold, detailed
18 as to use, location and marketing outlet; and

19 C. Such other records and information in such form and
20 at such times as the commission may deem necessary for
21 the proper enforcement of this chapter.

22 2. Statement to producers. Each dealer shall furnish
23 his producers a statement of the amount of milk purchased,
24 the price per hundredweight or quart, the total amount paid
25 for each pay period, the itemized deductions for transporta-
26 tion and other services, the percentages of milk in each
27 classification and the butterfat test when weight and test
28 method of payment is used and shall pay his Maine producers
29 the established minimum price for the classification of the
30 milk according to its usage.

31 3. Fee. Each licensed dealer shall pay to the commis-
32 sion an annual license fee of \$1 and the sum of 3¢ per
33 hundredweight as monthly payments, based on quantity of milk
34 purchased or produced in any market area, or purchased or
35 produced in an uncontrolled area and sold in any market
36 area. Dealers may deduct 1 1/2¢ per hundredweight from
37 amounts paid by them to producers of such milk, except that
38 the milk farm-processed into cream for the manufacturer of
39 butter is subject to the sum of 3¢ per hundredweight.

1 4. Reports. Dealers shall file reports together with
2 the prescribed hundredweight fees with the commission at its
3 office in Augusta not later than the 20th day of the follow-
4 ing month, on forms provided for this purpose, of all mat-
5 ters on account of which a record is required to be kept and
6 such other information or facts as may be pertinent and
7 material within the scope of this chapter; except that deal-
8 ers who sell less than 100 quarts of milk per day may file
9 reports and pay the prescribed hundredweight fees every 3
10 months.

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

17 §2979. Expenditure of funds

18 1. Purposes. Moneys received through this chapter
19 shall be paid forthwith to the Treasurer of State and shall
20 be appropriated and used for the following purposes:

21 A. For the collection of all fees and assessments pro-
22 vided for by this chapter; and

23 B. For the cost of administering this chapter.

24 2. Money not to lapse. Moneys received through this
25 chapter shall remain a continuing carrying account and shall
26 not lapse.

27 §2980. Injunctions

28 In addition to any other remedy set forth in this chap-
29 ter for the enforcement of this chapter or any rule, regula-
30 tion, order or decision of the commission, the Superior
31 Court shall have jurisdiction upon complaint filed by the
32 commission, or any person duly authorized to act for the
33 commission, including but not limited to its executive
34 secretary, to restrain or enjoin any person from committing
35 any act prohibited by this chapter or prohibited by any
36 rule, regulation, order or decision of the commission. If
37 it is established upon hearing that the person charged has
38 been or is committing any act declared to be unlawful by
39 this chapter or is in violation of any rule, regulation,
40 order or decision of the commission, the court shall enter a
41 decree perpetually enjoining the person from further commis-

