

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 453-End

AND AT THE
FIRST SPECIAL SESSION
September 6, 1983 to September 7, 1983
Chapters 583-588

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
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J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

Sec. 17. Effective date. Section 4 of this Act shall take effect on March 1, 1984.

Effective September 23, 1983, unless otherwise indicated.

CHAPTER 484

H.P. 1260 - L.D. 1681

AN ACT to Strengthen the Maine Milk Industry.

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

Whereas, the Maine milk industry is vitally important to Maine rural life and economy; and

Whereas, the protection of the milk industry from unfair sales practices is essential to the continued well-being of the industry and the State; and

Whereas, judicial invalidation of pricing orders of the Maine Milk Commission in June, 1981, resulted in an 11-day period during which no minimum dealer and retail prices for milk were in effect in Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning 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. 7 MRSA §2952, first ¶, as amended by PL 1979, c. 734, §6, is further amended to read:

The Maine Milk Commission, as heretofore established, shall consist of 5 members and at all times shall include within its membership the Commissioner of Agriculture, Food and Rural Resources or his designee, ex officio. In addition to the limitations of Title 5, section 18, none of the remaining 4 members of the commission shall at the time of appointment or while serving as a member of the commission, and no employee of the commission shall have any official business, other than retail purchases of milk, or

professional connection or relation with, or hold any interest or stock or securities in, any producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission; nor shall any member or employee of the commission render any professional or other service against any such producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission or be a member of a firm which shall render any such service.

Sec. 2. 7 MRSA c. 603-A is enacted to read:

CHAPTER 603-A

DESTRUCTIVE COMPETITION

§2981. Definitions

Unless the context otherwise indicates, the definitions contained in section 2951 shall apply to this chapter.

§2982. Applicability; authority

Dealers shall observe this chapter only when no applicable minimum dealer price for milk established under chapter 603 is in effect. Retail stores shall observe this chapter only when no applicable minimum retail price or minimum retail margin for milk established under chapter 603 is in effect. This chapter shall be administered by the Maine Milk Commission.

§2983. Selling below cost

It is unlawful for any dealer or retail store to sell milk for fluid consumption at less than the cost thereof to the dealer or retail store with the purpose or intent to injure competitors or destroy competition. In all proceedings brought to enforce this section, proof of consistent and repeated advertisements, offers to sell or sales of milk for fluid consumption by any dealer or retail store at less than cost to them, as defined in sections 2984 and 2985, the advertisements, offers to sell and sales thereby forming a pattern of sales below cost, shall be prima facie evidence of intent to injure competitors and destroy competition. This section shall not apply where the price of milk for fluid consumption is set in good faith to meet legal competition.

§2984. Cost of milk to a dealer

"Cost of milk to a dealer" means the dealer's raw product cost, plus any shrinkage allowance permitted by the commission, to which shall be added the deal-

er's expenses directly and indirectly incurred in receiving, processing, packaging and delivering milk. Without limitation, these expenses shall include labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, utilities, delivery costs, interest, licenses, taxes, insurance, advertising, professional services and all other fixed and variable expenses. The commission may determine the dealer's expenses directly and indirectly incurred in receiving, processing, packaging and delivering fluid milk by either of the following methods:

1. Cost accounting data. Through reliance upon cost accounting data, relating to the dealer, gathered or received by the commission pursuant to section 2953 or 2986 for any 3-month period within one year preceding and one year following the date of an alleged violation, unless the dealer proves that changed circumstances render any cost accounting data relied upon by the commission incapable of proving that the violation occurred; or

2. Expenses; percentage of dealer price. By imputing an amount to cover these expenses which, unless the dealer proves lower actual costs, shall be deemed to be the percentage of the total dealer price of the milk as the commission shall by rule establish in conjunction with any milk pricing orders which change base dealer margins.

§2985. Cost of milk to a retail store

"Cost of milk to a retail store" means the price paid by a retail store to a dealer for fluid milk, to which shall be added the retail store's expenses directly and indirectly incurred in shipping, handling and selling fluid milk. Without limitation, these expenses shall include labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, utilities, shipping costs, interest, licenses, taxes, insurance, advertising, professional services and all other fixed and variable expenses. The commission may determine the retail store's expenses directly and indirectly incurred in shipping, handling and selling milk by any of the following methods:

1. Cost accounting data. Through reliance upon cost accounting data, relating to the retailer, gathered or received by the commission pursuant to section 2953 or 2986 for any 3-month period within one year preceding and one year following the date of an alleged violation, unless the retail store proves that changed circumstances render the cost accounting

data relied upon by the commission incapable of proving that the violation occurred;

2. Expenses; percentage of total retail price. By imputing an amount to cover these expenses which, unless the retail store proves lower actual costs, shall be deemed to be the percentage of the total retail price of the milk as the commission shall by rule establish in conjunction with any milk pricing orders which change retail margins; or

3. Other expenses. By imputing an amount to cover these expenses which, unless the retail store proves lower actual costs, shall be determined by dividing total store expenses by total store sales and multiplying the percentage obtained by the total retail price of the milk.

§2986. Investigations; hearings; inspections

To aid the commission in determining if a dealer or retail store is selling fluid milk below cost, the commission may investigate, conduct hearings, subpoena and examine under oath dealers and retail stores and their officers, agents and representatives, together with their records, books and accounts and any other person from whom the commission requires information, together with his records, books and accounts. Any member of the commission, and any employee designated by the commission, may sign subpoenas and administer oaths to witnesses. The commission may also inspect the records, books and accounts of dealers and retail stores at their various offices and places of business at reasonable times.

§2987. Rules

The commission may adopt all rules establishing or relating to hearing procedures, cost accounting and the collection of information as may be necessary to carry out this chapter.

§2988. Civil action by injured person

1. Injunctive relief; damages and costs. Any person damaged or who is threatened with loss or injury by reason of a violation of section 2983 may bring a civil action in the Superior Court in the county where he resides, to prevent, restrain or enjoin the violation or threatened violation. If in that action a violation or threatened violation of section 2983 shall be established, the court may enjoin and restrain or otherwise prohibit the violation or threatened violation. In that action it

shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to the injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant 3 times the amount of actual damages sustained by him and the costs of the action, including reasonable attorneys' fees.

2. Damages only. In the event no injunctive relief is sought or required, any person injured by a violation of section 2983 may maintain an action for damages alone in the Superior Court in the county where he resides and the measure of damages in the action shall be the same as prescribed in subsection 1.

§2989. Civil action by the commission

1. Civil penalties. Any dealer or retail store which violates section 2983 shall be subject to the following civil penalties, to be collected by the commission in a civil action:

A. For the first violation, a civil penalty not to exceed \$1,000; and

B. For each subsequent violation, a civil penalty not to exceed \$2,000.

All penalties collected by the commission shall be paid to the Treasurer of State for deposit to the General Fund.

2. Injunction. In lieu of or in addition to the collection of civil penalties under subsection 1, the commission may bring a civil action in the Superior Court to prevent, restrain or enjoin a violation of section 2983. If in that action a violation or threatened violation of section 2983 shall be established, the court may enjoin and restrain or otherwise prohibit the violation or threatened violation. In the action it shall not be necessary that actual damages to any person be alleged or proved.

Sec. 3. 10 MRSA §1204 is amended to read:

§1204. Applicability of provisions

This chapter shall prevail whenever the application of any provision of any other law of this State, other than Title 7, chapter 603-A, conflicts with the application of any provision of this chapter.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 24, 1983.

CHAPTER 485

H.P. 1310 - L.D. 1739

AN ACT to Clarify the Education Laws.

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

Whereas, existing ambiguities in the education laws create confusion and uncertainty regarding the operation of school administrative units; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning 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. 20 MRSA §161, sub-§2, ¶¶A and B, as repealed and replaced by PL 1981, c. 658, §1, are amended to read:

A. The municipal officers in an ~~incorporated school district~~ a municipal corporation responsible for operating public schools, unless it has been approved in accordance with section 853; or

B. The treasurer of a ~~school administrative district~~ quasi-municipal corporation responsible for operating public schools, unless it has been approved by a majority vote of the full membership of ~~the board of directors or its governing body~~ or, in the case of a school administrative district, a finance committee elected in accordance with section 306.

Sec. 2. 20 MRSA §226-A, sub-§2, ¶B, as amended by PL 1979, c. 356, §2, is further amended to read:

B. The municipal officers of each municipality