

MAINE STATE LEGISLATURE

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NEW DRAFT

E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 953

H. P. 1618

House of Representatives, Mar. 17, 1933.

Reported by Mr. Osgood from Committee on Agriculture and laid on table to be printed under Joint Rules.

HARVEY R. PEASE, Clerk.

New Draft of H. P. 1083, L. D. 571.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-THREE

AN ACT Requiring the Licensing of Operators of Milk Gathering Stations.

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

Sec. 1. Definitions. As used in this act the term "milk gathering station" shall mean any establishment where the business of buying milk or cream from producers is carried on with or without a place or premises in connection therewith for the physical handling of milk or cream.

Sec. 2. Buying and selling milk, regulated. No person, firm, association or corporation, shall buy milk or cream within the state from producers for the purpose of sale or resale, or for manufacture, or for shipping the same to any city for consumption unless such business be regularly transacted at an office or station within the state and unless such person, firm, association or corporation, before engaging or continuing in the business of buying milk or cream for the purpose aforesaid, shall annually on or before the 1st day of December in each year file an application with the commissioner of agriculture for a license to transact such business. The application shall state the nature of the business, as hereinabove set forth, the full name of the person or corporation applying for the license, and, if the applicant be a firm or association, the full name of each member of such firm, or association, the city, town or village and street number

at which the business is to be conducted, and such other facts as the commissioner shall prescribe. The applicant shall further satisfy the commissioner of his or its character, financial responsibility and good faith in seeking to carry on such business. The commissioner shall thereupon issue to such applicant, on payment of \$5, a license entitling the applicant to conduct the business of buying milk and cream from producers for the purpose aforesaid at an office or station at the place named in the application until the 1st day of January next following: provided, however, that if the application be presented in the month of December, and if the applicant so elects, such license may be granted to begin on the 1st day of January next following and run for a term of 1 year. A license shall not be issued, however, to any applicant if during the year preceding the filing of the application a complaint from any producer and seller of milk or cream shall have been filed with the commissioner against such applicant for any of the grounds specified in section 4 hereof, and such complaint shall have been established as true and just to the satisfaction of the commissioner after such complaint shall have been investigated by the commissioner in the manner provided by this act. A license shall not be issued as provided in this section, unless the applicant for such license shall file with the application a good and sufficient surety bond, executed by a surety company, duly authorized to transact business in this state, in a sum not less than \$2,000, or shall be relieved from such requirements as provided herein. Such bond shall be approved as to its form and sufficiency by the commissioner.

Such applicant may in lieu of such bond deposit with the commissioner money or securities in which the trustees of a savings bank may invest the moneys deposited therein, as provided in the banking law, in an amount equal to the sum secured by the bond required to be filed as herein provided.

The bond required to be filed hereunder shall be given to the commissioner in his official capacity and shall be conditioned for the faithful compliance by the licensee with the provisions of this chapter, as hereby amended, and for the payment of all amounts due to persons who have sold milk or cream to such licensee, during the period that the license is in force. The money or securities deposited with the commissioner, as above provided, shall constitute a separate fund and shall be held in trust for, and applied exclusively to, the payment of claims against the licensee making such deposit, arising from the sale of milk or cream to such licensee.

Upon default by the licensee in the payment of any money due for the purchase of milk or cream, which payment is secured by a bond or the

deposit of money or securities as hereinbefore provided for, the creditor may file with the commissioner, upon a form prescribed by him, a verified statement of his claim. If such creditor shall have reduced such claim to judgment or shall thereafter and before the commencement of the action by the commissioner, as hereinafter provided for, reduce such claim to judgment, a transcript of such judgment shall also be filed with such commissioner.

Such statements may be filed at any time during the period of the license for purchases made during such period and within 90 days from the termination of such period.

After the expiration of 90 days from the termination of any license period the commissioner shall, by proper action wherein all such creditors and any surety upon any bond given as hereinbefore provided for and the licensee shall be parties, proceed to determine the amount due each such creditor, and the judgment rendered in such action shall be enforced ratably for such creditors against the surety on the bond, if one there be, or against the moneys or securities deposited as hereinbefore provided for. If any such creditor shall have reduced his claim to judgment such judgment shall be presumptive proof of the amount due such creditor in any action brought by the commissioner as hereinbefore provided for.

Every bond given pursuant to the provisions hereof shall be applicable, in the first instance, to the payment of all claims arising during the license period for which such bond shall continue, and filed either during such period or within 90 days after the expiration thereof. If all such claims shall be paid the balance available upon such bond shall be devoted to the extinguishment ratably of claims arising during such license period, but for which statements shall not have been filed until after 90 days after the expiration of such period.

All moneys and securities, deposited as herein provided for, shall be applicable, in the first instance, to the extinguishment of claims, properly filed, arising during the license period for which such moneys or securities were originally deposited and if, after the extinguishment of such claims, there shall be a surplus remaining such surplus shall be devoted to extinguishment of claims arising during any preceding license period which were properly filed as hereinbefore provided, all claims for any one license period to be a party. Any surplus remaining after the extinguishment of such prior claims shall be added to the moneys or securities then on deposit with the commissioner or, if there be at that time on file with such commissioner a bond given pursuant to this section, or if there be then on deposit with such commissioner additional moneys or securities deposited as herein provided for, and if such bond or such moneys or securities, as

the case may be, shall, in the opinion of the commissioner, be sufficient, such surplus shall be returned to the licensee.

A person or corporation licensed hereunder shall make a verified statement of his or its disbursements during a period to be prescribed by the commissioner, containing the names of the persons from whom such products were purchased, and the amount due to the vendors thereof. Such statement shall be submitted to the commissioner when requested by him and shall be in the form prescribed by such commissioner. If it appears from such statement or other facts ascertained by the commissioner, upon inspection or investigation of the books and papers of such licensee as authorized by this article, that the security afforded to persons selling milk and cream to such licensee by the bond executed or deposit made by such licensee as herein provided does not adequately protect such vendors, the commissioner may require such licensee to give an additional bond or to deposit additional money or securities, to be executed or deposited as above provided, in a sum to be determined by the commissioner, but not exceeding by more than 25% the maximum amount paid out by such licensee to sellers of milk in any one month: Provided, however, that the maximum amount of the bond or deposit required from any applicant under the provisions of this section shall be \$100,000; and that any applicant filing a bond or depositing money or securities in such maximum amount shall be exempted from filing either the statements of milk purchased, or the statements of disbursements in this section provided for, and further provided that the provisions of this act shall not apply to any person regularly engaged in the business of dairying and who purchases not exceeding 250 quarts of milk or cream per day as a supplement to his own supply for delivery to consumers within the state.

Sec. 3. Power of commissioner to investigate. The commissioner and his assistants shall have power to investigate upon the complaint of any interested person, or of his own motion, the record of any person, firm or corporation applying for or holding a license, or any transaction involving the purchase by such applicant or licensee or attempted purchase of milk for shipment as provided in this article; and for such purpose may examine the ledgers, books of account, memoranda or other documents of any such person, firm, association or corporation applying for or holding a license and may take testimony therein under oath; but information relating to the general business of any such person, firm, association or corporation, disclosed by such investigation and not relating to the immediate purpose thereof shall be deemed of a confidential nature by the commissioner, his assistants, representatives and employees. When a complaint is filed with the commissioner, he shall attempt to secure a satisfactory explanation or

adjustment, and if he shall fail to secure the same within 10 days, he shall cause a copy of the complaint, together with a notice of the time and place for a hearing thereon, to be served personally or by mail upon said applicant or licensee. If served by mail, such complaint and notice shall be directed to the applicant or licensee at his place of business, with postage fully prepaid thereon. Such service shall be made at least 7 days before the hearing. At the time and place appointed for such hearing, the commissioner or his assistant shall hear the parties to the complaint, shall have power to administer oaths and shall thereafter file in the office of the commissioner a decision either dismissing such complaint or specifying the facts which he deems established on such hearing.

Sec. 4. Granting and revoking licenses. The commissioner may decline to grant a license or may revoke a license already granted when he is satisfied of the existence of the following cases or either of them:

1. Where the applicant or licensee has made a general assignment for the benefit of creditors or has been adjudged a bankrupt.

2. Where a money judgment has been secured by any milk producer and has been entered against such applicant or licensee and remains unsatisfied of record.

3. Where there has been a failure to make prompt settlements to persons from whom he buys milk.

4. Where there have been combinations to fix prices except as authorized and permitted in the agricultural marketing laws of the United States.

5. Where there has been a continued course of dealing of such nature as to satisfy the commissioner of the inability of the applicant or licensee to properly conduct the business or of an intent to deceive or defraud customers.

6. Where there has been a continued and persistent failure to keep records required by the commissioner or by law.

7. Where the licensee has been duly required and notified by the commissioner to give an additional bond or to deposit additional money or securities as provided in this article and has failed to do so.

The commissioner, before revoking or determining to revoke any license issued under the provisions of this article shall give the licensee notice of the time and place of a hearing to determine whether such license shall be revoked. Such notice shall be served upon the licensee in the manner provided in the last preceding section for the service of a complaint. At the time and place appointed for such hearing the commissioner shall receive evidence and hear the licensee and shall thereafter file in the office of the commissioner an order either dismissing the proceeding or revoking such license.

Sec. 5. Certiorari to review. The action of the commissioner in refusing to grant a license, or in revoking a license granted under this act, shall be subject to review by writ of certiorari, and if such proceedings are begun to review the revocation of license, the license shall be deemed to be in full force and effect until the final determination of certiorari proceedings and all appeals therefrom.

Sec. 6. Records to be kept. Every proprietor of a milk gathering station shall keep, in such form as the commissioner may prescribe, a record of transactions of purchases of milk or cream by him and he shall, at least monthly, deliver to each person from whom he receives or purchases milk or cream and in the unit of measure in computing the amount due therefor, an itemized statement of the several amounts or quantities of such milk or cream so received or purchased at such milk station from such person during the prior month or, if statements are delivered more frequently than monthly during that period of time which has elapsed since the delivery of such last prior statement. If the milk or cream is purchased or received on a butter fat basis, such statement shall include the percentage, or average percentage of butter fat contained in said milk or cream as determined by tests periodical or otherwise. Every such proprietor of a milk gathering station shall keep a correct account of all the milk or cream daily received or purchased from each person at such milk station which account shall be open to inspection by said person.

Sec. 7. Right to review. If either party to the transaction of purchase and sale between a milk producer or a milk seller and a licensed buyer of milk shall be dissatisfied relative to any transaction of purchase and sale of milk between a milk seller and a licensed buyer of milk, he may apply to the commissioner in writing, within 60 days after the delivery of such milk to the licensed buyer, for investigation. The commissioner shall treat such application as a complaint, and shall cause a full investigation of the transaction complained of to be made either by himself or one of his assistants, in the manner provided by section 3.

Sec. 8. Offenses. No person who, being a buyer of milk for shipment for the purposes set forth in this act, whether such person be licensed or whether his business be transacted at a station or otherwise, shall (a) fail to make prompt payments for milk purchased, or (b) shall make any false or misleading statement or statements enumerated in this act, or (c) enter into any combination to fix prices except as authorized and permitted in the agricultural marketing laws of the United States, or (d) not being licensed shall conduct the business of buying milk for shipment as provided in this act, or (e) being licensed or otherwise, engage in such busi-

ness without having a station or office therefor, or (f) fail to conform to any requirement of or violate any provision of this chapter.

Sec. 9. Penalty. Any person, firm or corporation violating any of the provisions of this act or who shall engage in the business of dealing in milk and/or cream without first having secured a license and giving a bond as herein required, shall be punished by a fine of not more than \$100.