

# MAINE STATE LEGISLATURE

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# NINETY - FIRST LEGISLATURE

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**Legislative Document**

**No. 426**

H. P. 761

House of Representatives, February 10, 1943.

Referred to Committee on Agriculture. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Brown of Unity.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-THREE

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### **AN ACT Requiring the Licensing of Creamery Companies.**

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

**Sec. 1. Declaration of policy.** It is hereby declared that the production, processing, manufacture and distribution of fluid milk and fluid cream, in order that a pure product may be furnished to the consumer and that the producer may be safeguarded against irresponsible persons who engage in business as creamery companies, are essential to the public welfare and to the economic interests of the people of this state. Failure on the part of persons operating a creamery company as hereinafter defined to pay to persons producing milk for sale or delivery to a creamery company impairs and adversely affects the production, processing and distribution of a clean and healthful supply of fluid milk, fluid cream and the manufactured products thereof and impairs the value of agricultural assets which to a substantial degree supports the credit structure of the state. It is further declared that the business of selling milk is not in competition with that of selling fruits and vegetables and is in different classification.

It is hereby declared that: (1) health being the necessity of all personal enjoyment, hence a special ward of the police power of the state, it is necessary to induce the production and assurance of an adequate supply

of pure fluid milk and fluid cream for human consumption; (2) it is in the interest of the public welfare to safeguard the production, maintenance and handling of an adequate supply of such milk and cream so that producers, who sustain the large expense of maintaining sanitary conditions of production and standards of purity shall receive an assured reasonable return for such products to the end that there may be no relaxation of vigilance in the production and sale thereof, whereby otherwise the health and welfare of the community would be seriously affected.

It is further declared that although other industries and businesses require regulation in furtherance of the protection of the public under the police powers granted to the legislature that the police powers exercised under the provisions of this act are not in derogation of other rights.

**Sec. 2. Definitions.** (a) The word "company" and the words "creamery company" shall apply to a person, partnership, unincorporated association or corporation who receives or purchases in excess of 200 quarts of milk or 20 quarts of cream daily average of any calendar month from producers for sale or resale or for manufacture into other products.

(b) The word "patron" as used in this chapter, shall mean a person, partnership, unincorporated association or corporation who produces milk for sale or delivery to a company as defined in subdivision (a) of this section.

(c) The word "commissioner" means commissioner of agriculture.

**Sec. 3. License.** A creamery company shall not transact business in this state unless it first obtains a license from the commissioner authorizing it to do so. Application for such license shall be filed annually on or before the 1st day of December in each year with the commissioner. The application shall state the full name of the person or corporation applying for the license and if the application be a firm or association, the full name of each member of such firm or association, the city, town or village and the 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 financial responsibility and good faith in seeking to carry on a creamery company. 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 5 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 one and one-half times the estimated maximum monthly indebtedness of the applicant to the patrons from whom he may purchase or receive or may have purchased or received milk or cream, 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 laws of this state, 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 1st 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 1st 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 proceeding 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 50% the maximum amount paid out by such licensee to sellers of milk in any one month.

**Sec. 4. 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 com-

plaint or specifying the facts which he deems established on such hearing.

**Sec. 5. 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 finally 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 or of the state of Maine.

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 producers.

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 within the time set by the commissioner.

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. 6. 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 be-

gun 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. Application for review by writ of certiorari shall be made within 10 days after the filing of the order of the commissioner.

**Sec. 7. Service of process.** Before a license is issued under the provisions of this chapter such company, if a nonresident or a foreign corporation, shall in writing under seal, appoint the secretary of state its true and lawful attorney upon whom service of legal process in any action or proceeding against it may be made with the same validity as if made upon such company.

**Sec. 8. Payments when made.** A creamery company may contract with its patrons for the payment of the several sums due them at such time and in such manner as may be mutually agreed upon, but in the absence of such agreement, such payments shall be due and payable on the 15th day of each month for products delivered or furnished during the preceding calendar month; provided, however, that in case of such an agreement, such company shall file with the commissioner within 5 days after such agreement is made, a memorandum thereof duly sworn to by such company. The foregoing provision shall not be construed to prevent such company for making payments weekly or semi-monthly and in case such payments are so made such fact shall be taken into consideration by the commissioner in determining the amount of the bond, mortgage or other security that such company shall be required to furnish; provided, however, that in case such company shall agree to make payments weekly or semi-monthly, a memorandum of such agreements duly sworn to by such company shall be filed with said commissioner.

**Sec. 9. Records to be kept.** Every creamery company 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 patron 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 by such company from such patron 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 company shall keep a correct account of all the milk or cream daily received or purchased from each patron at the point where said milk or cream is delivered to such company, which account shall be open to inspection by said patron.

**Sec. 10. 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 4.

**Sec. 11. 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) into any combination to fix prices except as authorized and permitted in the agricultural marketing laws of the United States or of the State of Maine, 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, engaged in such business without having a station or office therefor, or (f) fail to conform to any requirements of or violate any provision of this chapter.

**Sec. 12. 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 for each offense. Every day that said person, firm or corporation carries on business in violation of any of the provisions of this act shall be deemed a separate offense.

**Sec. 13. Validating clause.** All acts or parts of acts inconsistent with the provisions of this act are hereby repealed or amended to conform with the provisions hereof.