

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 345

H.P. 274

House of Representatives, January 30, 2003

### An Act To Reinstate a Milk Handling Fee

(EMERGENCY)

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Reference to the Committee on Taxation suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MILLS of Cornville.

Under suspension of the rules, cosponsored by Senator WESTON of Waldo and Representatives: BERRY of Belmont, BIERMAN of Sorrento, BRUNO of Raymond, CARR of Lincoln, CHURCHILL of Orland, CLARK of Millinocket, CLOUGH of Scarborough, CRESSEY of Baldwin, DAVIS of Falmouth, DUPREY of Medway, FLETCHER of Winslow, GOODWIN of Pembroke, GREELEY of Levant, HEIDRICH of Oxford, HOTHAM of Dixfield, JACKSON of Fort Kent, JENNINGS of Leeds, JODREY of Bethel, KAELIN of Winterport, KOFFMAN of Bar Harbor, LEDWIN of Holden, McKEE of Wayne, McNEIL of Rockland, MOORE of Standish, NUTTING of Oakland, PIOTTI of Unity, SAVIELLO of Wilton, SHERMAN of Hodgdon, SIMPSON of Auburn, SMITH of Monmouth, SUSLOVIC of Portland, TARDY of Newport, TRAHAN of Waldoboro, USHER of Westbrook, WOTTON of Littleton, Senators: CATHCART of Penobscot, DAMON of Hancock, HALL of Lincoln, KNEELAND of Aroostook, MITCHELL of Penobscot, TREAT of Kennebec.

2           **Emergency preamble. Whereas.** Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

4           **Whereas,** the State is facing significant budget deficits in  
6 fiscal years 2003 and 2004; and

8           **Whereas,** the milk handling tax previously provided  
substantial revenue to the General Fund from its adoption in  
10 January of 1995 until its repeal on August 1, 1996; and

12           **Whereas,** the State and its citizens are experiencing  
economic difficulties and significant fiscal problems; and

14           **Whereas,** additional revenues are needed for the State to  
16 address such difficulties and problems; and

18           **Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
20 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
22 safety; now, therefore,

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

26           **Sec. 1. 7 MRSA §2954, sub-§1.** as amended by PL 1999, c. 679,  
Pt. B, §3 and affected by §14, is further amended to read:

28           **1. Commission empowered to establish prices; public**  
30 **hearing.** The commission is vested with the power to establish  
and change, after investigation and public hearing, the minimum  
32 wholesale and retail prices to be paid to producers, dealers and  
stores for milk received, purchased, stored, manufactured,  
34 processed, distributed or otherwise handled within the State.  
The commission shall hold a public hearing prior to the  
36 establishing or changing of such minimum prices. The commission  
may proceed, however, under the emergency rule-making provisions  
38 of Title 5, section 8054 without making findings of emergency  
when the only changes to be made in the minimum prices are to  
40 conform with the orders of any federal or other agency duly  
authorized by law to establish or negotiate producer prices ~~or~~  
42 are to respond to other conditions affecting prevailing Class I,  
Class II and Class III prices in southern New England or are to  
44 reflect the milk handling tax levied and imposed by Title 36,  
chapter 720. Title 5, section 8054, subsection 3, the 2nd  
46 sentence, does not apply to minimum prices adopted under the  
previous sentence. Due notice of the public hearing must be  
48 given by publishing notice as provided in Title 5, chapter 375.  
The commission shall hold such a public hearing not less  
50 frequently than once every 12 months to determine whether the

2 minimum wholesale and retail prices then established should be  
3 changed. In addition to the data received through the  
4 implementation of the information gathering procedures of its  
5 rules as a basis for its determinations, the commission shall  
6 solicit and seek to receive oral and written testimony at  
7 hearings to determine whether the minimum wholesale and retail  
8 prices then established should be changed and whether the  
9 proposed minimum wholesale and retail prices are just and  
10 reasonable. This subsection is repealed January 1, 2005.

11 **Sec. 2. 7 MRSA §2954, sub-§1-A** is enacted to read:

12 **1-A. Commission empowered to establish prices; public**  
13 **hearing.** The commission is vested with the power to establish  
14 and change, after investigation and public hearing, the minimum  
15 wholesale and retail prices to be paid to producers, dealers and  
16 stores for milk received, purchased, stored, manufactured,  
17 processed, distributed or otherwise handled within the State.  
18 The commission shall hold a public hearing prior to the  
19 establishing or changing of such minimum prices. The commission  
20 may proceed, however, under the emergency rule-making provisions  
21 of Title 5, section 8054 without making findings of emergency  
22 when the only changes to be made in the minimum prices are to  
23 conform with the orders of any federal or other agency duly  
24 authorized by law to establish or negotiate producer prices or  
25 are to respond to other conditions affecting prevailing Class I,  
26 Class II and Class III prices in southern New England. Title 5,  
27 section 8054, subsection 3, the 2nd sentence, does not apply to  
28 minimum prices adopted under the previous sentence. Due notice  
29 of the public hearing must be given by publishing notice as  
30 provided in Title 5, chapter 375. The commission shall hold such  
31 a public hearing not less frequently than once every 12 months to  
32 determine whether the minimum wholesale and retail prices then  
33 established should be changed. In addition to the data received  
34 through the implementation of the information gathering  
35 procedures of its rules as a basis for its determinations, the  
36 commission shall solicit and seek to receive oral and written  
37 testimony at hearings to determine whether the minimum wholesale  
38 and retail prices then established should be changed and whether  
39 the proposed minimum wholesale and retail prices are just and  
40 reasonable. This subsection takes effect January 1, 2005.

41 **Sec. 3. 7 MRSA §2954, sub-§2. ¶B,** as amended by PL 1995, c. 2,  
42 §2, is further amended to read:

43 B. The minimum wholesale prices paid to dealers must be  
44 established to reflect the lowest prices at which milk  
45 purchased from producers in this State at minimum prices in  
46

2 the State can be received, processed, packaged and  
distributed within the State at a just and reasonable  
4 return, and in addition must include the amount of any tax  
determined levied and imposed by Title 36, chapter 716 720.  
6 This paragraph is repealed January 1, 2005.

8 **Sec. 4. 7 MRSA §2954, sub-§2, ¶B-1** is enacted to read:

10 B-1. The minimum wholesale prices paid to dealers must be  
12 established to reflect the lowest prices at which milk  
14 purchased from producers in this State at minimum prices in  
the State can be received, processed, packaged and  
distributed within the State at a just and reasonable  
return. This paragraph takes effect January 1, 2005.

16 **Sec. 5. 7 MRSA §2954, sub-§13**, as amended by PL 1995, c. 2,  
18 §3, is further amended to read:

20 **13. Report to State Tax Assessor.** The Maine Milk  
Commission shall report before the first of each month to the  
22 State Tax Assessor the basic price of milk established for that  
month as defined in Title 36, chapter 716 720. This subsection  
is repealed January 1, 2005.

24 **Sec. 6. 36 MRSA c. 720** is enacted to read:

26 **CHAPTER 720**

28 **MILK HANDLING TAX**

30 **§4901. Definitions**

32 As used in this chapter, unless the context otherwise  
34 indicates, the following terms have the following meanings.

36 **1. Handler.** "Handler," with respect to a particular  
38 container of packaged milk, means the wholesale handler or, if  
none, the retail handler.

40 **2. Milk.** "Milk" has the same meaning as in Title 7,  
42 section 2951, subsection 6.

44 **3. Packaged milk.** "Packaged milk" means milk that has been  
processed and placed in containers for ultimate sale to consumers.

46 **4. Person.** "Person" means an individual, partnership,

2 firm, corporation, association or other unit and the State and  
3 all political subdivisions or agencies of the State.

4 5. Retail handler. "Retail handler" means a person who  
5 handles packaged milk in this State that is next sold in this  
6 State subject to the retail minimum prices established pursuant  
7 to Title 7, chapter 603.

8  
9 6. Tax period. "Tax period" means the period beginning on  
10 the Sunday closest to the first day of the month and continuing  
11 through the Saturday prior to the Sunday closest to the first day  
12 of the subsequent month.

13  
14 7. Wholesale handler. "Wholesale handler" means a person  
15 who handles packaged milk in this State that is next sold in this  
16 State subject to the minimum wholesale prices paid to dealers  
17 established pursuant to Title 7, chapter 603.

18 **§4902. Milk handling tax**

19  
20  
21 1. Tax. An excise tax is levied and imposed at the rate  
22 established in subsection 2 on the handling in this State of  
23 packaged milk for sale in this State. With respect to the  
24 handling in this State of a particular container of packaged milk  
25 for sale in this State, the tax must be paid by the handler.  
26 There is no tax on the handling in this State of packaged milk  
27 for sale in containers that are less than one quart or 20 or more  
28 quarts in volume, or packaged milk that is sold to an institution  
29 that is owned and operated by the State or Federal Government.

30  
31 2. Rate. The rate of the tax levied under this chapter is  
32 8¢ per quart.

33 For a container other than a quart, the tax is computed on a  
34 quart-equivalent basis.

35  
36 3. Tax calculation. Handlers shall pay the tax for each  
37 tax period on all milk subject to the tax sold during the tax  
38 period:

39  
40 A. Subject to the minimum wholesale prices paid to dealers  
41 established by the Maine Milk Commission pursuant to Title  
42 7, chapter 603; or

43  
44 B. Not subject to minimum wholesale prices paid to dealers  
45 but subject to minimum retail prices established by the  
46 Maine Milk Commission pursuant to Title 7, chapter 603.

47  
48 In calculating the amount of packaged milk handled for sale in  
49 this State each tax period, the handler shall deduct any packaged  
50

2 milk returned to the handler during that tax period.

4 4. Tax; additional. A tax imposed and collected under this  
chapter is in addition to any other taxes imposed or collected  
under any other law of the State.

6 5. Records, reports and administration. Every handler  
8 subject to the tax imposed under subsection 1 shall register with  
the assessor within 5 business days of becoming subject to the  
10 tax and annually thereafter on forms provided by the assessor.  
The list of registered handlers must be available to the public.  
12 By the 25th day of each calendar month, every handler subject to  
the tax imposed under subsection 1 shall report to the assessor  
14 for the quantity of packaged milk handled in this State for sale  
in this State during the preceding tax period, the quantity of  
16 packaged milk handled that was subject to the milk handling tax  
and any other information the assessor determines necessary or  
18 useful in the administration of this chapter and enforcement of  
the milk handling tax.

20 6. Due dates. Handlers shall pay to the assessor the tax  
22 due for the preceding tax period not later than the 25th day of  
each calendar month and submit the information required by the  
24 assessor on the forms provided.

26 7. Presumption. In a proceeding against a retail handler  
for collection of the tax with respect to a particular container  
28 of packaged milk, there is a rebuttable presumption that that  
retail handler did not purchase that container in a transaction  
30 subject to the minimum wholesale prices paid to dealers  
established pursuant to Title 7, chapter 603. The burden is on  
32 the retail handler to show that the retail handler purchased that  
container of packaged milk in a transaction subject to minimum  
34 wholesale prices paid to dealers established pursuant to Title 7,  
chapter 603.

36 8. General Fund. The assessor shall immediately pay all  
38 funds received from the milk handling tax to the Treasurer of  
State to be deposited in the General Fund. The funds may not be  
40 dedicated to a particular purpose and may be used for all  
purposes of State Government.

42 **§4903. Repeal**

44 This chapter is repealed January 1, 2005.

46 **Sec. 7. Appropriations and allocations.** The following  
48 appropriations and allocations are made.

50 **ADMINISTRATIVE AND FINANCIAL  
SERVICES, DEPARTMENT OF**

