

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2232.
6

7 H.P. 1585 House of Representatives, March 18, 1986
8 Submitted by the Department of Agriculture, Food and Rural Resources
pursuant to Joint Rule 24.

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

10 EDWIN H. PERT, Clerk

Presented by Representative McCollister of Canton.
11

12 STATE OF MAINE
13

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

17 AN ACT to Provide Appropriate Penalties for
18 Violations of Milk Commission Statutes
19 and to Provide for Administrative
20 Enforcement.
21

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

24 Sec. 1. 7 MRSA §2959 is repealed and the follow-
25 ing enacted in its place:

26 §2959. Injunctions and civil penalties

27 1. Injunction. In addition to any other remedy
28 set forth in this chapter for the enforcement of this
29 chapter or any rule, order or decision of the commis-
30 sion, the Superior Court shall have jurisdiction upon
31 complaint filed by the commission, or any person duly
32 authorized to act for the commission, including, but
33 not limited to, its executive secretary, to restrain
34 or enjoin any person from committing any act prohib-
35 ited by this chapter or prohibited by any rule, order

1 or decision of the commission. If it is established
2 upon hearing that the person charged has been or is
3 committing any act declared to be unlawful by this
4 chapter or is in violation of any rule, order or de-
5 cision of the commission, the court shall enter a de-
6 cree perpetually enjoining that person from further
7 commission of that act or actions. In case of viola-
8 tion of any injunction issued under this section, the
9 court shall summarily try and punish the person for
10 contempt of court. The existence of other civil or
11 criminal remedies shall be no defense to this pro-
12 ceeding. The commission or its authorized agent shall
13 not be required to give or post a bond when making an
14 application for an injunction under this section.

15 2. Civil penalties. Any person who violates any
16 provision of this chapter or of any rule, order or
17 decision of the commission shall be subject to the
18 following civil penalties, to be collected by the
19 commission in a civil action:

20 A. For the first violation, a civil penalty not
21 to exceed \$1,000; and

22 B. For each subsequent violation, a civil penal-
23 ty not to exceed \$2,000.

24 All penalties collected by the commission shall be
25 paid to the Treasurer of State for deposit to the
26 General Fund.

27 Sec. 2. 7 MRSA §2960, as repealed and replaced
28 by PL 1977, c. 696, §100, is repealed.

29 Sec. 3. 7 MRSA §§2960-A and 2962 are enacted to
30 read:

31 §2960-A. Civil action by injured person

32 1. Injunction relief; damages and costs. Any
33 person damaged or who is threatened with loss or in-
34 jury by reason of a violation of section 2954, sub-
35 section 11, may bring a civil action in the Superior
36 Court in the county where he resides, to prevent, re-
37 strain and enjoin the violation or threatened viola-
38 tion. If in that action, a violation or threatened
39 violation of section 2954, subsection 11, is estab-

1 lished, the court may enjoin and restrain or other-
2 wise prohibit the violation or threatened violation.
3 In that action, it is not necessary that actual dam-
4 ages to the plaintiff be alleged or proved. In addi-
5 tion to the injunctive relief, the plaintiff in the
6 action shall be entitled to recover from the defend-
7 ant 3 times the amount of actual damages sustained by
8 him and the cost of the action, including reasonable
9 attorneys' fees.

10 2. Damages only. In the event no injunctive re-
11 lief is sought or required, any person injured by a
12 violation of section 2954, subsection 11, may main-
13 tain any action for damages alone in the Superior
14 Court in the county where he resides and the measure
15 of damages in the action shall be the same as pre-
16 scribed in subsection 1.

17 §2962. Administrative enforcement

18 When the commission, after such investigation as
19 it deems appropriate, believes that a violation of
20 this chapter or of any rule, order or decision of the
21 commission has occurred, it may order any person to
22 cease that violation. Before issuing such an order,
23 the commission shall afford any person who would be
24 aggrieved by the order an opportunity for a hearing.
25 In any such investigation or hearing, the commission
26 may exercise all of the powers given to it by section
27 2953. Any person aggrieved by a final order issued
28 under this section may obtain judicial review of the
29 order in Superior Court by filing a petition in ac-
30 cordance with Title 5, section 11001, and the Maine
31 Rules of Civil Procedure, Rule 80C. In responding to
32 such a petition, the commission may seek enforcement
33 of its order, including civil penalties for any vio-
34 lation found, and the court, if it upholds the order,
35 may order its enforcement, including civil penalties.

36 Nothing in this section is intended to require
37 that the commission take administrative enforcement
38 action prior to seeking judicial relief for any vio-
39 lation of this chapter or of any rule, order or deci-
40 sion of the commission, nor intended to limit the
41 commission's ability to bring an independent action
42 to enforce any decision or order issued by it, in-
43 cluding civil penalties for any violation found by
44 it.

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STATEMENT OF FACT

2 For violations of the Maine Milk Commission laws,
3 only injunctive relief and criminal penalties are
4 presently available. No provision is made for civil
5 monetary penalties. This bill continues the commis-
6 sion's authorization to seek injunctive relief, re-
7 peals the criminal penalties and provides for civil
8 monetary penalties.

9 In addition, as a part of the new regulatory sys-
10 tem provided for by other legislation, this bill pro-
11 vides for civil action by a person injured by a vio-
12 lation of the Maine Milk Commission law. These pro-
13 visions are common to laws which seek to discourage
14 anticompetitive conduct, as does the new milk regula-
15 tory system.

16 The bill also provides for administrative en-
17 forcement by the commission, allowing the commission
18 to investigate to determine the existence of a viola-
19 tion, to hold hearings and to issue cease and desist
20 orders. Such an order may be appealed to the Superi-
21 or Court by any person aggrieved by it. The commis-
22 sion is not required to take administrative enforce-
23 ment action in the case of every violation. It may
24 instead go directly to court. It may also initiate
25 an action in court to seek enforcement of its deci-
26 sions or orders.

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