

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 (After Deadline)

3 FIRST REGULAR SESSION  
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE  
6

7 Legislative Document

No. 1681

8  
9 H.P. 1260

House of Representatives, May 23, 1983

10 Approved for introduction by a majority of the Legislative Council  
11 pursuant to Joint Rule 27.

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

EDWIN H. PERT, Clerk

Presented by Representative McCollister of Canton.  
13

14 STATE OF MAINE  
15

16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-THREE  
18

19 AN ACT to Strengthen the Maine Milk  
20 Industry.  
21

22 Emergency preamble. Whereas, Acts of the Legis-  
23 lature do not become effective until 90 days after  
24 adjournment unless enacted as emergencies; and

25 Whereas, the Maine milk industry is vitally  
26 important to Maine rural life and economy; and

27 Whereas, the protection of the milk industry from  
28 unfair sales practices is essential to the continued  
29 well-being of the industry and the State; and

30 Whereas, judicial invalidation of pricing orders  
31 of the Maine Milk Commission in June, 1981, resulted  
32 in an 11-day period during which no minimum dealer  
33 and retail prices for milk were in effect in Maine;  
34 and

1           Whereas, in the judgment of the Legislature,  
2 these facts create an emergency within the meaning of  
3 the Constitution of Maine and require the following  
4 legislation as immediately necessary for the preser-  
5 vation of the public peace, health and safety; now,  
6 therefore,

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

9           Sec. 1. 7 MRSA c. 603-A is enacted to read:

10                           CHAPTER 603-A

11                                   DESTRUCTIVE COMPETITION

12           §2981. Definitions

13           Unless the context otherwise indicates, the defi-  
14 nitions contained in section 2951 shall apply to this  
15 chapter.

16           §2982. Applicability; authority

17           Dealers shall observe this chapter only when no  
18 applicable minimum dealer price for milk established  
19 under chapter 603 is in effect. Retail stores shall  
20 observe this chapter only when no applicable minimum  
21 retail price or minimum retail margin for milk estab-  
22 lished under chapter 603 is in effect. This chapter  
23 shall be administered by the Maine Milk Commission.

24           §2983. Selling below cost

25           It is unlawful for any dealer or retail store to  
26 sell milk for fluid consumption at less than the cost  
27 thereof to the dealer or retail store with the pur-  
28 pose or intent to injure competitors or destroy com-  
29 petition. In all proceedings brought to enforce this  
30 section, proof of consistent and repeated advertise-  
31 ments, offers to sell or sales of milk for fluid con-  
32 sumption by any dealer or retail store at less than  
33 cost to them, as defined in sections 2984 and 2985,  
34 the advertisements, offers to sell and sales thereby  
35 forming a pattern of sales below cost, shall be prima  
36 facie evidence of intent to injure competitors and

1 destroy competition. This section shall not apply  
2 where the price of milk for fluid consumption is set  
3 in good faith to meet legal competition.

4 §2984. Cost of milk to a dealer

5 "Cost of milk to a dealer" means the dealer's raw  
6 product cost, plus any shrinkage allowance permitted  
7 by the commission, to which shall be added the deal-  
8 er's expenses directly and indirectly incurred in  
9 receiving, processing, packaging and delivering milk.  
10 Without limitation, these expenses shall include  
11 labor, including salaries and bonuses of executives  
12 and officers, rent, depreciation, selling costs,  
13 maintenance of equipment, utilities, delivery costs,  
14 interest, licenses, taxes, insurance, advertising,  
15 professional services and all other fixed and vari-  
16 able expenses. The commission may determine the  
17 dealer's expenses directly and indirectly incurred in  
18 receiving, processing, packaging and delivering fluid  
19 milk by either of the following methods:

20 1. Cost accounting data. Through reliance upon  
21 cost accounting data, relating to the dealer, gather-  
22 ed or received by the commission pursuant to  
23 section 2953 or 2986 for any 3-month period within  
24 one year preceding and one year following the date of  
25 an alleged violation, unless the dealer proves that  
26 changed circumstances render any cost accounting data  
27 relied upon by the commission incapable of proving  
28 that the violation occurred; or

29 2. Expenses; percentage of dealer price. By  
30 imputing an amount to cover these expenses which,  
31 unless the dealer proves lower actual costs, shall be  
32 deemed to be the percentage of the total dealer price  
33 of the milk as the commission shall by rule establish  
34 in conjunction with any milk pricing orders which  
35 change base dealer margins.

36 §2985. Cost of milk to a retail store

37 "Cost of milk to a retail store" means the price  
38 paid by a retail store to a dealer for fluid milk, to  
39 which shall be added the retail store's expenses  
40 directly and indirectly incurred in shipping, han-  
41 dling and selling fluid milk. Without limitation,

1 these expenses shall include labor, including sal-  
2 aries and bonuses of executives and officers, rent,  
3 depreciation, selling costs, maintenance of equip-  
4 ment, utilities, shipping costs, interest, licenses,  
5 taxes, insurance, advertising, professional services  
6 and all other fixed and variable expenses. The com-  
7 mission may determine the retail store's expenses  
8 directly and indirectly incurred in shipping, han-  
9 dling and selling milk by any of the following  
10 methods:

11 1. Cost accounting data. Through reliance upon  
12 cost accounting data, relating to the retailer, gath-  
13 ered or received by the commission pursuant to  
14 section 2953 or 2986 for any 3-month period within  
15 one year preceding and one year following the date of  
16 an alleged violation, unless the retail store proves  
17 that changed circumstances render the cost accounting  
18 data relied upon by the commission incapable of prov-  
19 ing that the violation occurred;

20 2. Expenses; percentage of total retail  
21 price. By imputing an amount to cover these expenses  
22 which, unless the retail store proves lower actual  
23 costs, shall be deemed to be the percentage of the  
24 total retail price of the milk as the commission  
25 shall by rule establish in conjunction with any milk  
26 pricing orders which change retail margins; or

27 3. Other expenses. By imputing an amount to  
28 cover these expenses which, unless the retail store  
29 proves lower actual costs, shall be determined by  
30 dividing total store expenses by total store sales  
31 and multiplying the percentage obtained by the total  
32 retail price of the milk.

33 §2986. Investigations; hearings; inspections

34 To aid the commission in determining if a dealer  
35 or retail store is selling fluid milk below cost, the  
36 commission may investigate, conduct hearings, sub-  
37 poena and examine under oath dealers and retail  
38 stores and their officers, agents and representa-  
39 tives, together with their records, books and ac-  
40 counts and any other person from whom the commission  
41 requires information, together with his records,  
42 books and accounts. Any member of the commission,

1 and any employee designated by the commission, may  
2 sign subpoenas and administer oaths to witnesses.  
3 The commission may also inspect the records, books  
4 and accounts of dealers and retail stores at their  
5 various offices and places of business at reasonable  
6 times.

7 §2987. Rules

8 The commission may adopt all rules establishing  
9 or relating to hearing procedures, cost accounting  
10 and the collection of information as may be necessary  
11 to carry out this chapter.

12 §2988. Civil action by injured person

13 1. Injunctive relief; damages and costs. Any  
14 person damaged or who is threatened with loss or  
15 injury by reason of a violation of section 2983 may  
16 bring a civil action in the Superior Court in the  
17 county where he resides, to prevent, restrain or  
18 enjoin the violation or threatened violation. If in  
19 that action a violation or threatened violation of  
20 section 2983 shall be established, the court may  
21 enjoin and restrain or otherwise prohibit the viola-  
22 tion or threatened violation. In that action it  
23 shall not be necessary that actual damages to the  
24 plaintiff be alleged or proved. In addition to the  
25 injunctive relief, the plaintiff in the action shall  
26 be entitled to recover from the defendant 3 times the  
27 amount of actual damages sustained by him and the  
28 costs of the action, including reasonable attorneys'  
29 fees.

30 2. Damages only. In the event no injunctive  
31 relief is sought or required, any person injured by a  
32 violation of section 2983 may maintain an action for  
33 damages alone in the Superior Court in the county  
34 where he resides and the measure of damages in the  
35 action shall be the same as prescribed in subsection  
36 1.

37 §2989. Civil action by the commission

38 1. Civil penalties. Any dealer or retail store  
39 which violates section 2983 shall be subject to the  
40 following civil penalties, to be collected by the  
41 commission in a civil action:

