

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

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

CHAPTER 573

H.P. 1323 - L.D. 1754

AN ACT Creating a Maine Milk Pool.

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

Sec. 1. 7 MRSA §2954, sub-§6, as repealed and replaced by PL 1975, c. 517, §3, is repealed and the following enacted in its place:

6. Schedule of maximum transportation allowances; adjustments. The commission may annually establish a schedule of maximum transportation allowances which may be charged by any Maine dealer for hauling milk from a producer's farm to the dealer's dairy plant. The commission shall base its schedule on the recommendations of the commissioner pursuant to section 3157 and shall conduct hearings prior to establishing that schedule. Any dealer may petition the commission at any time to approve a proposed adjustment in that schedule of transportation charges for that dealer. The burden shall be on the dealer to substantiate the need and reasonableness of such a proposed adjustment, and in the absence of evidence, the proposed adjustments shall be denied.

Sec. 2. 7 MRSA §2954, sub-§9 is enacted to read:

9. Minimum wholesale prices to producers. Notwithstanding any other provisions of this chapter, minimum wholesale prices to producers shall be subject to the provisions of chapter 611.

Sec. 3. 7 MRSA §2956, 3rd ¶ from the end, as amended by PL 1981, c. 481, §1, is further amended to read:

Each licensed dealer shall pay to the commission an annual license fee of \$1 and the sum of 5¢ 6 1/2¢ per hundredweight as monthly payments, based on quantity of milk purchased or produced in any market area, or purchased or produced in an uncontrolled area and sold in any market area. Two and one-half cents per hundredweight may be deducted by dealers from amounts paid by them to producers of such milk, except that the milk farm-processed into cream for the manufacture of butter shall not be subject to such sums of 5¢ 6 1/2¢ per hundredweight. Of the amount paid by each dealer, 1 1/2¢ per hundredweight shall be paid by the commission to the Maine Dairy and Nutrition Council for the purposes authorized by Title 36, section 4521.

Sec. 4. 7 MRSA c. 611 is enacted to read:

CHAPTER 611

MILK POOLING

§3151. Legislative Findings and Intent

The Legislature finds that among Maine's dairy farmers, prices received for milk differ substantially, and that these differences arise in part from a dual marketing system whereby approximately 1/2 the milk produced in Maine is marketed in Maine subject to the price control authority of the Maine Milk Commission, Maine market, while the other 1/2 is marketed to handlers selling in southern New England, commonly known as the Boston market, subject to the price regulations of the New England Milk Marketing Order, Federal Milk Order No. 1.

The Legislature finds that under this dual system, producers selling on the Maine market receive a significantly higher price for their milk than do their Boston market counterparts; that, in terms of net income after operating costs, producers on the Maine market receive, on the average, 50% more than their Boston market counterparts of equal size; that the lower net returns received by producers selling on the Boston market seriously limits their ability to withstand cost fluctuations caused by unpredictable increases in costs of fuel, credit, feed and other input costs or price fluctuations resulting from changing milk price support policies, all of which are largely controlled by national and international policies and other events beyond their control; that this relative vulnerability engenders an instability in the present marketing system resulting in a destructive competition for higher priced markets; that this instability has recently been aggravated by the introduction of store-brand milk in Maine markets; that the result is a serious threat not only to the viability of these Boston market farms but also to the Maine dairy industry as a whole; and that the loss of these dairy farms would seriously erode Maine's agricultural base.

The Legislature finds that the higher prices paid to Maine milk producers selling on the Maine market result from the state and federal regulatory framework of the milk industry, as well as from actual cost differences which would exist independent of any regulatory framework. Specifically, higher prices on the Maine market are found to derive from cost savings realized by the Maine market producers in transporting milk to local markets, and from a comparatively higher fluid milk, Class I, utilization rate. Whereas, this favorable utilization rate is

made possible by the presence of 2 independently regulated markets which allow the sale of excess Maine production on the Boston market, with the result that such excess is excluded from the calculation of utilization rates on the Maine market, the Legislature finds that the resulting price difference is in the nature of an economic benefit which has arbitrarily accrued to Maine market producers over Boston market producers.

The Legislature finds that it is in the best interest of the Maine dairy industry and the well-being of the State as a whole to adjust prices paid to Maine milk producers to redistribute this benefit among Maine milk producers in both markets. In so doing, it is the intention of the Legislature to eliminate those differences attributable to the higher utilization rates which are a product of the 2 regulated markets.

The Legislature finds that dairy farms in Aroostook, Washington and northern Penobscot Counties presently operate at significantly higher costs because of their remoteness from markets and supplies; that they face greater risks because they operate on a closer margin; that their markets are less secure; and that negative changes in the overall economy have a magnified effect in the northern Maine region.

It is the intent of the Legislature that the reblending of Class I premiums under the Maine Milk Pool created by this chapter be deemed to be the reapportionment of an economic benefit created by regulation in order to smooth out differences in milk prices between different markets and not as a tax on the income of Maine market producers. It is also the interest of the Legislature that deductions from the Maine Milk Pool for promotion be deemed to be deductions from the amounts otherwise payable from the pool to Maine and Boston market producers.

§3152. Definitions

As used in this chapter, unless the context indicates otherwise, the following words have the following meanings.

1. Blend price. "Blend price" means the price of milk per hundredweight computed as the sum of the Class I price multiplied by the percentage of milk sold as Class I milk and the Class II price multiplied by the percentage sold as Class II milk.

2. Boston market dealer. "Boston market dealer" means any dealer as defined in subsection 4 who purchases milk from producers subject to the price regu-

lations of the New England Milk Marketing Order.

3. Boston market producer. "Boston market producer" means any Maine milk producer selling to a dealer marketing milk subject to the New England Milk Marketing Order, or any agricultural cooperative that buys milk from or handles milk for such a producer and sells it to such a dealer.

4. Dealer. "Dealer" means any person or entity who purchases or receives milk from a producer within the State for processing and sale within or outside of the State. A producer-dealer shall be deemed a dealer only with respect to milk purchased from other producers.

5. Maine market dealer. "Maine market dealer" means any dealer as defined in subsection 4 who sells milk subject to the price control authority of the Maine Milk Commission.

6. Maine market producer. "Maine market producer" means any Maine milk producer selling to a dealer marketing milk on the Maine market, or any agricultural cooperative that buys milk or handles milk for such a producer and sells it to such a dealer.

7. Maine Milk Pool. "Maine Milk Pool" means the sum of collections as prescribed in section 3153, from Maine market producers.

8. Northern Maine market producer. "Northern Maine market producer" means any Maine milk producer located in Aroostook County and Washington County, and that portion of Penobscot County north of and including the minor civil divisions of Medway, T.A.R. 7 and Long A T.W.P. selling to a dealer marketing milk on the Maine market, or any agricultural cooperative that buys milk or handles milk for such a producer and sells it to such a dealer.

9. Plant price. "Plant price" means the F.O.B. price paid for milk at a milk processing plant, unless milk received at that plant is first collected at a federal order bulk reload station as defined by Part 1001 Federal Milk Order No. 1 in which case the plant price shall mean the price paid for milk at the reload station after deductions for subsequent transportation.

10. Producer-dealer. "Producer-dealer" means a dealer who himself produces a part or all of his milk or a person who produces milk and sells to a grocery store or dairy products store or similar commercial establishment, and shall include an agricultural

cooperative comprised solely of dairy farmers that wholly owns and operates its processing facilities, and whose individual members hold a share of that ownership which is in direct proportion to that individual's share of all milk produced by cooperative members for the cooperative.

11. Utilization rate. "Utilization rate" means the percentage of milk produced which is utilized as Class I or fluid milk.

§3153. Maine Milk Pool

1. Establishment. Within 180 days after the effective date of this chapter, the commissioner shall promulgate rules establishing a fund to be known as the "Maine Milk Pool," to which all moneys collected from Maine dealers pursuant to subsections 2 and 3 shall be credited. These funds shall be redistributed to eligible Maine market producers and eligible Boston market producers according to procedures, northern Maine market producers established under subsection 4.

2. Collections from dealers. Collections from dealers shall be made as follows.

A. Effective June 1, 1984, each Maine market dealer shall, on a monthly basis, calculate for its Maine market producers the amount of payment that would be payable to its Maine market producers at that dealer's utilization rate, and the amount of payment that would be due its Maine market producers at the applicable utilization rate for the New England Milk Marketing Order. Each Maine market dealer shall make an initial payment to its Maine market producers according to the blend price calculated using the Federal Milk Order utilization rate, but shall comply in all other respects with chapter 603. Any additional payment that would be due its Maine market producers pursuant to that dealer's applicable utilization rate shall be made to the Maine Milk Pool. Based on the fact that northern Maine market producers presently operate at significantly higher costs because of their remoteness from markets and supplies, that they face greater risks because they operate on a closer margin and because their markets are less secure, payments to the Maine Milk Pool attributable to northern Maine market producers shall be reduced by 1/2 and those producers' initial payments under this section shall be increased by the corresponding amounts. The commissioner shall adopt by rule such procedures as are necessary to implement this section.

B. For any month in which the amount of money payable to producers at a dealer's utilization rate would be less than the amount of money payable to that dealer's producers based upon the Boston market utilization rate, the dealer may deduct the difference from his next month's initial payment to producers. Upon the termination of their business relationship, producers shall be liable to dealers for all sums advanced under this paragraph which have not been recouped by way of deduction.

3. Additional collections for promotion. Effective June 1, 1984, each producer-dealer shall on a monthly basis pay to the Maine Milk Pool a promotion fee equal to .6 of 1% for a period of one year ending May 31, 1985, and .8 of 1% thereafter of the average Class I price per hundredweight for milk of 3.5% butterfat content, as established by the Maine Milk Commission during the preceding calendar year, rounded to the nearest 1/10 of 1¢ applied to all milk produced by the producer-dealer. This promotion fee shall be credited to the Maine Dairy Promotion Board, except that 1.5¢ per hundredweight for the first year and 2¢ per hundredweight thereafter shall be paid by the board to the Maine Dairy and Nutrition Council. This promotion fee shall also be paid to the Maine Milk Pool by Maine market dealers on all milk imported for sale within the State and such sums shall be credited in the same manner.

4. Redistribution of pool. The commissioner shall, by rule, adopt such procedures as are necessary to redistribute the Maine Milk Pool on an equal basis to all Maine market producers and Boston market producers, excepting:

A. If any Boston market producer receives a plant price, excluding deductions or additions imposed by the so-called Louisville Plan as defined by Part 1001 Federal Milk Order No. 1 Section 1001.61, Subsections c and d, or any amendment thereto, or imposed by any other seasonal balancing plan subsequently adopted by Federal Order No. 1, which is an amount greater than the amount initially payable to Maine market producers under subsection 2, the commissioner shall credit that additional amount against the redistribution from the Maine Milk Pool to which that producer would otherwise be entitled in order to avoid potential inequities arising from equal redistribution;

B. Should the commissioner determine that payments from the pool will be made to dairies, cooperatives or some other entity as a repre-

sentative of producers, then the dairy, cooperative or other representative shall pay to the producer the amount owed to that producer within such time period as shall be determined by the procedures established by rule under this section;

C. If the credit for any producer calculated under paragraph A exceeds the pool payment due that producer, that producer shall pay an amount equal to the difference into the Maine Milk Pool not to exceed that producer's share of the cost of promotion. The commissioner may provide by rule that these amounts shall be deducted from future pool payments to that producer or that these amounts shall be deducted by that producer's dealer from future payments for that producer's milk and paid over to the Maine Milk Pool by the dealer; and

D. In addition to other available remedies, the commissioner may bring a civil action to collect any amounts owed to the Maine Milk Pool under this chapter.

Should the commissioner determine that payments from the pool will be made to dairies, cooperatives or some other entity as a representative of producers, then the dairy, cooperative or other representative shall pay to the producer the amount owed to that producer within such time period as shall be determined by the procedures established by rule under this section.

§3154. Administration

1. Authority of commissioner. The commissioner may enter into agreement with the Maine Milk Commission or other state agency for administering the provisions of this chapter, and may employ such staff and services as may be necessary.

2. Deductions. Prior to the redistribution of the pool as provided in section 3153, the commissioner shall deduct the following:

A. Amounts sufficient to cover the costs of administering this chapter. Those amounts shall be determined annually and shall be adopted by rule by the commissioner;

B. Amounts paid to the Maine Dairy Promotion Board for the purposes authorized by Title 36, section 4501, equal to .6 of 1% for one year beginning June 1, 1984, and ending May 31, 1985, and .8 of 1% thereafter of the average Class I price per hundredweight for milk of 3.5% butter-

fat content, as established by the Maine Milk Commission during the preceding calendar year, rounded to the nearest 1/10 of 1¢, applied to all milk produced, purchased or imported for sale within the State, excluding milk consumed on the farm where produced. Of the amount credited to the Maine Dairy Promotion Board, 1.5¢ per hundredweight for the first year after the establishment of the pools and 2¢ per hundredweight thereafter shall be paid by the board to the Maine Dairy and Nutrition Council; and

3. Records and information. The commissioner may receive and utilize such reports and other information from any dealer as furnished to the Maine Milk Commission pursuant to section 2956 for the purpose of administering this chapter. The commissioner may also require any dealer purchasing milk from producers who may be eligible for participation in the milk pool to furnish directly such reports and other information as may be necessary to determine the eligibility of those producers and the extent of their participation.

In the event that information requested is not adequately provided by any dealer, the commissioner may require producers who may be eligible for participation in the milk pool to furnish such reports and other information as may be necessary to determine their eligibility and the extent of their participation.

The cost of obtaining information required to determine eligibility and extent of participation shall be shared by all producers as provided in subsection 2, except that added costs incurred in obtaining information directly from a producer whose dealer does not furnish that information shall be assessed to that producer.

The commissioner shall prescribe by rule the form, content and time for filing of any reports which may be required under this section. All reports shall be subject to audit.

§3155. Penalties

Any person who fails to furnish reports required by the commissioner pursuant to section 3155 in a timely fashion shall be subject to the following civil penalties, to be collected by the commissioner in a civil action:

1. First violation. For the first violation, a civil penalty not to exceed \$100; and

2. Subsequent violation. For each subsequent

violation within one year of the first violation, a civil penalty not to exceed \$500.

Persons who violate any other rules promulgated under this chapter shall be subject to a civil penalty not to exceed \$100 to be collected by the commissioner in a civil action. All penalties collected by the commissioner shall be paid to the Treasurer of State for deposit to the General Fund.

§3156. Transportation allowances

The commissioner shall annually conduct a study investigating the costs of transporting milk from producers' farms to dairy processing plants and shall examine existing and practicably achievable cost efficiencies by market areas as defined by the Maine Milk Commission pursuant to section 2951, subsection 5. Based upon that study, the commissioner shall annually recommend a schedule of maximum allowable transportation charges to the Maine Milk Commission.

Sec. 5. 36 MRSA §4503, as repealed and replaced by PL 1979, c. 452, §2, is repealed and the following enacted in its place:

§4503. Maine Dairy Promotion Board

There is established the Maine Dairy Promotion Board, consisting of the following 5 members: The Commissioner of Agriculture, Food and Rural Resources or his designee, who shall serve ex officio, and 4 producers.

The producer members shall be appointed by the commissioner on recommendation of the various producer associations, individuals or unorganized groups of producers in the State. The 4 producer members shall include 2 producers selling milk on the Maine market and 2 producers selling milk on the Boston market, Federal Milk Marketing Order No. 1. Producer members selling in the same market shall not belong to the same agricultural cooperative or sell their milk to the same dealer.

The first 4 members appointed to the board as reconstituted in this section shall serve one-year, 2-year, 3-year and 4-year terms respectively. The members appointed thereafter shall serve 4-year terms. No person may be appointed to consecutive 4-year terms. In case of a vacancy caused by death, resignation or otherwise, the vacancy shall be filled by the commissioner for the unexpired period of the term.

The appointed members shall be allowed actual traveling and other necessary expenses incurred in the performance of their duties and each member shall receive a per diem compensation for the time actually spent in the performance of his duties. This compensation shall be determined by the Governor.

The members of the board shall elect a chairman. The commissioner may employ a director and such clerks and assistants as he may deem necessary and may prescribe their duties and fix their compensation, subject to the Personnel Law.

Sec. 6. 36 MRSA §4503-A is enacted to read:

§4503-A. Powers and duties

The board may:

1. Contracts. Make contracts or enter into contracts with any local, state, federal or private agency, department, firm, corporation or association for the purposes defined in this chapter;

2. Cooperation with other agencies. Cooperate with other state or regional agencies with like purposes, including transferring to those agencies any portion of its receipts that it deems appropriate and in the best interests of the dairy industry in Maine. In determining those amounts, the board shall consider the relative benefits accruing to all Maine producers from increased fluid milk consumption within the Maine market and the New England market, Federal Milk Marketing Order No. 1; the relative effectiveness of the various programs intended to increase fluid milk consumption for which funding is being considered; appropriate research needs; and other considerations pertinent to the distribution of its funds to other agencies for cooperative efforts;

3. Books and records. Keep books, records and accounts of all its activities, which shall be open to inspection and audit by the State at all times;

4. Annual report. Prepare an annual report which shall include a summary of all receipts and expenditures, including expenditures for specific promotional or research programs; a description of the various promotional or research programs operated, contracted or sponsored by the board; and a directory of current board members, including their affiliation and term of office; and

5. Outside funding. Accept grants, donations and gifts of funds for purposes defined in this chapter.

Sec. 7. 36 MRSA §4505, as repealed and replaced by PL 1979, c. 452, §3, is repealed.

Sec. 8. 36 MRSA §4506, as repealed and replaced by PL 1979, c. 452, §4, is repealed.

Sec. 9. 36 MRSA §4507, as amended by PL 1979, c. 452, §5, is repealed.

Sec. 10. 36 MRSA §4509, as repealed and replaced by PL 1981, c. 698, §185, is repealed.

Sec. 11. 36 MRSA §4510, as repealed and replaced by PL 1981, c. 364, §52, is repealed.

Sec. 12. 36 MRSA §4512, as repealed and replaced by PL 1981, c. 364, §53, is repealed.

Sec. 13. 36 MRSA §4523, as amended by PL 1977, c. 564, §133, is repealed and the following enacted in its place:

§4523. Organization

The Maine Dairy and Nutrition Council, as established within the Department of Agriculture, Food and Rural Resources, shall consist of the following 5 members: Four producers and one dealer to be appointed by the Commissioner of Agriculture, Food and Rural Resources on recommendation of the various producer and dealer associations, individuals or unorganized groups of producers and dealers in this State.

The 4 producer members shall include 2 members selling milk on the Maine market and 2 members selling milk on the Boston market, Federal Milk Market Order No. 1. Producer members selling in the same market shall not belong to the same agricultural cooperative or sell their milk to the same dealer.

The first 4 members appointed to the council as reconstituted in this section shall serve one-year, 2-year, 3-year and 4-year terms respectively. All subsequent appointments to the council as reconstituted in this section shall be for a 4-year term. No person may be appointed to consecutive 4-year terms. In case of a vacancy caused by death, resignation or otherwise, the vacancy shall be filled by the commissioner for the unexpired period of the term.

The members of the council shall elect a chairman. The commissioner may employ such personnel for the council as he deems necessary, subject to the Personnel Law.

Members of the council shall be allowed actual traveling and other necessary expenses incurred in the performance of their duties and each member shall receive a per diem compensation for the time actually spent in the performance of his duties, that compensation to be determined by the Governor. The cost of administration of the council, including expenses and compensation of members, shall not exceed the moneys collected under this chapter. The council shall be furnished a suitable office in the State Capitol together with all necessary equipment and supplies therefor.

Sec. 14. 36 MRSA §4524 and 4525, as enacted by PL 1975, c. 444, §6, are repealed.

Sec. 15. 36 MRSA §4526, as amended by PL 1977, c. 694, §715, is repealed.

Sec. 16. 36 MRSA §4528, as amended by PL 1981, c. 364, §54, is repealed.

Sec. 17. 36 MRSA §4529, as repealed and replaced by PL 1981, c. 364, §55, is repealed.

Sec. 18. 36 MRSA §4530, as amended by PL 1979, c. 541, Pt. A §226, is repealed.

Sec. 19. 36 MRSA §4531, as repealed and replaced by PL 1981, c. 364, §56, is repealed.

Sec. 20. Transition clause. For a period of one year beginning June 1, 1984, and ending May 31, 1985, payments made into the Maine Milk Pool as provided for in this Act, shall be calculated as follows:

1. The actual amounts paid to the Maine Milk Pool shall be 1/2 the amount provided for in Title 7, section 3153, and initial payments to Maine market producers provided for in that section shall be increased by the amount paid to the Maine Milk Pool under these transition provisions; and

Sec. 21. Effective date. Sections 7 to 12 and sections 14 to 19 shall become effective June 1, 1984.

Effective September 23, 1983, unless otherwise indicated.

CHAPTER 574

H.P. 1327 - L.D. 1762

AN ACT to Establish the Maine
Environmental Protection Fund.