

# MAINE STATE LEGISLATURE

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(Governor's Bill)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1741

H.P. 1274 House of Representatives, June 3, 1987  
Referred to the Committee on Agriculture. Sent up for  
concurrence and ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative WHITCOMB of Waldo.

Cosponsored by Representatives SHERBURNE of Dexter,  
PARENT of Benton and NUTTING of Leeds.

STATE OF MAINE

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

1 AN ACT to Better Accommodate Over-order Milk  
2 Pricing.  
3

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

6 Sec. 1. 7 MRSA §2954, sub-§1, as amended by PL  
7 1977, c. 694, §140, is repealed and the following  
8 enacted in its place:

9 1. Commission empowered to establish prices;  
10 public hearing. The commission is vested with the  
11 power to establish and change, after investigation  
12 and public hearing, the minimum wholesale and retail  
13 prices to be paid to producers, dealers and stores  
14 for milk received, purchased, stored, manufactured,  
15 processed, distributed or otherwise handled within

1 the State. The commission shall hold a public hear-  
2 ing prior to the establishing or changing of the min-  
3 imum prices. Provided, however, that the commission  
4 may proceed under the emergency rule-making provi-  
5 sions of Title 5, section 8054, without making find-  
6 ings of emergency when the only changes to be made in  
7 the minimum prices are to conform with the orders of  
8 any federal or other agency duly authorized by law to  
9 establish or negotiate minimum prices or are to re-  
10 spond to other conditions affecting prevailing Class  
11 I and Class II prices in southern New England. Title  
12 5, section 8054, subsection 3, shall not apply to  
13 minimum prices adopted under the previous sentence.  
14 Due notice of the public hearing shall be given by  
15 publishing the notice as provided in Title 5, chapter  
16 375. The commission shall hold such a public hearing  
17 not less frequently than once every 12 months to de-  
18 termine whether the minimum wholesale and retail  
19 prices then established should be changed. In addi-  
20 tion to the data received through the implementation  
21 of the information gathering procedures of its rules  
22 as a basis for its determinations, the commission  
23 shall solicit and seek to receive oral and written  
24 testimony at the hearings to determine whether the  
25 minimum wholesale and retail prices then established  
26 should be changed and whether the proposed minimum  
27 wholesale and retail prices are just and reasonable.

28 **Sec. 2. 7 MRSA §3152, sub-§1, as enacted by PL**  
29 **1983, c. 573, §4, is amended to read:**

30 1. **Blend price.** "Blend price" means the price  
31 of milk per hundredweight computed as the sum of the  
32 Class I price multiplied by the percentage of milk  
33 sold as Class I milk and the Class II price multi-  
34 plied by the percentage sold as Class II milk. The  
35 blend price shall be separately calculated for the  
36 base minimum price and the over-order premium.

37 **Sec. 3. 7 MRSA §3152, sub-§§1-A, 4-A and 8-A are**  
38 **enacted to read:**

39 1-A. Base minimum price. "Base minimum price" means  
40 such part of the minimum Class I and Class II prices,  
41 established by the Maine Milk Commission pursuant to  
42 chapter 603, as corresponds to the Class I and Class  
43 II prices established by the administrator of the New  
44 England milk marketing order.

1           4-A. Eligible marketing cooperative. "Eligible  
2 marketing cooperative" means an association of milk  
3 producers organized to negotiate producer prices  
4 higher than the federally established minimums which  
5 the commissioner has determined will not through its  
6 operation evade, undermine or dilute the purposes of  
7 this chapter as set forth in section 3151. Notwith-  
8 standing Title 4, section 1151, subsection 2 and Ti-  
9 tle 5, section 10051, subsection 1, the commissioner  
10 may revoke the eligible status of a marketing cooper-  
11 ative upon a determination that it has through its  
12 operation evaded, undermined or diluted the purposes  
13 of this chapter.

14           8-A. Over-order premium. "Over-order premium"  
15 means such part of the minimum Class I and Class II  
16 prices, established by the Maine Milk Commission pur-  
17 suant to chapter 603, as exceeds the applicable Class  
18 I and Class II prices established by the administra-  
19 tor of the New England milk marketing order.

20           Sec. 4. 7 MRSA §3153, sub-§2, as enacted by PL  
21 1983, c. 573, §4, is amended to read:

22           2. Collections from dealers. Collections from  
23 dealers shall be made as follows.

24           A. Effective June 1, 1984, each Maine market  
25 dealer shall, on a monthly basis, calculate for  
26 its Maine market producers the amount of payment  
27 from the base minimum price that would be payable  
28 to its Maine market producers at that dealer's  
29 utilization rate, and the amount of payment from  
30 the base minimum price that would be due its  
31 Maine market producers at the applicable utilization  
32 rate for the New England Milk Marketing Or-  
33 der. Each Maine market dealer shall make an ini-  
34 tial payment from the base minimum price to its  
35 Maine market producers according to the blend  
36 price calculated using the Federal Milk Order  
37 utilization rate, but shall comply in all other  
38 respects with chapter 603. Any additional pay-  
39 ment from the base minimum price that would be  
40 due its Maine market producers pursuant to that  
41 dealer's applicable utilization rate shall be  
42 made to the Maine Milk Pool. Based on the fact  
43 that northern Maine market producers presently

1 operate at significantly higher costs because of  
2 their remoteness from markets and supplies, that  
3 they face greater risks because they operate on a  
4 closer margin and because their markets are less  
5 secure, payments to the Maine Milk Pool from the  
6 base minimum price attributable to northern Maine  
7 market producers shall be reduced by 1/2 and  
8 those producers' initial payments under this sec-  
9 tion shall be increased by the corresponding  
10 amounts. The commissioner shall adopt by rule  
11 such procedures as are necessary to implement  
12 this section.

13 B. For any month in which the amount of money  
14 payable to producers from the base minimum price  
15 at a dealer's utilization rate would be less than  
16 the amount of money payable to that dealer's pro-  
17 ducers from the base minimum price based upon the  
18 Boston market utilization rate, the dealer may  
19 deduct the difference from his next month's ini-  
20 tial payment to producers from the base minimum  
21 price. Upon the termination of their business  
22 relationship, producers shall be liable to deal-  
23 ers for all sums advanced under this paragraph  
24 which have not been recouped by way of deduction.

25 C. Each Maine market dealer, on a monthly basis,  
26 shall calculate for its Maine market producers  
27 the amount of payment from the over-order premium  
28 that would be payable to its Maine market produc-  
29 ers at that dealer's utilization rate and the  
30 amount of payment from the over-order premium  
31 that would be due its Maine market producers at  
32 the applicable utilization rate for the New  
33 England Milk Marketing Order. Each Maine market  
34 dealer shall make an initial payment from the  
35 over-order premium to its Maine market producers  
36 or to an eligible marketing cooperative desig-  
37 nated by any of its Maine market producers ac-  
38 ording to the blend price calculated using the  
39 Federal Milk Order utilization rate, but shall  
40 comply in all other respects with chapter 603.  
41 Any additional payment from the over-order premi-  
42 um that would be due its Maine market producers  
43 pursuant to that dealer's applicable utilization  
44 rate shall be made to the Maine Milk Pool with  
45 respect to those producers who did not designate

1 an eligible marketing cooperative to receive the  
2 initial payment under this paragraph and to the  
3 eligible marketing cooperative with respect to  
4 those producers who designated an eligible mar-  
5 keting cooperative to receive the initial payment  
6 under this paragraph.

7 **Sec. 5. 7 MRSA §3153, sub-§4, ¶B, as enacted by**  
8 **PL 1983, c. 573, §4, is repealed and the following**  
9 **enacted in its place:**

10 B. If any Maine market producer which designated  
11 an eligible marketing cooperative to receive an  
12 over-order premium pursuant to section 3153, sub-  
13 section 2, paragraph C, or any Boston market pro-  
14 ducer belonging to an eligible marketing coopera-  
15 tive, receives a redistribution from that cooper-  
16 ative at a utilization rate which exceeds the ap-  
17 plicable Boston market utilization rate, the com-  
18 missioner shall credit the amount of that excess  
19 against the redistribution from the Maine Milk  
20 Pool to which that producer would otherwise be  
21 entitled in order to avoid potential inequities  
22 arising from equal redistribution.

23 **Sec. 6. 7 MRSA §3155-A is enacted to read:**

24 §3155-A. Predatory behavior of eligible marketing  
25 cooperative prohibited

26 1. Violations. No eligible marketing cooperative  
27 may:

28 A. Collect or attempt to collect from a Maine  
29 market dealer, directly or indirectly, all or any  
30 part of an over-order premium with respect to the  
31 milk of a Maine market producer who has not des-  
32 ignated that cooperative to receive the over or-  
33 der premium pursuant to section 3153, subsection  
34 2, paragraph C;

35 B. Collect or attempt to collect from a Maine  
36 market dealer, directly or indirectly, any han-  
37 dling charge, fee or other payment in lieu of an  
38 over-order premium which the cooperative is  
39 barred from collecting under paragraph A;

1 C. Discriminate against any Maine dealer in the  
2 marketing of its members' milk based in whole or  
3 in part on the extent to which the dealer's pro-  
4 ducers have joined or refused to join the cooper-  
5 ative; or

6 D. Collect or attempt to collect all or any part  
7 of an over-order premium from a Maine market  
8 dealer during any period for which its eligible  
9 status has been revoked by the commissioner.

10 2. Civil penalties. Each violation of this sec-  
11 tion is punishable by a civil penalty not to exceed  
12 \$2,000 for a first violation and \$5,000 for each sub-  
13 sequent violation, which penalties may be collected  
14 by the commissioner in a civil action. All penalties  
15 collected by the commissioner shall be paid to the  
16 Treasurer of State for deposit into the General Fund.

17 3. Injunctive relief. The Superior Court shall  
18 have jurisdiction upon complaint filed by the commis-  
19 sioner to restrain or enjoin any person from commit-  
20 ting any act prohibited by subsection 1 or from vio-  
21 lating any order or decision issued by the commis-  
22 sioner pursuant to subsection 4. The commissioner  
23 shall not be required to post a bond when applying  
24 for an injunction under this subsection.

25 4. Administrative enforcement. When the commis-  
26 sioner, after such investigation as he determines ap-  
27 propriate, believes that a violation of this section  
28 has occurred, he may order the eligible marketing co-  
29 operative to cease that violation. In lieu of or in  
30 addition to such an order, and notwithstanding Title  
31 4, section 1151, subsection 2 and Title 5, section  
32 10051, subsection 1, the commissioner may also revoke  
33 the eligible status of the cooperative for purposes  
34 of this chapter for a period not to exceed one year  
35 for a first violation, 2 years for a 2nd violation  
36 and permanently for a 3rd or subsequent violation.  
37 Before issuing the order or revoking a cooperative's  
38 eligibility, the commissioner shall afford the coop-  
39 erative an opportunity for a hearing. Any person ag-  
40 grieved by a final order or decision issued under  
41 this subsection may obtain judicial review in Superi-  
42 or Court by filing a petition in accordance with Ti-  
43 tle 5, section 11001 and the Maine Rules of Civil

1 Procedure, Rule 80C. In responding to such a petition  
2 the commissioner may seek enforcement of his order or  
3 decision, including civil penalties for any violation  
4 found and the court, if it upholds the order or deci-  
5 sion, may order its enforcement, including civil pen-  
6 alties.

7 Nothing in this section is intended to require  
8 that the commissioner take administrative enforcement  
9 action prior to seeking judicial relief for any vio-  
10 lation of this section, nor intended to limit the  
11 commissioner's ability to bring an independent action  
12 to enforce any decision or order issued by him, in-  
13 cluding civil penalties for any violation found by  
14 him.

15

#### STATEMENT OF FACT

16 Present law prevented the commission from quickly  
17 reacting to the appearance of a 25¢ producer price  
18 premium in southern New England during the fall of  
19 1986 and its disappearance several months later. Sec-  
20 tion 1 of this bill allows the commission to estab-  
21 lish minimum producer prices under the emergency  
22 rule-making provisions of the Maine Administrative  
23 Procedure Act, the Maine Revised Statutes, Title 5,  
24 chapter 375 and to pass through changes made to the  
25 minimum dealer and retail prices.

26 Under current law, the commission can employ  
27 expedited procedures in setting producer prices only  
28 "to conform with the orders of any federal or other  
29 agency duly authorized by law to establish or negoti-  
30 ate producer prices." This existing authorization  
31 covers over-order premiums negotiated by an organized  
32 cooperative, but does not include recognition of  
33 over-order premiums that arise more or less spontane-  
34 ously in the market place, as was the case last fall.  
35 Section 1 remedies this deficiency.

36 Sections 2 to 7 deal with the impact of an  
37 over-order premium on the Maine Milk Pool.

38 When the milk pooling law was enacted in 1983,  
39 prevailing producer prices in both the Boston and



1 Maine markets had for the past 8 years remained at  
2 the Class I and Class II levels established monthly  
3 by the federal market administrator for the Boston  
4 market and by the Maine Milk Commission for the Maine  
5 market. No prospect of an over-order premium, last  
6 seen during 1973 to 1975 appeared to exist. Conse-  
7 quently, the milk pooling law did not explicitly ad-  
8 dress whether or not an over-order premium should be  
9 pooled or how pooling of such a premium would be ac-  
10 complished.

11 A related development not anticipated in the milk  
12 pooling law is the reemergence of regional coopera-  
13 tives organized solely for the purpose of collective-  
14 ly bargaining with milk dealers for over-order  
15 prices. Operating as an overlay on the existing net-  
16 work of traditional producer cooperatives and inde-  
17 pendent farmers, cooperatives formed to negotiate  
18 over-order prices can only flourish if they acquire  
19 control over nearly all milk supplies available to  
20 handlers over a wide geographic area. Although the  
21 monopolization of milk supplies by an over-order co-  
22 operative is protected by federal law, the use of  
23 predatory means to acquire or maintain such monopoly  
24 power is not.

25 The over-order cooperative responsible for the  
26 1973 to 1975 collection of an over-order premium is  
27 currently reorganizing in the New England and  
28 mid-Atlantic states. If this group is successful, the  
29 return of over-order pricing to Maine is likely.

30 Sections 2 to 7 integrate these new developments  
31 into the existing framework of the Maine Milk Pool.  
32 Producers who have joined an over-order cooperative,  
33 defined in the bill as an "eligible marketing cooper-  
34 ative," are free to direct handlers to pay the entire  
35 over-order premium on their milk to that cooperative  
36 for redistribution among cooperative members. For  
37 producers who decline to join the cooperative, the  
38 over-order premium would be pooled in the same manner  
39 as the Maine market premium is currently treated by  
40 the Maine Milk Pool. A portion would be paid directly  
41 to the producer and the balance would be paid into  
42 the pool for redistribution among all Maine dairy  
43 farmers. An eligible marketing cooperative would be  
44 prohibited from committing predatory practices, such

1 as attempting to collect the over-order premium on  
2 the milk of nonmembers.

3 This bill expressly provides for the pooling of  
4 an over-order premium, recognizes the role of eligi-  
5 ble marketing cooperatives in bringing about the ex-  
6 istence of an over-order premium, permits a greater  
7 net amount of an over-order premium to remain in the  
8 State than would be the case in the absence of legis-  
9 lation and maintains the equality of producer prices  
10 that is currently achieved by the Maine Milk Pool.

11

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