

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

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1987

Sec. 7. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

LEGISLATURE

1987-88

Site Selection Advisory Committee

All Other \$6,250

These funds shall not lapse, but shall be carried forward to be expended for the same purpose.

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

Effective June 26, 1987.

CHAPTER 446

H.P. 775 — L.D. 1047

AN ACT to Repeal the Mandatory Brucellosis Vaccination for Cattle.

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

Whereas, Maine is a brucellosis-free State and has been free from brucellosis for several years;

Whereas, the requirement to vaccinate cattle is unnecessary, costly and causes hardship for dealers buying and selling cattle to support Maine farmers; and

Whereas, the requirement must be lifted immediately to eliminate the unnecessary restriction of interstate trade; 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Sec. 1. 7 MRSA §1812, 2nd ¶, as amended by PL 1985, c. 545, is repealed.

Sec. 2. 7 MRSA §1812, 3rd ¶, as enacted by PL 1981, c. 197, § 2, is repealed and the following enacted in its place:

Female cattle brought into the State may enter without having been vaccinated for brucellosis, provided they are imported from brucellosis-free states and countries. In order to import female cattle over 120

days of age from class A and B states as defined in the 9 Code of Federal Regulations, Part 78, those cattle must be vaccinated for brucellosis before entering the State.

Sec. 3. Allocation. The following funds are allocated from Other Special Revenue Funds to carry out the purposes of this Act.

1987-88 1988-89

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Bureau of Agricultural Production

Personal Services (\$5,000) (\$5,000)

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

Effective June 26, 1987.

CHAPTER 447

H.P. 1274 — L.D. 1741

AN ACT to Better Accommodate Over-order Milk Pricing.

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

Whereas, the status of any over-order premium under the milk pooling law is uncertain; and

Whereas, a producer marketing cooperative proposes to implement an over-order premium on milk throughout the northeastern states, which over-order premium may be inaugurated prior to 90 days after adjournment; and

Whereas, the implementation of an over-order premium without this legislation in effect may result in an excess amount of the over-order premium paid by Maine milk dealers on Maine milk being actually received by milk producers in other states; 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 §2954, sub-§1, as amended by PL 1977, c. 694, §140, is repealed and the following enacted in its place:

1. Commission empowered to establish prices; pub-

lic hearing. The commission is vested with the power to establish and change, after investigation and public hearing, the minimum wholesale and retail prices to be paid to producers, dealers and stores for milk received, purchased, stored, manufactured, processed, distributed or otherwise handled within the State. The commission shall hold a public hearing prior to the establishing or changing of such minimum prices. The commission may proceed, however, under the emergency rule-making provisions of Title 5, section 8054 without making findings of emergency when the only changes to be made in the minimum prices are to conform with the orders of any federal or other agency duly authorized by law to establish or negotiate producer prices or are to respond to other conditions affecting prevailing Class I and Class II prices in southern New England. Title 5, section 8054, subsection 3, the second sentence, does not apply to minimum prices adopted under the previous sentence. Due notice of the public hearing shall be given by publishing notice as provided in Title 5, chapter 375. The commission shall hold such a public hearing not less frequently than once every 12 months to determine whether the minimum wholesale and retail prices then established should be changed. In addition to the data received through the implementation of the information gathering procedures of its rules as a basis for its determinations, the commission shall solicit and seek to receive oral and written testimony at hearings to determine whether the minimum wholesale and retail prices then established should be changed and whether the proposed minimum wholesale and retail prices are just and reasonable.

Sec. 2. 7 MRSA §2954-A, sub-§2, as enacted by PL 1985, c. 172, is amended to read:

2. Balance due. Each dealer shall make payment to his producers for the balance due for milk received during that month as follows.

A. On or before the 20th day after the end of that month, each dealer shall pay his producers the amount calculated as the initial payment according to the Maine Milk Pool statute, section 3153, subsection 2, paragraph A, and Milk Pool rules, minus the amount of the payment made to the producer under subsection 1.

B. On or before the 5th day after the end of the month in which the payments required by section 1 and paragraph A are made, each dealer shall pay each of his producers any sums received on behalf of his producers pursuant to the Maine Milk Pool statute, section 3153, subsection 4 and Milk Pool rules.

This subsection does not apply to any over-order premium established by the commission as part of the minimum wholesale prices to producers for any month in which section 3153, subsection 2, paragraph C and section 3153, subsection 5, paragraphs A and B are operational.

Sec. 3. 7 MRSA §3151, as enacted by PL 1983, c. 573,

§4, is amended by adding at the end a new paragraph to read:

In addition to the above findings and as a result of the possible implementation of an over-order premium to be paid to milk producers, the Legislature finds that legislation is necessary to ensure that such a premium is distributed in a manner which is most advantageous and most equitable for all Maine milk producers and intends to achieve that result by enacting the provisions of this chapter relating to over-order pricing. The Legislature also finds that while the pooling and redistribution of such a premium as provided in this chapter is in the best interest of all Maine milk producers, it intends that redistribution to be a separate and distinct purpose and function of the Maine Milk Pool not essential to the purpose and function of the pool as originally enacted.

Sec. 4. 7 MRSA §3152, sub-§1, as enacted by PL 1983, c. 573, §4, is amended to read:

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. The blend price shall be separately calculated for the base minimum price and the over-order premium.

Sec. 5. 7 MRSA §3152, sub-§§1-A, 4-A and 8-A are enacted to read:

1-A. Base minimum price. "Base minimum price" means such part of the minimum Class I and Class II prices established by the Maine Milk Commission pursuant to chapter 603 as corresponds to Class I and Class II prices established pursuant to the New England Milk Marketing Order.

4-A. Eligible marketing cooperative. "Eligible marketing cooperative" means an association of milk producers organized to negotiate producer prices higher than the minimum producer prices established pursuant to the New England Milk Marketing Order and which the commissioner has determined will not, through its operation, evade, impair or undermine the purposes of this chapter. Notwithstanding Title 4, section 1151, subsection 2 and Title 5, section 10051, subsection 1, the commissioner may revoke the eligible status of a marketing cooperative upon a determination that it has through its operation evaded, impaired or undermined the purposes of this chapter.

8-A. Over-order premium. "Over-order premium" means such part of the minimum Class I and Class II prices established by the Maine Milk Commission pursuant to chapter 603, as exceeds the applicable Class I and Class II prices established pursuant to the New England Milk Marketing Order.

Sec. 6. 7 MRSA §3153, sub-§2, as enacted by PL 1983, c. 573, §4, is amended to read:

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 at the base minimum price that would be payable to its Maine market producers at according to the blend price calculated using that dealer's utilization rate, and the amount of payment at the base minimum price that would be due its Maine market producers at according to the blend price calculated using the applicable utilization rate for the New England Milk Marketing Order. Each Maine market dealer shall make an initial payment at the base minimum price 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 at the base minimum price 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 at the base minimum price 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 the base minimum price at a dealer's utilization rate would be less than the amount of money payable to that dealer's producers at the base minimum price based upon the Boston market utilization rate, the dealer may deduct the difference from his next month's initial payment to producers at the base minimum price. 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.

C. For any month in which the Maine Milk Commission has established minimum prices payable to producers that include an over-order premium which the commission has determined is attributable to the activity of an eligible marketing cooperative, this paragraph shall apply. Each Maine market dealer shall, on a monthly basis, calculate for its Maine market producers the amount of payment from the over-order premium that would be payable to its Maine market producers according to the blend price calculated using that dealer's utilization rate. With respect to those producers who have designated an eligible marketing cooperative to receive the over-order premium, the dealer shall make the payment to the eligible marketing cooperative. With respect to those producers who have not designated an eligible marketing cooperative

to receive the over-order premium, the dealer shall make the payment into the Maine Milk Pool. In making the payments required by this paragraph, Maine market dealers shall comply in all other respects with chapter 603.

D. For any month in which the Maine Milk Commission has established minimum prices payable to producers that include an over-order premium which the commission has determined is not attributable to the activity of an eligible marketing cooperative, the over-order premium shall not be pooled.

Sec. 7. 7 MRSA §3153, sub-§4, as enacted by PL 1983, c. 573, §4, is repealed and the following enacted in its place:

4. Redistribution of pool; base minimum price. The commissioner shall, by rule, adopt such procedures as are necessary to redistribute payments into the Maine Milk Pool at the base minimum price on an equal basis to eligible Maine market producers and eligible Boston market producers, except that:

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, paragraph A, 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. 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 base minimum price pool payments to that producer or from over-order premium 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

C. If the commissioner determines 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 subsection.

Sec. 8. 7 MRSA §3153, sub-§5 is enacted to read:

5. Redistribution of pool; over-order premium. Redistribution of the pool and the following over-order premiums apply.

A. Subject to paragraph C, for any month in which subsection 2, paragraph C is in effect, the commissioner shall pay those Maine market producers whose over-order premium was paid into the Maine Milk Pool a redistribution on their milk. In calculating the rate of this redistribution and the timing of its payment, the commissioner shall attempt to achieve, insofar as practicable, an initial redistribution of the over-order premium which ensures that Maine producers who are not members of eligible marketing cooperatives receive an initial redistribution equivalent to that received by Maine producers who are members of eligible marketing cooperatives. The commissioner shall consider the following factors:

- (1) The gross rate of redistribution used by eligible marketing cooperatives to calculate payment to their members;
- (2) Reasonable administrative and other charges deducted by eligible marketing cooperatives from the redistributions made to their members;
- (3) The timing of the redistributions made by an eligible marketing cooperative to its members; and
- (4) Such other factors as may be relevant to the goal of achieving, insofar as practicable, price equity among producers.

B. The commissioner shall redistribute the remainder of the over-order premium paid into the Maine Milk Pool on an equal basis to eligible Maine market producers and eligible Boston market producers; except that if any Maine market producer or Boston market producer receives an additional premium other than one attributable to the activity of an eligible marketing cooperative, the commissioner shall credit that additional premium against the redistribution to which that producer would otherwise be entitled under this paragraph in order to avoid potential inequities arising from equal redistribution.

C. If the commissioner determines that the basis for redistribution adopted by an eligible marketing cooperative is disadvantageous to Maine producers belonging to that cooperative, that the cooperative has not made redistributions to its Maine members in a timely manner or that the administrative or other fees deducted by the cooperative from redistributions to its member are excessive, unjust or unreasonable, he may commence proceedings to revoke the eligible status of the cooperative pursuant to section 3152, subsection 6.

D. The commissioner shall, by rule, adopt such procedures as are necessary to implement this subsection. If the commissioner determines 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 is determined by the procedures established by rule under this subsection.

Sec. 9. 7 MRSA §3154, sub-§4 is enacted to read:

4. Interest on over-order premiums. Interest earned on over-order premiums paid into the Maine Milk Pool pursuant to section 3153, subsection 2, paragraph C, shall be credited to the pool. At least annually, the commissioner shall pay accrued interest on an equal basis to eligible Maine market and Boston market producers.

Sec. 10. 7 MRSA §3154, as enacted by PL 1983, c. 573, §4, is amended by adding before the last paragraph a new paragraph to read:

An eligible marketing cooperative, or an organization applying for recognition as an eligible marketing cooperative, shall furnish the commissioner all information, records and reports necessary for the commissioner to determine and monitor the cooperative's initial eligibility and its ongoing compliance with this chapter. In addition to any other available remedies, the commissioner may commence proceedings pursuant to section 3152, subsection 6, to revoke the eligible status of a cooperative which willfully fails to provide information, records or reports requested by the commissioner.

Sec. 11. 7 MRSA §3155, last ¶, as enacted by PL 1983, c. 573, §4, is amended to read:

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. 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.

Sec. 12. 7 MRSA §3155-A is enacted to read:

§3155-A. Predatory behavior of eligible marketing cooperative prohibited

1. Violations. No eligible marketing cooperative may:

A. Collect or attempt to collect from a Maine market dealer, directly or indirectly, all or any part of an over-order premium with respect to the milk of a Maine market producer who has not designated that cooperative to receive the over-order premium pursuant to section 3153, subsection 2, paragraph C;

B. Collect or attempt to collect from a Maine market dealer, directly or indirectly, any handling charge, fee or other payment in lieu of an over-order premium

which the cooperative is barred from collecting under paragraph A;

C. Discriminate against any Maine market dealer making payments in accordance with section 3153, subsection 2, paragraph C, in the marketing of its members' milk based in whole or in part on the extent to which the dealer's producers have joined or refused to join the cooperative; or

D. Collect or attempt to collect all or any part of an over-order premium from a Maine market dealer prior to determination of its eligibility or during any period for which its eligible status has been revoked by the commissioner.

2. Civil penalties. Each violation of this section is punishable by a civil penalty not to exceed \$2,000 for a first violation and \$5,000 for each subsequent violation, which penalties may 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 into the General Fund.

3. Injunctive relief. The Superior Court shall have jurisdiction upon complaint filed by the commissioner to restrain or enjoin any person from committing any act prohibited by subsection 1 or from violating any order or decision issued by the commissioner pursuant to subsection 4. The commissioner shall not be required to post a bond when applying for an injunction under this subsection.

4. Administrative enforcement. When the commissioner, after such investigation as he deems appropriate, believes that a violation of this section has occurred, he may order the eligible marketing cooperative to cease that violation. In lieu of, or in addition to, such an order and notwithstanding Title 4, section 1151, subsection 2 and Title 5, section 10051, subsection 1, the commissioner may also revoke the eligible status of the cooperative for purposes of this chapter for a period not to exceed one year for a first violation, 2 years for a 2nd violation and permanently for a 3rd or subsequent violation. Before issuing such an order or revoking a cooperative's eligibility, the commissioner shall afford the cooperative an opportunity for a hearing. Any person aggrieved by a final order or decision issued under this subsection may obtain judicial review in Superior Court by filing a petition in accordance with Title 5, section 11001 and the Maine Rules of Civil Procedure, Rule 80C. In responding to such a petition, the commissioner may seek enforcement of his order or decision, including civil penalties for any violation found and the court, if it upholds the order or decision, may order its enforcement, including civil penalties.

Nothing in this section is intended to require that the commissioner take administrative enforcement action prior to seeking judicial relief for any violation of this section or is intended to limit the commissioner's ability to bring an independent action to enforce any decision

or order issued by him, including civil penalties for any violation found by him.

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

Effective June 26, 1987.

CHAPTER 448

H.P. 1286 — L.D. 1762

AN ACT to Ensure Safe Abatement of Asbestos Hazards.

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

Whereas, the identification and correction of asbestos-related problems in public and private buildings are a matter of significant concern as a public health hazard; and

Whereas, the State is undertaking a major asbestos identification and removal program financed with bonds approved in public referendum; and

Whereas, it is critical to the safe and effective conduct of asbestos identification, encapsulation, removal, handling and disposal activities that trained and qualified personnel from the public and private sectors be employed; 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. 5 MRSA §282, sub-§5 is amended to read:

5. Other powers and duties. To exercise such other powers and perform such other duties as may be designated by statute law;

Sec. 1-A. 5 MRSA §282, sub-§6, as enacted by PL 1983, c. 553, §1, is amended to read:

6. Supervise. To supervise and direct the administration of the State Claims Board; and

Sec. 1-B. 5 MRSA §1877, sub-§9 is enacted to read:

9. Asbestos abatement. The commission shall authorize the expenditure of funds for the abatement of asbestos-related hazards in buildings used by the courts of the State.