

# MAINE STATE LEGISLATURE

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EIGHTY - SEVENTH LEGISLATURE

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Legislative Document

No. 71

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H. P. 289

House of Representatives, January 22, 1935.

Referred to Committee on Agriculture and 1,000 copies ordered printed.  
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Woodbury of Morrill.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-FIVE

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**AN ACT Concerning the Production and Distribution of Milk, Creating a  
Milk Marketing Board and Defining its Powers and Duties.**

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**Emergency preamble.** Whereas, the production, distribution and sale of milk and cream within this state is a business affecting the public health, welfare and general interest of all the people of the state; and

Whereas, unfair, destructive and uneconomic practices in the business of said production, distribution and sale of milk and cream have developed which threaten the disruption of said business and great loss to all persons engaged in said business and which create a situation which cannot be adequately controlled and remedied by existing statutes; and

Whereas, in the judgment of the legislature these facts create an emergency within the meaning of section 16 of Article XXXI of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health, and safety; now therefore

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

**Sec. 1. Definitions.** As used in this act, unless the context otherwise requires, "board" means the state agency, created by this act to be known as the "milk control board". "Person" means any person, firm, corporation or association. "Dealer" means any person who purchases or sells

milk within the state for consumption within the state. "Market" means any city, town or village of the state, or 2 or more of the same designated by the board as a natural marketing area. "Milk" means fluid milk and cream. "Producer" means any person who produces milk for fluid consumption. "Consumer" means any person other than a milk dealer who purchases milk for fluid consumption.

"Producer-dealer" means any person who sells milk to consumers within the state and who himself produces the whole or a substantial part of said milk.

**Sec. 2. Milk control board created.** The milk control board is hereby created to consist of 5 persons, 2 of whom shall be milk producers, 1 of whom shall be a producer-dealer, 1 of whom shall be a milk dealer and 1 of whom shall be neither a milk producer nor milk dealer nor producer-dealer, and all of whom shall be residents of the state and shall be appointed by the governor within 10 days after this act becomes effective. A vacancy in any membership of the board shall be filled by like appointment. The governor may remove any member for mis-feasance, mal-feasance, or non-feasance in office. The members of said board shall elect a chairman and may employ a secretary and such clerks and assistants as may be deemed necessary and may prescribe their duties and fix their compensation, subject to the approval of the governor and council. Members of the board shall be allowed actual traveling and other expenses incurred in the performance of its duties and each member shall receive a per diem compensation for the time actually spent in the performance of his duties, such compensation to be determined by the governor and council. Provided that the cost of administration of said board including expense and compensation of members shall not exceed the amount of fees collected under the provisions of this act.

**Sec. 3. Powers of the board.** The board shall have power to supervise, regulate, and control the production, distribution and sale of milk for consumption within the state in such a manner as to supplement such supervision and regulations as are now imposed by existing statutes or by the lawful ordinances or rules and regulations of the several towns and cities of the state. In administering this act it shall have the power to conduct hearings, subpoena and examine under oath dealers with their records, books and accounts and any other person from whom information may be desired to carry out the purpose and intent of this act and any member of the board may sign subpoenas and administer oaths to witnesses. The board may adopt, promulgate and enforce all rules and orders necessary to

carry out the provisions of this act and any member of the board or its representatives shall have access to and may enter at all reasonable hours all places where milk is being distributed or sold. The board may act as mediator or arbitrator to settle any controversy or issue among or between producers, dealers and consumers any of whom may petition the board in writing to change prices or conditions in any market area.

**Sec. 4. Limit on exercise of power.** The board shall not exercise its power except upon written application of producers or a duly incorporated association of producers authorized to act as a marketing agency of such producers and dealers, or associations of dealers, supplying in the judgment of the board a substantial proportion of the milk consumed in such market.

**Sec. 5. Further powers and limitations.** The board shall have power to supervise and regulate the entire milk industry in this state exclusive of the manufacture of milk products not sold or intended to be offered for sale as milk.

(a) The general power hereby conferred upon the board extends to the supervision and regulation of the production, processing, distribution and sale of the entire output of the lacteal secretion of dairy animals in this state to the extent that the same is available in the form of milk as defined in this act.

(b) After public hearing and investigation, to fix the prices to be paid producers by dealers, the minimum and maximum wholesale and retail prices to be charged for milk in any market, and to establish different prices for different grades of milk, and in like manner to alter, revise, amend, or rescind, the prices so fixed.

(c) To have access to and at all reasonable hours enter any place where milk is being produced, processed, bottled, or stored, and to inspect all books, papers, records, or documents at any place within the state for the purpose of ascertaining facts to enable the board to administer this act.

(d) To determine and designate any area of the state as a natural marketing area whenever such determination and designation may be necessary to establish definite boundaries between markets in order to secure uniformity, enforce the provisions, and effect the purposes of this act.

(e) To adopt and enforce all rules, regulations, and orders necessary to carry out the provisions of this act.

The foregoing accumulation of powers of the board shall not derogate

from or prejudice any other power expressly or impliedly granted to the board by any other provision of this act.

**Sec. 6. Dealers to be licensed; revocations; penalty.** The board shall require all dealers in any market designated by said board to be licensed by said board. The board, after a hearing or an opportunity to be heard, may decline to grant a license or may grant a conditional or limited license to an applicant for a license as a milk dealer, or may suspend or revoke a license already granted to a milk dealer, when satisfied of the existence of any of the following: (1) That he has without reasonable cause refused to accept and/or to pay for milk purchased by him from a producer, or has without reasonable cause or reasonable advance notice refused to accept and/or to pay for milk delivered to him by or on behalf of a producer in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated; (2) That he has failed without reasonable cause to account and make payment for any milk purchased by him; (3) That he has committed any act which may demoralize the price structure of milk or interfere with an ample supply of milk for the inhabitants of the state; (4) That he has engaged in a course of action such as to indicate his inability or unwillingness properly to conduct the business of a milk dealer; (5) That he has been, or is, a party to a combination to fix or maintain prices contrary to any provision of this act; (6) That he has engaged in a course of action such as to indicate an intent to deceive or defraud customers, producers, or consumers; (7) That he has failed either to keep records or to furnish the statements or information required by the board under any provision of this act; (8) That he has made a general assignment for the benefit of creditors, or has been adjudged a bankrupt, within the current license year; (9) That any statement made by a milk dealer and in reliance upon which, to any degree, his license was granted, has been found to have been false or fraudulent in any material particular; (10) That such applicant or milk dealer is a partnership or a corporation, and that any natural person holding any position, owning any substantial interest or having any power or control, in such partnership or corporation, has within the current license year been responsible, in whole or in part, for any act on account of which a license might be denied, suspended or revoked pursuant to any provision of this act; or (11) That he has violated any provision of this act or any rule, regulation or order of the board made under authority thereof. A violation of any provision of this act or of any rule or order of the board, including failure to answer subpoena or to testify before the board, shall be a misdemeanor punishable by a fine of not more than \$100 or by imprisonment for not more than 1

year, or by both such fine and imprisonment, and each day during which such violation shall continue shall be deemed a separate violation.

**Sec. 7. Records to be kept; licenses; rebates.** All dealers in any market designated by the board shall keep such records and submit such reports in such form as the board directs. Each licensed dealer shall pay to said board an annual license fee of \$1 and a further sum of 1 cent per hundredweight of all fluid milk sold or distributed by him,  $\frac{1}{2}$  of which sum may be deducted from the price paid by him to the producers of such milk under regulations of the board. In any market area where for any reason the amount so paid as above provided is in the opinion of the board insufficient to meet the cost of administering this act in said market area the board may compel the payment by dealers for such period as may be deemed necessary of an additional 1 cent per hundredweight of such milk,  $\frac{1}{2}$  of which additional sum may be deducted from the price paid producers as above provided. All moneys received by said board shall be paid by the board to the treasurer of state monthly and all such sums are hereby appropriated for the purposes of administering this act.

**Sec. 8. Board to study uniform milk control.** The board may confer with legally constituted authorities of the state and of the United States with respect to uniform milk control within the several states and among such states may conduct joint investigations, hold joint hearings, and issue joint or concurrent orders, and may exercise its powers under this act to effect uniform milk control.

**Sec. 9. Limitations on act.** Nothing in this act shall be deemed or construed to prevent a cooperative association of producers organized under the laws of this or of any other state then engaged in making collective sales or marketing of milk for the producers thereof, from blending the net proceeds of all its sales in various classes and whether in fluid form or manufactured products both within and without the state and paying its producers such blended prices, with such deduction of differentials as may be authorized by the contracts between such association and its members, nor from making collective sales for its members or for its members and other producers represented by it at a blended price based upon sales of milk whether in the form defined in this act or otherwise, and whether within or without this state, or within or without a different state, such price being payable to such members directly or their producers, or to such associations, nor to prevent any milk dealer or licensee from entering into a contract with such producer cooperative, or either of the bases hereinbe-

fore mentioned by all such contracts shall be upon the basis of the prices and handling charges fixed by the board, with the result that the net price received for milk by the producer cooperative shall be commensurate with such prices and handling charges, and further, that no milk dealer shall receive from a producer cooperative directly or indirectly any discounts, rebates, or compensation, for the purpose or with the effect of reducing the net cost to the dealer for milk purchased by or through a producer cooperative, nor to effect contracts of such a producer cooperative with its members subsisting when this act shall take effect, nor to abridge the rights, duties, privileges, and immunities of such an association or its members arising from the provisions of any other law of this state.

Nothing in this act shall be so construed or applied as to prevent the sale of raw milk when otherwise complying with this act.

**Sec. 10. Termination of this act; validity.** This act shall terminate on August 1, 1937 unless prior thereto it shall be repealed by the legislature, or unless the governor shall, during a period in which the legislature is not in session, proclaim that the emergency set forth in the preamble of this act is ended and designate a date for its termination by proclamation. If any portion of this act is held invalid or unconstitutional such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid.

**Emergency clause.** In view of the emergency recited in the preamble, this act shall take effect when approved.