

MAINE STATE LEGISLATURE

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(New Draft of S.P. 856, L.D. 2168)
SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document

No. 2352

S.P. 939

In Senate, April 8, 1986

Reported by the Minority Report from the Committee on Agriculture and printed under Joint Rule 2. Original bill sponsored by Senator Emerson of Penobscot. Cosponsored by Senator Dutremble of York, Representative Masterman of Milo and Representative Brannigan of Portland.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

AN ACT to Improve the Marketing of Milk in
Maine.

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

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

3-A. Cost-based price. "Cost-based price" means a price for milk, published by the commission, a sale or offer to sell at which is presumed to be at or above the cost of milk to the dealer or retail store.

3-B. Cost of milk to a dealer. "Cost of milk to a dealer" means the dealer's raw product cost, plus any shrinkage allowance permitted by the commission, to which shall be added the dealer's expenses directly and indirectly incurred in receiving, processing, packaging and delivering milk. Without limitations, these expenses shall include labor, including sala-

1 ries and bonuses of executives and officers, rent,
2 depreciation, selling costs, maintenance of equip-
3 ment, utilities, delivery costs, interest, licenses,
4 taxes, insurance, advertising, professional services
5 and all other fixed and variable expenses.

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

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

28 4-B. Legal competitive price. "Legal competi-
29 tive price" means a price which is not subject to a
30 restraint or injunction issued by a court of compe-
31 tent jurisdiction and which is set or offered by a
32 directly competing dealer or retail store.

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

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

35 6. Milk. "Milk" means whole milk and cream,
36 fresh, sour or storage; lowfat milk, nonfat milk,
37 skimmed milk and buttermilk; irrespective of whether
38 or not any such milk is flavored.

39 Sec. 4. 7 MRSA §2951, sub-§§9 and 11 are amended
40 to read:

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

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

13 Sec. 5. 7 MRSA §2951, sub-§14, as enacted by PL
14 1973, c. 758, §1, is repealed.

15 Sec. 6. 7 MRSA §2951-A is enacted to read:
16 §2951-A. Purpose

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

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

34 The Legislature has always desired and intended
35 to maintain a viable dairy industry in Maine. This
36 chapter does not change that intent. The Legislature
37 is principally concerned that milk producers continue
38 to exist and that they continue to receive and to
39 share equitably the premium derived from the state
40 regulation of producer prices. The Legislature also

1 remains concerned that a viable dairy processing
2 sector continue to exist in Maine.

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

16 Sec. 7. 7 MRSA §2953, as repealed and replaced
17 by PL 1975, c. 517, §2, is repealed and the following
18 enacted in its place:

19 §2953. Powers and duties

20 The commission shall have power to establish and
21 change minimum prices for milk to be paid to produc-
22 ers by dealers, in accordance with section 2954, and
23 to publish and change cost-based prices for milk sold
24 in all wholesale and retail sales, except sales to
25 federal agencies and institutions, in accordance with
26 section 2954. The commission shall have no power to
27 modify, add to or annul any sanitary regulations im-
28 posed by any state or municipal authority or to com-
29 pel pasteurization in any market area.

30 Not less than once every 3 years, the commission
31 shall conduct independent studies of the economics
32 and practices of the milk industry in order to assist
33 the commission in establishing minimum wholesale
34 prices to be paid to producers and in publishing
35 cost-based prices.

36 In administering this chapter, the commission may
37 conduct hearings, subpoena and examine under oath,
38 producers, dealers, stores or other persons whose ac-
39 tivities are subject to the jurisdiction of the com-
40 mission and their officers, agents and representa-
41 tives, together with their records, books and ac-

1 counts, and any other person from whom the commission
2 requires information in order to carry out the pur-
3 poses and intent of this chapter. Any member of the
4 commission and any employee designated by the commis-
5 sion may sign subpoenas and administer oaths to wit-
6 nesses.

7 The commission may adopt, promulgate and enforce
8 all rules and orders necessary to carry out this
9 chapter.

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

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

31 Sec. 8. 7 MRSA §2953-B, as enacted by PL 1979,
32 c. 672, Pt. A, §39, is repealed.

33 Sec. 9. 7 MRSA §2954, as amended by PL 1985, c.
34 42, §1, is further amended to read:

35 §2954. Establishment of minimum producer prices and
36 publishing of cost-based prices

37 1. Commission empowered to establish minimum
38 producer prices; public hearing. The commission is
39 vested with the power to establish and change, after
40 investigation and public hearing, the minimum whole-

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

28 2. Considerations in establishing and publishing
29 prices. In establishing and changing minimum whole-
30 sale and ~~retail~~ prices paid to producers and in pub-
31 lishing and changing cost-based prices, the prices so
32 established and published shall be just and reason-
33 able taking into due consideration the public health
34 and welfare and the insuring of an adequate supply of
35 pure and wholesome milk to the inhabitants of this
36 State under varying conditions in various marketing
37 areas; prevailing prices in neighboring states; sea-
38 sonal production and other conditions affecting the
39 costs of production, transportation and marketing in
40 the milk industry; ~~including a reasonable return to~~
41 ~~producer, dealer and store;~~ taking into consideration
42 the public need for the establishment of retail milk
43 prices at the lowest practicable levels.

44 A- The minimum wholesale prices paid to produc-
45 ers shall be based on the prevailing Class I and

1 Class II prices in southern New England and, af-
2 ter investigation by the Maine Milk Commission,
3 shall reflect as accurately as possible the in-
4 creased costs of production.

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

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

16 2-A. Minimum prices based on prevailing Class I
17 and Class II prices; cost of production. The minimum
18 wholesale prices paid to producers shall be based on
19 the prevailing Class I and Class II prices in south-
20 ern New England and, after investigation by the Maine
21 Milk Commission, shall reflect as accurately as pos-
22 sible the increased costs of production.

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

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

35 5. Minimum price order. Upon establishing said
36 the minimum wholesale prices in any market to be paid
37 to producers which shall apply to the various classi-
38 fications of milk and which may vary in the several
39 market areas of the State, the commission shall issue
40 an order setting forth the prices and shall furnish

1 all dealers registered in said market with a schedule
2 of such prices copy of the order and shall publish a
3 schedule thereof the order in appropriate newspapers
4 in said market the State. Such The order shall become
5 effective in accordance with Title 5, chapters 301 to
6 307, and thereafter no dealer, store or other person
7 handling milk in such market shall buy or offer to
8 buy, or sell or offer to sell milk for prices less
9 than the scheduled established minimum wholesale
10 prices established for that market to be paid to
11 producers.

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

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

40 8. Milk produced or processed outside the State.
41 Whenever milk produced or processed outside the
42 State becomes a subject of regulation by the State in
43 the exercise of its police powers, this chapter shall
44 apply and the powers of the commission shall attach.

1 After any such milk so produced or processed shall
2 come within the jurisdiction of this State, any sale
3 or purchase by dealers of such milk within this State
4 of any milk so produced at a price less than the
5 scheduled established minimum price established ac-
6 cording to usage in any given market shall be
7 unlawful. Wholesale prices to be paid to producers is
8 unlawful and any sale of any milk so processed at a
9 price which is below the cost of milk to the dealer
10 or retail store is prohibited in accordance with sec-
11 tion 11.

12 9. Minimum wholesale prices to producers. Not-
13 withstanding any other provisions of this chapter,
14 minimum wholesale prices to producers shall be sub-
15 ject to the provisions of chapter 611.

16 10. Additional considerations in establishing
17 prices. In establishing and changing minimum whole-
18 sale and retail prices, in addition to the considera-
19 tions set out in subsection 2, the commission-

20 A. Shall consider the effect of possible pricing
21 decisions on the ability of the Maine dairy in-
22 dustry to compete in supplying milk to Maine con-
23 sumers and, in such consideration, shall include
24 the following factors:

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

27 (2) The extent of any social or economic
28 benefits of maintaining dairy processing
29 plants in different geographic regions or
30 natural marketing areas of the State; and

31 (3) The encouragement of consumption by
32 Maine consumers of milk produced and pro-
33 cessed within the State, consistent with the
34 Constitution of Maine and the United States
35 Constitution; and

36 B. Shall not set different minimum wholesale
37 prices for different retail delivery volumes of
38 milk.

1 11. Sales below cost prohibited. It is unlawful
2 for any dealer or retail store to sell milk for fluid
3 consumption at less than the cost of the milk to
4 the dealer or retail store with the purpose or intent
5 to injure competitors or destroy competition or where
6 the effect may be the same. In all proceedings
7 brought to enforce this section, proof of consistent
8 and repeated advertisements, offers to sell or sales
9 of milk for fluid consumption by any dealer or retail
10 store at less than cost to them, as defined in this
11 chapter, the advertisements, offers to sell and sales
12 thereby forming a pattern of sales below cost, shall
13 be prima facie evidence of intent to injure competi-
14 tors and destroy competition. This section does not
15 apply where the price of milk for fluid consumption
16 is set in good faith to meet a legal competitive
17 price. In any calculation of costs under this subsec-
18 tion, the cost of the raw product shall be accounted
19 for at not less than the minimum wholesale price to
20 be paid to producers established for the relevant
21 time period by the commission. Where the raw product
22 is purchased in a transaction which is not subject to
23 the price regulation by the commission, the cost of
24 the raw product plus any transportation and handling
25 charges incurred in receiving the raw product shall
26 be accounted for at actual cost, but in no case at
27 less than the minimum wholesale price to be paid to
28 producers established by the commission for the rele-
29 vant time period.

30 12. Publication of cost-based prices. In apply-
31 ing and enforcing the prohibition set out in subsec-
32 tion 11, the commission may publish and change
33 cost-based prices for any or all wholesale and retail
34 sales of milk.

35 A. In publishing and changing a cost-based
36 price, the commission shall specify the butterfat
37 content, container size and market, as designated
38 by the commission, to which the price applies.
39 Cost-based prices are not rules within the mean-
40 ing of Title 5, chapter 375, subchapter II, and
41 the publication of and changes of cost-based
42 prices by the commission is not subject to the
43 requirements of that subchapter.

1 B. Cost-based prices shall reflect the cost of
2 milk to a dealer achievable by the most efficient
3 Maine dealer. The most efficient Maine dealer and
4 its costs shall be determined by the commission
5 on the basis of cost accounting information filed
6 with the commission by dealers pursuant to this
7 chapter and accepted by the commission as accu-
8 rately representing the cost of milk to the deal-
9 er.

10 C. The commission may calculate cost-based
11 prices for wholesale sales by subdealers and for
12 retail sales by adding to the applicable
13 cost-based wholesale dealer price a percentage
14 markup which represents the cost of milk to
15 subdealers or retail stores. This percentage
16 markup shall reflect the cost of milk to the most
17 efficient Maine subdealer or retail store.

18 D. A sale or offer to sell by a dealer or retail
19 store at a price below the applicable cost-based
20 price is a violation of this chapter, unless the
21 dealer or retail store has first demonstrated to
22 the satisfaction of the commission, on the basis
23 of accounting information required by the commis-
24 sion, that the price is not below the cost of
25 milk to the dealer or the cost of milk to the re-
26 tail store, as defined in this chapter. In mak-
27 ing such a demonstration, the burden of proof on
28 all issues is on the dealer or retail store. In
29 any demonstration, the cost of the raw product
30 shall be accounted at actual cost, but in no case
31 at less than the minimum wholesale price to be
32 paid to producers established for the relevant
33 time period by the commission. Where the raw
34 product is purchased in a transaction not subject
35 to price regulation by the commission, the cost
36 of the raw product plus any transportation and
37 handling charges incurred in receiving the raw
38 product shall be accounted for at not less than
39 the minimum wholesale price to be paid to produc-
40 ers established by the commission for the rele-
41 vant time period.

42 E. If a dealer or retail store sells or offers
43 to sell at a price below the applicable
44 cost-based price in order to meet a legal compet-

1 itive price, the dealer or retail store is not
2 required to first prove that that price is not
3 below its costs, provided that the dealer or re-
4 tail store does not sell or offer to sell at a
5 price which is less than the legal competitive
6 price and providing that, at the time he sells or
7 offers to sell, he files a written statement with
8 the commission which:

9 (1) Identifies the competing dealer or re-
10 tail store which is selling or offering to
11 sell at the price he is meeting;

12 (2) Identifies to whom the competing sale
13 or offer to sell is made;

14 (3) States the exact price necessary to
15 meet the competing price;

16 (4) States the effective date of the com-
17 peting price; and

18 (5) States the effective date of his own
19 price.

20 13. Limited authority to set minimum wholesale
21 and retail prices. The commission may not establish a
22 minimum wholesale price or prices for sales of milk
23 by dealers or a minimum retail price or prices, ex-
24 cept upon a determination, after public hearing held
25 in accordance with Title 5, chapter 375, that the ab-
26 sence of a minimum wholesale price or prices or a
27 minimum retail price or prices, or both, has caused
28 or is about to cause a disruption in the Maine milk
29 market or some segment of the Maine milk market which
30 is likely to cause or has caused a substantial reduc-
31 tion in competition between dealers or between stores
32 in an area, so as to adversely affect the public
33 health and welfare which requires an adequate supply
34 of milk at reasonable and fair prices. The commis-
35 sion may establish the minimum wholesale price or
36 prices, or minimum retail price or prices, or both,
37 on an emergency basis prior to public hearing.

38 In establishing any minimum wholesale price or prices
39 or any minimum retail price or prices, or both, the
40 commission shall establish any such price or prices

1 only for an area within the public interest as set
2 forth in this subsection justifies such a price or
3 prices being set and in establishing the price or
4 prices shall be guided by the considerations set
5 forth in subsection 2.

6 The commission shall periodically review the price or
7 prices, once established, to insure that they do not
8 remain in effect any longer than the public interest
9 requires.

10 Sec. 10. 7 MRSA §2954-C is enacted to read:

11 §2954-C. Applicability to integrated operations

12 The provisions of this chapter which apply to
13 dealers shall apply to the dealer phase of the busi-
14 ness of an integrated operation and those which apply
15 to retail stores shall apply to the retail phase of
16 the business of an integrated operation.

17 Sec. 11. 7 MRSA §2956, as amended by PL 1983, c.
18 573, §3, is further amended to read:

19 §2956. Records and fees

20 All dealers in any market designated by the
21 commission and retail stores, as indicated in this
22 section, shall keep the following records:-

23 1. Names and addresses of producers or milk
24 dealers. A All dealers shall keep a record of the
25 quantity of all milk received or produced, detailed
26 as to location and as to names and addresses of pro-
27 ducers or milk dealers from whom received, or of
28 ~~importer~~ importers of such milk into the State.

29 2. Use, location and market outlet. A All deal-
30 ers shall keep a record of the quantity of all milk
31 sold, detailed as to use, location and market out-
32 let.

33 3. Other records and information. Such All deal-
34 ers and retail stores shall keep such other records
35 and information in such form and at such times as the
36 commission may deem necessary for the proper enforce-
37 ment of this chapter.

1 The commission may require by rule the filing of
2 such records and information as it deems necessary
3 for the proper administration and enforcement of this
4 chapter.

5 Each dealer shall furnish his producers a state-
6 ment of the amount of milk purchased, the price per
7 hundredweight or quart, the total amount paid for
8 each pay period, the itemized deductions for trans-
9 portation and other services, the percentages of milk
10 in each classification and the butterfat test when
11 weight and test method of payment is used, and shall
12 pay his Maine producers the established minimum price
13 for the classification of the milk according to its
14 usage.

15 Each licensed dealer shall pay to the commission
16 an annual license fee of \$1 and the sum of 6 1/2¢ per
17 hundredweight as monthly payments, based on quantity
18 of milk purchased or produced ~~in any market area, or~~
19 ~~purchased or produced in an uncentrelled area and~~
20 ~~sold in any market area.~~ Two and one-half cents per
21 hundredweight may be deducted by dealers from amounts
22 paid by them to producers of such milk, except that
23 the milk farm-processed into cream for the manufac-
24 ture of butter shall not be subject to such sums of 6
25 1/2¢ per hundredweight. Of the amount paid by each
26 dealer, 1 1/2¢ per hundredweight shall be paid by the
27 commission to the Maine Dairy and Nutrition Council
28 for the purposes authorized by Title 36, section
29 4521.

30 Dealers shall ~~file reports together with pay~~ the
31 prescribed hundredweight fees ~~with~~ to the commission
32 at its office in Augusta not later than the 20th of
33 the following month, ~~on forms provided for this pur-~~
34 ~~pose, of all matters on account of which a record is~~
35 ~~required to be kept and such other information or~~
36 ~~facts as may be pertinent and material within the~~
37 ~~scope of this chapter,~~ except that dealers who sell
38 less than 100 quarts of milk per day may ~~file reports~~
39 ~~and~~ pay the prescribed hundredweight fees every 3
40 months.

41 In case the same milk is handled by more than one
42 dealer, the first dealer within the State dealing in
43 or handling said milk shall be deemed to be the milk

1 dealer within the meaning of this section. For the
2 purpose of computing fees as provided, 1/2 pint of
3 cream shall be considered the equivalent of one quart
4 of milk.

5 Sec. 12. Effective date; transition. This Act
6 shall become effective 180 days after the end of the
7 Second Regular Session of the 112th Legislature.
8 Within this 180-day period, the commission shall
9 adopt all rules necessary for the implementation of
10 this chapter. At least one week prior to the date
11 upon which this Act becomes effective, the commission
12 shall publish the initial cost-based price or prices.

13 STATEMENT OF FACT

14 In its 1985 session, out of growing concern
15 whether the present minimum price system for regu-
16 lating milk marketing in Maine was serving the
17 State's dairy industry and consumers well, the 112th
18 Legislature commissioned a study of regulatory op-
19 tions available to the State for the regulation of
20 milk marketing. In its report, the study panel, made
21 up of 4 agricultural economists with milk marketing
22 expertise, concluded that, while the present system
23 had served the industry reasonably well, it could not
24 continue to do so for long, given existing economic
25 incentives for large retail chains to go out of state
26 to buy their private label milk.

27 This new draft does not represent a change in the
28 long-standing goals of milk regulation in Maine which
29 are protection of the premium price received by pro-
30 ducers; maintenance of viability in the processing
31 sector; and wholesome, reasonably low-cost milk to
32 consumers. Rather, it establishes a new way of meet-
33 ing these goals in the context of today's economic
34 and technological realities.

35 This new draft retains the Maine Milk Commission
36 as the State's milk regulatory agency and retains the
37 Maine Milk Pool, which remains a key element in
38 Maine's milk regulation. The new draft authorizes
39 the commission to set minimum prices to be paid to
40 milk producers by dealers. In place of minimum

1 wholesale and retail prices, it prohibits the sale of
2 milk by a dealer to a store at a price below the
3 dealer's costs and prohibits the sale of milk by a
4 store at a price below the store's costs. In order
5 to apply and enforce the prohibition of sales below
6 cost, the new draft authorizes the commission to pub-
7 lish "cost-based prices" for sales by dealers and re-
8 tail stores. A cost-based price for dealers repre-
9 sents the cost at which a most efficient dealer may
10 purchase raw milk and receive, process, package and
11 deliver the milk. A cost-based price for retail
12 stores represents the cost at which a most efficient
13 retailer may buy packaged milk and ship, handle and
14 sell the milk. A sale at or above a cost-based price
15 is presumed to be not below the seller's cost. A
16 dealer or store may sell below the cost-based price
17 if it can demonstrate to the commission that it has
18 lower costs enabling it to sell at the lower price.

19 These changes in the State's regulatory system
20 recognize that the State's dairy processing sector
21 competes with presently more efficient out-of-state
22 dairies and they encourage Maine processors to become
23 more efficient. These changes provide better protec-
24 tion for producers, and for the dairy industry as a
25 whole, from economic forces which under the present
26 minimum price regulatory system have potentially a
27 great negative effect on the industry. For consum-
28 ers, the changed system offers better assurance that
29 the milk they drink will continue to be Maine milk
30 and that the price at which that milk is sold will be
31 directly related to cost.

32 In the original bill, the term "presumptive"
33 price was used to identify what is called the
34 "cost-based" price in the new draft. The term
35 "cost-based" more accurately describes the price and
36 its function.

37 Sections 1 to 5 add 5 new definitions and remove
38 2 definitions. These changes are needed because of
39 the new regulatory system established by the new
40 draft. The definition of "milk" is expanded to in-
41 clude "lowfat milk," and the terms "store" and "re-
42 tail store" are combined into a single definition. In
43 the new draft, "nonfat" milk is also included in the
44 definition of milk.

1 Section 6 states the purpose of this new draft.

2 Section 7 defines the powers and duties of the
3. Maine Milk Commission. Those powers and duties re-
4 main largely unchanged, in the context of the new
5 regulatory system.

6 Section 8 repeals requirements related to the es-
7 tablishment of new or expanded market areas. The
8 provision is no longer needed as it was a part of the
9 minimum wholesale and retail price regulatory system.

10 The first subsection of section 9 continues the
11 commission's authority to establish minimum prices to
12 be paid to producers. It requires that the commis-
13 sion hold hearings to do so.

14 The 2nd subsection describes what the commission
15 must consider in establishing minimum producer prices
16 and in publishing cost-based wholesale and retail
17 prices. While the language setting out the considera-
18 tions remains the same as under the old regulatory
19 system, it will of course have different meaning in
20 the framework of the new regulatory system.

21 Subsection 2-A relates minimum producer prices to
22 class prices in southern New England, to a federal
23 order, and to any increased Maine production costs.
24 This language appears in present law. Provisions
25 covering minimum wholesale and retail prices are de-
26 leted.

27 Subsection 3 continues the exemption from minimum
28 producer prices for sales of raw milk by the producer
29 on the farm where the milk is produced.

30 Subsection 4 continues the commission's present
31 authority to establish classifications of milk and to
32 relate minimum producer prices to those classifica-
33 tions.

34 Subsection 5 continues the requirement that the
35 commission publicly announce the minimum producer
36 prices it establishes, by issuing an order setting
37 out the prices, distributing the order to dealers and
38 publishing it in appropriate newspapers.

1 Subsection 6 continues unchanged the authority of
2 the commission to establish a schedule of maximum
3 transportation allowances, upon recommendation of the
4 Commissioner of Agriculture, Food and Rural Resources
5 following a study of hauling costs.

6 Subsection 7 continues the prohibition of unfair
7 trade practices, but restates the prohibition in lan-
8 guage which is consistent with the new regulatory
9 system.

10 Subsection 8 continues the explicit assertion of
11 jurisdiction over milk produced out-of-state, once
12 that milk is subject to state regulation. It expands
13 the assertion of jurisdiction to include milk pro-
14 cessed outside of the State, in keeping with the new
15 regulatory system.

16 Subsection 9 continues unchanged the relationship
17 between producer prices and the Maine Milk Pool,
18 which pools the premium made available to producers
19 by state regulation and shares it equitably among all
20 Maine producers.

21 Subsection 11 prohibits the selling of milk at
22 wholesale and retail at a price which is below a
23 dealer's cost to receive, process, package and deliver
24 the milk or a store's costs to ship, handle and
25 sell the milk, unless the price is set in order to
26 meet a legal competitive price. The new draft pro-
27 vides that in calculating costs for purposes of this
28 prohibition, the cost of the raw milk product must be
29 accounted for at not less than the minimum price set
30 by the commission to be paid to Maine producers. If
31 the raw milk product is purchased in a transaction
32 which is not subject to producer price regulation by
33 the commission, the cost of the raw product plus the
34 cost of transportation and any handling charge must
35 be accounted for at not less than the Maine minimum
36 producer price.

37 Subsection 12 authorizes the commission to pub-
38 lish cost-based prices, which are not rules, as a
39 means for applying and enforcing the prohibition of
40 sales below cost. In the new draft, this subsection
41 requires that cost-based prices reflect costs achie-
42 vable by a most efficient Maine dealer, as determined

1 by the commission on the basis of cost accounting in-
2 formation filed by dealers. The new draft also re-
3 quires that cost-based prices for subdealers and re-
4 tail stores reflect costs achievable by most effi-
5 cient Maine subdealers and stores and allows the com-
6 mission to calculate those cost-based prices by using
7 a percentage markup over the cost-based dealer price.

8 A sale below the cost-based price is a violation of
9 law unless the dealer or retail store offering the
10 price has first demonstrated to the commission that
11 the price is not below its costs. The new draft re-
12 quires that in demonstrating costs, the cost of the
13 raw milk product must be accounted for at not less
14 than the minimum price set by the commission to be
15 paid to Maine producers or, in the case where the raw
16 product is purchased in a transaction not regulated
17 by the commission, the cost of the raw product plus
18 its transportation and any handling charge must be
19 accounted for at not less than the Maine minimum pro-
20 ducer price. A dealer or retail store is allowed to
21 sell below the applicable cost-based price in order
22 to meet a legal competitive price without first dem-
23 onstrating that the price is not below its costs,
24 providing he simultaneously notifies the commission
25 as to the details of the competitive price.

26 New subsection 13 is added by the new draft. This
27 provision gives the commission limited authority to
28 set minimum wholesale or retail prices in the Maine
29 milk market or any segment of it where there is mar-
30 ket disruption which threatens to reduce competition.
31 While the commission may, in an emergency, establish
32 such minimum prices prior to hearing, it must there-
33 after hold a hearing and, where there is not an emer-
34 gency, must hold a hearing before establishing such
35 minimums. The commission must establish such minimums
36 only for areas where such action is necessary in the
37 public interest and must insure that such minimums
38 remain in effect only so long as the public interest
39 in a stable market and fair competition requires.

40 Section 10 specifies the applicability of the
41 chapter to integrated operations, that is, those
42 which both process milk and sell it at retail.

43 Section 11 specifies certain record keeping, fil-
44 ing and fee payment requirements. Fees paid by deal-

