

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2168

6
7 S.P. 856

In Senate, March 10, 1986

8 Submitted by the Department of Agriculture, Food and Rural Resources
9 pursuant to Joint Rule 24.

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Emerson of Penobscot.

11 Cosponsored by Senator Dutremble of York, Representative Masterman
of Milo and Representative Brannigan of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Improve the Marketing of Milk in
18 Maine.
19

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

22 Sec. 1. 7 MRSA §2951, sub-§§3-A, 3-B, 4-A and
23 4-B are enacted to read:

24 3-A. Cost of milk to a dealer. "Cost of milk to
25 a dealer" means the dealer's raw product cost, plus
26 any shrinkage allowance permitted by the commission,
27 to which shall be added the dealer's expenses direct-
28 ly and indirectly incurred in receiving, processing,
29 packaging and delivering milk. Without limitations,
30 these expenses shall include labor, including sala-
31 ries and bonuses of executives and officers, rent,
32 depreciation, selling costs, maintenance of equip-
33 ment, utilities, delivery costs, interest, licenses,
34 taxes, insurance, advertising, professional services
35 and all other fixed and variable expenses.

1 3-B. Cost of milk to a retail store. "Cost of
2 milk to a retail store" means the price paid by a re-
3 tail store to a dealer for fluid milk, to which shall
4 be added the retail store's expenses directly and in-
5 directly incurred in shipping, handling and selling
6 fluid milk. Without limitation, these expenses shall
7 include labor, including salaries and bonuses of ex-
8 ecutives and officers, rent, depreciation, selling
9 costs, maintenance of equipment, utilities, shipping
10 costs, interest, licenses, taxes, insurance, adver-
11 tising, professional services and all other fixed and
12 variable expenses.

13 4-A. Integrated operation. "Integrated opera-
14 tion" means a person who is a dealer and who also
15 sells at retail the milk which he processes and de-
16 livers. Such a person shall be considered a dealer
17 and not an integrated operation with respect to any
18 sales or consignments of milk he makes to any other
19 retail store and shall be considered a retail store
20 and not an integrated operation with respect to any
21 purchases of packaged milk he makes from any other
22 dealer.

23 4-B. Legal competitive price. "Legal competi-
24 tive price" means a price which is not subject to a
25 restraint or injunction issued by a court of compe-
26 tent jurisdiction and which is set or offered by a
27 directly competing dealer or retail store.

28 Sec. 2. 7 MRSA §2951 sub-§5 is repealed.

29 Sec. 3. 7 MRSA §2951, sub-§6 is amended to read:

30 6. Milk. "Milk" means whole milk and cream,
31 fresh, sour or storage; lowfat milk, skimmed milk and
32 buttermilk; irrespective of whether or not any such
33 milk is flavored.

34 Sec. 4. 7 MRSA §2951, sub-§7-A is enacted to
35 read:

36 7-A. Presumptive price. "Presumptive price"
37 means a price for milk, published by the commission,
38 a sale or offer to sell at which is presumed to be at
39 or above the cost of milk to the dealer or retail
40 store.

1 Sec. 5. 7 MRSA §2951, sub-§§9 and 11 are amended
2 to read:

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

8 11. Store and retail store. "Store and retail
9 ~~store"~~ means a grocery store, dairy product store,
10 canteen, milk vending machine operator, milk dispensing
11 operator or any similar commercial establishment
12 or outlet or any other sale where milk is sold to
13 consumers for consumption off the premises where
14 sold.

15 Sec. 6. 7 MRSA §2951, sub-§14, as enacted by PL
16 1973, c. 758, §1, is repealed.

17 Sec. 7. 7 MRSA §2951-A is enacted to read:

18 §2951-A. Purpose

19 The Legislature recognizes that certain general
20 economic principles apply to the marketing of milk,
21 as to any other commodity. The Legislature also rec-
22 ognizes that a regulatory system which ignores or
23 conflicts with those economic principles will not
24 serve the best interest of the regulated industry or
25 of the general public and will ultimately prove det-
26 rimental to both.

27 "Milk Pricing Alternatives for Maine," a study
28 commissioned by the Legislature, makes clear that the
29 present system of milk regulation in Maine conflicts
30 with economic principles in ways that may work to the
31 detriment of the long-term health of the Maine milk
32 industry. It is also clear that under the present
33 system of regulation certain groups of consumers pay
34 prices which reflect more than their share of milk
35 costs.

36 The Legislature has always desired and intended
37 to maintain a viable dairy industry in Maine. This
38 chapter does not change that intent. The Legislature
39 is principally concerned that milk producers continue

1 to exist and that they continue to receive and to
2 share equitably the premium derived from the state
3 regulation of producer prices. The Legislature also
4 remains concerned that a viable dairy processing
5 sector continue to exist in Maine.

6 The Legislature recognizes that the maintenance
7 of a viable dairy industry and the maintenance of
8 that industry in the exact form in which it presently
9 exists may be inconsistent goals. The forces of
10 technology and economics will unavoidably impose
11 themselves on the milk industry, inevitably causing
12 change. While the fundamental intent to maintain a
13 viable dairy industry remains, the Legislature recog-
14 nizes that a different regulatory mechanism is
15 needed. It is the Legislature's intent to provide by
16 this chapter a system of regulation which can achieve
17 that intent, to the ultimate benefit of the Maine
18 dairy industry and the consumers of this State.

19 Sec. 8. 7 MRSA §2953, as repealed and replaced
20 by PL 1975, c. 517, §2, is repealed and the following
21 enacted in its place:

22 §2953. Powers and duties

23 The commission shall have power to establish and
24 change minimum prices for milk to be paid to produc-
25 ers by dealers, in accordance with section 2954, and
26 to publish and change presumptive prices for milk
27 sold in all wholesale and retail sales, except sales
28 to federal agencies and institutions, in accordance
29 with section 2954. The commission shall have no power
30 to modify, add to or annul any sanitary regulations
31 imposed by any state or municipal authority or to
32 compel pasteurization in any market area.

33 Not less than once every 3 years, the commission
34 shall conduct independent studies of the economics
35 and practices of the milk industry in order to assist
36 the commission in establishing minimum wholesale
37 prices to be paid to producers and in publishing pre-
38 sumptive prices.

39 In administering this chapter, the commission may
40 conduct hearings, subpoena and examine under oath,
41 producers, dealers, stores or other persons whose ac-

1 tivities are subject to the jurisdiction of the com-
2 mission and their officers, agents and representa-
3 tives, together with their records, books and ac-
4 counts, and any other person from whom the commission
5 requires information in order to carry out the pur-
6 poses and intent of this chapter. Any member of the
7 commission and any employee designated by the commis-
8 sion may sign subpoenas and administer oaths to wit-
9 nesses.

10 The commission may adopt, promulgate and enforce
11 all rules and orders necessary to carry out this
12 chapter.

13 To enable the commission to perform its duties,
14 the commission may inquire into the management of the
15 businesses of the producers, dealers and stores to
16 obtain from them all necessary information. Every
17 producer, dealer and store shall keep and render to
18 the commission, at such times and in such manner and
19 form as shall be prescribed by the rules of the com-
20 mission, accounts of all business transacted which is
21 related to the production, purchasing, processing,
22 sale or distribution of milk. The accounts shall rea-
23 sonably reflect, in such detail as the commission
24 deems appropriate, income, expense, assets, liabili-
25 ties and such other accounting entries as the commis-
26 sion deems necessary, to assist the commission in
27 making its determinations as to all matters pertinent
28 to the proper performance of its duties.

29 The rules of the commission shall also establish
30 procedures to enable the commission to inspect the
31 records, books and accounts of dealers, producers and
32 stores at their various offices and places of busi-
33 ness at reasonable times.

34 Sec. 9. 7 MRSA §2953-B, as enacted by PL 1979,
35 c. 672, Pt. A, §39, is repealed.

36 Sec. 10. 7 MRSA §2954, as amended by PL 1985, c.
37 42, §1, is further amended to read:

38 §2954. Establishment of minimum producer prices and
39 publishing of presumptive prices

1 1. Commission empowered to establish minimum
2 producer prices; public hearing. The commission is
3 vested with the power to establish and change, after
4 investigation and public hearing, the minimum whole-
5 sale ~~and retail~~ prices to be paid to producers, deal-
6 ers and stores for milk received, purchased, stored,
7 manufactured, processed, distributed or otherwise
8 handled within the State. The commission shall hold
9 a public hearing prior to the establishing or chang-
10 ing of such minimum prices. ~~Provided, however;~~
11 provided that the commission may waive the require-
12 ment of a public hearing when the only changes to be
13 made in the minimum prices are to conform with the
14 orders of any federal or other agency duly authorized
15 by law to establish or negotiate producer prices.
16 Due notice of such public hearing shall be given by
17 publishing such notice as provided in Title 5, chap-
18 ter 375. The commission shall hold such a public
19 hearing not less frequently than once ~~ever~~ every 12
20 months to determine whether the minimum wholesale ~~and~~
21 ~~retail~~ prices paid to producers then established
22 should be changed. In addition to the data received
23 through the implementation of the information gather-
24 ing procedures of its rules ~~and regulations~~ as a ba-
25 sis for its determinations, the commission shall so-
26 licit and seek to receive oral and written testimony
27 at such hearings to determine whether the minimum
28 wholesale ~~and retail~~ prices paid to producers then
29 established should be changed and whether the pro-
30 posed minimum wholesale ~~and retail~~ prices paid to
31 producers are just and reasonable.

32 2. Considerations in establishing and publishing
33 prices. In establishing and changing minimum whole-
34 sale ~~and retail~~ prices paid to producers and in pub-
35 lishing and changing presumptive prices, the prices
36 so established ~~and published~~ shall be just and rea-
37 sonable taking into due consideration the public
38 health and welfare and the insuring of an adequate
39 supply of pure and wholesome milk to the inhabitants
40 of this State under varying conditions in various
41 marketing areas; prevailing prices in neighboring
42 states; seasonal production and other conditions af-
43 fecting the costs of production, transportation and
44 marketing in the milk industry; ~~including a reason-~~
45 ~~able return to producer, dealer and store;~~ taking in-
46 to consideration the public need for the establish-

1 ment of retail milk prices at the lowest practicable
2 levels.

3 A- The minimum wholesale prices paid to produc-
4 ers shall be based on the prevailing Class I and
5 Class II prices in southern New England and, af-
6 ter investigation by the Maine Milk Commission,
7 shall reflect as accurately as possible the in-
8 creased costs of production.

9 B- The minimum wholesale prices paid to dealers
10 shall be established to reflect the lowest prices
11 at which milk purchased from Maine producers at
12 Maine minimum prices can be received, processed,
13 packaged and distributed within the State of
14 Maine at a just and reasonable return.

15 C- The minimum retail prices established for
16 payment by consumers shall be based on the mini-
17 mum wholesale price paid to dealers and a rate of
18 return deemed just and reasonable by the Maine
19 Milk Commission.

20 2-A. Minimum prices based on prevailing Class I
21 and Class II prices; cost of production. The minimum
22 wholesale prices paid to producers shall be based on
23 the prevailing Class I and Class II prices in south-
24 ern New England and, after investigation by the Maine
25 Milk Commission, shall reflect as accurately as pos-
26 sible the increased costs of production.

27 3. Exemption for on-premise sales of raw milk.
28 The minimum price provisions of this chapter shall
29 not apply to sales by producers of raw milk produced
30 and sold to consumers on the premises of the produc-
31 ers.

32 4. Commission empowered to establish classifica-
33 tions of milk. The commission is vested with power
34 to establish and change, after investigation and pub-
35 lic hearing, classifications of milk according to its
36 various usages and shall specify to what classifica-
37 tion the prices established under this chapter shall
38 apply.

1 5. Minimum price order. Upon establishing said
2 the minimum wholesale prices in any market to be paid
3 to producers which shall apply to the various classi-
4 fications of milk and which may vary in the several
5 market areas of the State, the commission shall issue
6 an order setting forth the prices and shall furnish
7 all dealers registered in said market with a schedule
8 of such prices copy of the order and shall publish a
9 schedule thereof the order in appropriate newspapers
10 in said market the State. Such The order shall become
11 effective in accordance with Title 5, chapters 301 to
12 307, and thereafter no dealer, ~~store~~ or other person
13 ~~handling milk in such market~~ shall buy or offer to
14 buy, or sell or offer to sell milk for prices less
15 than the ~~scheduled~~ established minimum wholesale
16 prices established for that market to be paid to
17 producers.

18 6. Schedule of maximum transportation allow-
19 ances; adjustments. The commission may annually es-
20 tablish a schedule of maximum transportation allow-
21 ances which may be charged by any Maine dealer for
22 hauling milk from a producer's farm to the dealer's
23 dairy plant. The commission shall base its schedule
24 on the recommendations of the commissioner pursuant
25 to section ~~3157~~ 3156 and shall conduct hearings prior
26 to establishing that schedule. Any dealer may peti-
27 tion the commission at any time to approve a proposed
28 adjustment in that schedule of transportation charges
29 for that dealer. The burden shall be on the dealer
30 to substantiate the need and reasonableness of such a
31 proposed adjustment, and in the absence of evidence,
32 the proposed adjustments shall be denied.

33 7. Prohibition. It shall be unlawful for any
34 person to engage in any practice destructive of ~~the~~
35 scheduled minimum prices for competition or tending
36 to injure or destroy competition in the sale of milk
37 established under this chapter for any market, in-
38 cluding, but not limited to, any discount, rebate,
39 gratuity, advertising allowance or combination price
40 for milk with any other commodity. In addition to
41 any penalty otherwise provided by law, the commission
42 after notice and hearing may prohibit any such prac-
43 tice, and any person feeling himself aggrieved by any
44 order of the commission issued under this chapter may
45 appeal to the Superior Court.

1 8. Milk produced or processed outside the State.
2 Whenever milk produced or processed outside the
3 State becomes a subject of regulation by the State in
4 the exercise of its police powers, this chapter shall
5 apply and the powers of the commission shall attach.
6 After any such milk so produced or processed shall
7 come within the jurisdiction of this State, any sale
8 or purchase by dealers of such milk within this State
9 of any milk so produced at a price less than the
10 scheduled established minimum price established ac-
11 cording to usage in any given market shall be
12 unlawful wholesale prices to be paid to producers is
13 unlawful and any sale of any milk so processed at a
14 price which is below the cost of milk to the dealer
15 or retail store is prohibited in accordance with sec-
16 tion 11.

17 9. Minimum wholesale prices to producers. Not-
18 withstanding any other provisions of this chapter,
19 minimum wholesale prices to producers shall be sub-
20 ject to the provisions of chapter 611.

21 10. Additional considerations in establishing
22 prices. In establishing and changing minimum whole-
23 sale and retail prices, in addition to the considera-
24 tions set out in subsection 2, the commission-

25 A. Shall consider the effect of possible pricing
26 decisions on the ability of the Maine dairy in-
27 dustry to compete in supplying milk to Maine con-
28 sumers and, in such consideration, shall include
29 the following factors-

30 (1) The strength and viability of the Maine
31 dairy industry as a whole;

32 (2) The extent of any social or economic
33 benefits of maintaining dairy processing
34 plants in different geographic regions or
35 natural marketing areas of the State; and

36 (3) The encouragement of consumption by
37 Maine consumers of milk produced and pro-
38 cessed within the State, consistent with the
39 Constitution of Maine and the United States
40 Constitution; and

1 B. Shall not set different minimum wholesale
2 prices for different retail delivery volumes of
3 milk.

4 11. Sales below cost prohibited. It is unlawful
5 for any dealer or retail store to sell milk for fluid
6 consumption at less than the cost of the milk to
7 the dealer or retail store with the purpose or intent
8 to injure competitors or destroy competition or where
9 the effect may be the same. In all proceedings
10 brought to enforce this section, proof of consistent
11 and repeated advertisements, offers to sell or sales
12 of milk for fluid consumption by any dealer or retail
13 store at less than cost to them, as defined in this
14 chapter, the advertisements, offers to sell and sales
15 thereby forming a pattern of sales below cost, shall
16 be prima facie evidence of intent to injure competi-
17 tors and destroy competition. This section does not
18 apply where the price of milk for fluid consumption
19 is set in good faith to meet a legal competitive
20 price.

21 12. Publication of presumptive prices. In ap-
22 plying and enforcing the prohibition set out in sub-
23 section 11, the commission may publish and change
24 presumptive prices for any or all wholesale and re-
25 tail sales of milk.

26 A. In publishing and changing a presumptive
27 price, the commission shall specify the butterfat
28 content, container size and market, as designated
29 by the commission, to which the price applies.
30 Presumptive prices are not rules within the mean-
31 ing of Title 5, chapter 375, subchapter II, and
32 the publication of and changes of presumptive
33 prices by the commission is not subject to the
34 requirements of that subchapter.

35 B. Presumptive prices shall reflect costs achie-
36 vable by a most efficient dealer or retail store,
37 as determined by the commission on the basis of
38 economic models and other economic studies.

39 C. The commission may calculate presumptive
40 prices for wholesale sales by subdealers and for
41 retail sales by adding to the applicable presump-
42 tive wholesale dealer price a percentage markup

1 which represents the cost of milk to subdealers
2 or retail stores.

3 D. A sale or offer to sell by a dealer or retail
4 store at a price below the applicable presumptive
5 price is a violation of this chapter, unless the
6 dealer or retail store has first demonstrated to
7 the satisfaction of the commission, on the basis
8 of accounting information required by the commis-
9 sion, that the price is not below the cost of
10 milk to the dealer or the cost of milk to the re-
11 tail store, as defined in this chapter. In mak-
12 ing such a demonstration, the burden of proof on
13 all issues is on the dealer or retail store.

14 E. If a dealer or retail store sells or offers
15 to sell at a price below the applicable presump-
16 tive price in order to meet a legal competitive
17 price, the dealer or retail store is not required
18 to first prove that that price is not below its
19 costs, provided that the dealer or retail store
20 does not sell or offer to sell at a price which
21 is less than the legal competitive price and pro-
22 viding that, at the time he sells or offers to
23 sell, he files a written statement with the com-
24 mission which:

25 (1) Identifies the competing dealer or re-
26 tail store which is selling or offering to
27 sell at the price he is meeting;

28 (2) Identifies to whom the competing sale
29 or offer to sell is made;

30 (3) States the exact price necessary to
31 meet the competing price;

32 (4) States the effective date of the com-
33 peting price; and

34 (5) States the effective date of his own
35 price.

36 Sec. 11. 7 MRS.A §2954-C is enacted to read:

37 §2954-C. Applicability to integrated operations

1 The provisions of this chapter which apply to
2 dealers shall apply to the dealer phase of the busi-
3 ness of an integrated operation and those which apply
4 to retail stores shall apply to the retail phase of
5 the business of an integrated operation.

6 Sec. 12. 7 MRSA §2956, as amended by PL 1983, c.
7 573, §3, is further amended to read:

8 §2956. Records and fees

9 All dealers in any market designated by the
10 commission and retail stores, as indicated in this
11 section, shall keep the following records.

12 1. Names and addresses of producers or milk
13 dealers. A All dealers shall keep a record of the
14 quantity of all milk received or produced, detailed
15 as to location and as to names and addresses of pro-
16 ducers or milk dealers from whom received, or of
17 ~~importer~~ importers of such milk into the State.

18 2. Use, location and market outlet. A All deal-
19 ers shall keep a record of the quantity of all milk
20 sold, detailed as to use, location and market out-
21 let.

22 3. Other records and information. Such All deal-
23 ers shall keep such other records and information in
24 such form and at such times as the commission may
25 deem necessary for the proper enforcement of this
26 chapter.

27 The commission may require by rule the filing of
28 such records and information as it deems necessary
29 for the proper administration and enforcement of this
30 chapter.

31 Each dealer shall furnish his producers a state-
32 ment of the amount of milk purchased, the price per
33 hundredweight or quart, the total amount paid for
34 each pay period, the itemized deductions for trans-
35 portation and other services, the percentages of milk
36 in each classification and the butterfat test when
37 weight and test method of payment is used, and shall
38 pay his Maine producers the established minimum price
39 for the classification of the milk according to its
40 usage.

1 Each licensed dealer shall pay to the commission
2 an annual license fee of \$1 and the sum of 6 1/2¢ per
3 hundredweight as monthly payments, based on quantity
4 of milk purchased or produced ~~in any market area, or~~
5 ~~purchased or produced in an uncontrolled area and~~
6 ~~sold in any market area.~~ Two and one-half cents per
7 hundredweight may be deducted by dealers from amounts
8 paid by them to producers of such milk, except that
9 the milk farm-processed into cream for the manufac-
10 ture of butter shall not be subject to such sums of 6
11 1/2¢ per hundredweight. Of the amount paid by each
12 dealer, 1 1/2¢ per hundredweight shall be paid by the
13 commission to the Maine Dairy and Nutrition Council
14 for the purposes authorized by Title 36, section
15 4521.

16 Dealers shall ~~file reports together with~~ pay the
17 prescribed hundredweight fees ~~with to~~ the commission
18 at its office in Augusta not later than the 20th of
19 the following month, ~~on forms provided for this pur-~~
20 ~~pose, of all matters on account of which a record is~~
21 ~~required to be kept and such other information or~~
22 ~~facts as may be pertinent and material within the~~
23 ~~scope of this chapter,~~ except that dealers who sell
24 less than 100 quarts of milk per day may ~~file reports~~
25 ~~and~~ pay the prescribed hundredweight fees every 3
26 months.

27 In case the same milk is handled by more than one
28 dealer, the first dealer within the State dealing in
29 or handling said milk shall be deemed to be the milk
30 dealer within the meaning of this section. For the
31 purpose of computing fees as provided, 1/2 pint of
32 cream shall be considered the equivalent of one quart
33 of milk.

1

STATEMENT OF FACT

2 In its 1985 session, out of growing concern
3 whether the present minimum price system for regulat-
4 ing milk marketing in Maine was serving the
5 State's dairy industry and consumers well, the 112th
6 Legislature commissioned a study of regulatory op-
7 tions available to the State for the regulation of
8 milk marketing. In its report, the study panel, made
9 up of 4 agricultural economists with milk marketing
10 expertise, concluded that, while the present system
11 had served the industry reasonably well, it could not
12 continue to do so for long, given existing economic
13 incentives for large retail chains to go out of state
14 to buy their private label milk.

15 This bill does not represent a change in the
16 long-standing goals of milk regulation in Maine which
17 are protection of the premium price received by pro-
18 ducers; maintenance of viability in the processing
19 sector; and wholesome, reasonably low-cost milk to
20 consumers. Rather, it establishes a new way of meet-
21 ing these goals in the context of today's economic
22 and technological realities.

23 The bill retains the Maine Milk Commission as the
24 State's milk regulatory agency and retains the Maine
25 Milk Pool, which remains a key element in Maine's
26 milk regulation. The bill authorizes the commission
27 to set minimum prices to be paid to milk producers by
28 dealers. In place of minimum wholesale and retail
29 prices, it prohibits the sale of milk by a dealer to
30 a store at a price below the dealer's costs and pro-
31 hibits the sale of milk by a store at a price below
32 the store's costs. In order to apply and enforce the
33 prohibition of sales below cost, the bill authorizes
34 the commission to publish "presumptive prices" for
35 sales by dealers and retail stores. A presumptive
36 price for dealers represents the cost at which a most
37 efficient dealer may purchase raw milk and receive,
38 process, package and deliver the milk. A presumptive
39 price for retail stores represents the cost at which
40 a most efficient retailer may buy packaged milk and
41 ship, handle and sell the milk. A sale at or above a
42 presumptive price is presumed to be not below the
43 seller's cost. A dealer or store may sell below the

1 presumptive price if it can demonstrate to the com-
2 mission that it has lower costs enabling it to sell
3 at the lower price.

4 These changes in the State's regulatory system
5 recognize that the State's dairy processing sector
6 competes with presently more efficient out-of-state
7 dairies and they encourage Maine processors to become
8 more efficient. These changes provide better protec-
9 tion for producers, and for the dairy industry as a
10 whole, from economic forces which under the present
11 minimum price regulatory system have potentially a
12 great negative effect on the industry. For consum-
13 ers, the changed system offers better assurance that
14 the milk they drink will continue to be Maine milk
15 and that the price at which that milk is sold will be
16 directly related to cost.

17 Sections 1 to 6 add 5 new definitions and remove
18 2 definitions. These changes are needed because of
19 the new regulatory system established by the bill.
20 The definition of "milk" is expanded to include
21 "lowfat milk," and the terms "store" and "retail
22 store" are combined into a single definition.

23 Section 7 states the purpose of this bill.

24 Section 8 defines the powers and duties of the
25 Maine Milk Commission. Those powers and duties re-
26 main largely unchanged, in the context of the new
27 regulatory system.

28 Section 9 repeals requirements related to the es-
29 tablishment of new or expanded market areas. The
30 provision is no longer needed as it was a part of the
31 minimum wholesale and retail price regulatory system.

32 The first subsection of section 10 continues the
33 commission's authority to establish minimum prices to
34 be paid to producers. It requires that the commis-
35 sion hold hearings to do so.

36 The 2nd subsection describes what the commission
37 must consider in establishing minimum producer prices
38 and in publishing presumptive wholesale and retail
39 prices. While the language setting out the considera-
40 tions remains the same as under the old regulatory

1 system, it will of course have different meaning in
2 the framework of the new regulatory system.

3 Subsection 2-A relates minimum producer prices to
4 class prices in southern New England, to a federal
5 order, and to any increased Maine production costs.
6 The language appears in present law. Provisions cov-
7 ering minimum wholesale and retail prices are de-
8 leted.

9 Subsection 3 continues the exemption from minimum
10 producer prices for sales of raw milk by the producer
11 on the farm where the milk is produced.

12 Subsection 4 continues the commission's present
13 authority to establish classifications of milk and to
14 relate minimum producer prices to those classifica-
15 tions.

16 Subsection 5 continues the requirement that the
17 commission publicly announce the minimum producer
18 prices it establishes, by issuing an order setting
19 out the prices, distributing the order to dealers and
20 publishing it in appropriate newspapers.

21 Subsection 6 continues unchanged the authority of
22 the commission to establish a schedule of maximum
23 transportation allowances, upon recommendation of the
24 Commissioner of Agriculture, Food and Rural Resources
25 following a study of hauling costs.

26 Subsection 7 continues the prohibition of unfair
27 trade practices, but restates the prohibition in lan-
28 guage which is consistent with the new regulatory
29 system.

30 Subsection 8 continues the explicit assertion of
31 jurisdiction over milk produced out-of-state, once
32 that milk is subject to state regulation. It expands
33 the assertion of jurisdiction to include milk pro-
34 cessed outside of the State, in keeping with the new
35 regulatory system.

36 Subsection 9 continues unchanged the relationship
37 between producer prices and the Maine Milk Pool,
38 which pools the premium made available to producers
39 by state regulation and shares it equitably among all
40 Maine producers.

1 Subsection 11 prohibits the selling of milk at
2 wholesale and retail at a price which is below a
3 dealer's cost to receive, process, package and deliver
4 the milk or a store's costs to ship, handle and
5 sell the milk, unless the price is set in order to
6 meet a legal competitive price.

7 Subsection 12 authorizes the commission to publish
8 presumptive prices, which are not rules, as a
9 means for applying and enforcing the prohibition of
10 sales below cost. This subsection requires that presumptive
11 prices reflect costs achievable by a most
12 efficient dealer or retail store, as shown by economic
13 studies and allows the commission to calculate
14 wholesale subdealer and retail presumptive prices by
15 using a percentage markup over the wholesale dealer
16 price. A sale below the presumptive price is a violation
17 of law unless the dealer or retail store offering the
18 price has first demonstrated to the commission that the
19 price is not below its costs. A dealer or retail store
20 is allowed to sell below the applicable presumptive price
21 in order to meet a legal competitive price without first
22 demonstrating that the price is not below its costs,
23 providing he simultaneously notifies the commission as to
24 the details of the competitive price.
25

26 Section 11 specifies the applicability of the
27 chapter to integrated operations, that is, those
28 which both process milk and sell it at retail.

29 Section 12 specifies certain record keeping, filing
30 and fee payment requirements. Fees paid by dealers
31 and producers to support the commission are unchanged.
32
33

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