

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
OCTOBER 9, 1991

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

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J.S. McCarthy Company  
Augusta, Maine  
1991

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**PUBLIC LAWS**  
**OF THE**  
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**FIRST REGULAR SESSION**

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**1991**

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**§807. Commission rules**

The commission may adopt rules pursuant to the Maine Administrative Procedure Act to implement the requirements of this chapter.

**§808. Penalties**

Violation of this chapter is a violation of the Maine Unfair Trade Practices Act.

See title page for effective date.

**CHAPTER 525**

H.P. 1340 - L.D. 1932

**An Act to Correct a Conflict in the Law Relating to Sentencing Considerations and Appellate Review**

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

**Whereas,** recent decisions of the Maine Supreme Judicial Court indicate that legislative clarification of sentencing criteria and the role of a reviewing court is essential; 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**Sec. 1. 15 MRSA §2154, sub-§1,** as enacted by PL 1989, c. 218, §5, is repealed and the following enacted in its place:

1. Sentence correction. To provide for the correction of sentences imposed without due regard for the sentencing factors set forth in this chapter;

**Sec. 2. 15 MRSA §2155,** as enacted by PL 1989, c. 218, §5, is amended to read:

**§2155. Factors to be considered by Supreme Judicial Court**

In reviewing a criminal sentence, the Supreme Judicial Court ~~is authorized to~~ shall consider:

**1. Propriety of sentence.** The propriety of the sentence, having regard to the nature of the offense, the character of the offender, ~~and~~ the protection of the public inter-

est, the effect of the offense on the victim and any other relevant sentencing factors recognized under law; and

**2. Manner in which sentence was imposed.** The manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.

**Sec. 3. 15 MRSA §2156, sub-§1,** as enacted by PL 1989, c. 218, §5, is repealed.

**Sec. 4. 15 MRSA §2156, sub-§1-A** is enacted to read:

1-A. Remand. If the Supreme Judicial Court determines that relief should be granted, it must remand the case to the court that imposed the sentence for any further proceedings that could have been conducted prior to the imposition of the sentence under review and for resentencing on the basis of such further proceedings provided that the sentence is not more severe than the sentence appealed.

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

Effective June 30, 1991.

**CHAPTER 526**

H.P. 598 - L.D. 849

**An Act to Stabilize the Maine Dairy Industry**

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

**Whereas,** the producer price of milk has dropped approximately 40% as a result of a milk surplusage west of the Mississippi River; and

**Whereas,** the magnitude of these price fluctuations jeopardizes the economic viability and stability of the Maine dairy industry and Maine agriculture as a whole; and

**Whereas,** the Maine dairy industry is essential to the viability of the State's rural communities and contributes to the general welfare of the State by generating business activity and employment and preserving open space and other benefits for the people of Maine; and

**Whereas,** helping to stabilize the Maine dairy industry during temporary periods of price fluctuations constitutes a public purpose and an appropriate expenditure of tax revenues; 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 repealed and replaced by PL 1987, c. 447, §1, is amended to read:

**1. Commission empowered to establish prices; public 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 ~~and~~ Class III prices in southern New England, or reflect the Maine Dairy Farm Stabilization Tax as determined by Title 36, chapter 708-A. 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~~ must 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, sub-§2, ¶B,** as repealed and replaced by PL 1975, c. 517, §3, is amended to read:

B. The minimum wholesale prices paid to dealers ~~shall~~ must be established to reflect the lowest prices at which milk purchased from ~~Maine~~ Maine producers in this State at ~~Maine~~ Maine minimum prices in the State can be received, processed, packaged and distributed within the State of ~~Maine~~ at a just and reasonable return, and in addition must include the amount of any tax determined by Title 36, chapter 708-A.

**Sec. 3. 7 MRSA §2954, sub-§§13 and 14** are enacted to read:

**13. Report to State Tax Assessor.** The Maine Milk Commission shall report before the first of each month to

the State Tax Assessor the basic price of milk established for that month as defined in Title 36, chapter 708-A.

**14. Effective date of certain prices; repeal.** Any new minimum wholesale prices paid to dealers and new minimum retail prices established pursuant to this section are effective on the first Sunday of the calendar month. This subsection is repealed on November 7, 1993.

**Sec. 4. 36 MRSA c. 708-A** is enacted to read:

## CHAPTER 708-A

### MAINE DAIRY FARM STABILIZATION ACT

#### §4541. Short title

This chapter may be known and cited as the "Maine Dairy Farm Stabilization Act."

#### §4542. Definitions

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

**1. Basic price.** "Basic price" means the minimum Class I price of milk established pursuant to Title 7, chapter 603 including that part of the Class I price that exceeds the applicable Class I price established pursuant to the New England Milk Marketing Order, except such part of the Class I price established by the Maine Milk Commission to reflect the cost factors provided in Title 7, section 2954, subsection 2 or the increased costs of production pursuant to Title 7, section 2954, subsection 2, paragraph A.

**2. Handler.** "Handler," with respect to a particular container of packaged milk, means the wholesale handler or, if none, the retail handler.

**3. Milk.** "Milk" has the same meaning as in Title 7, section 2951, subsection 6.

**4. Packaged milk.** "Packaged milk" means milk that has been processed and placed in containers for ultimate sale to consumers.

**5. Person.** "Person" means any individual, partnership, firm, corporation, association or other unit and the State and all political subdivisions or agencies of the State.

**6. Retail handler.** "Retail handler" means any person who handles packaged milk in this State that is next sold in this State subject to the retail minimum prices established pursuant to Title 7, chapter 603.

**7. Tax period.** "Tax period" means the period beginning the first Sunday of the calendar month and continuing through the Saturday prior to the first Sunday of the following calendar month.

**8. Wholesale handler.** "Wholesale handler" means any person who handles packaged milk in this State that is next sold in this State subject to the minimum wholesale prices paid to dealers established pursuant to Title 7, chapter 603.

**§4543. Maine Dairy Farm Stabilization Tax**

**1. Tax.** An excise tax is levied and imposed at the rate established in subsection 2 on the handling in this State of packaged milk for sale in this State. With respect to the handling in this State of a particular container of packaged milk for sale in this State, the tax must be paid by the wholesale handler or, if there is no wholesale handler with respect to that container of packaged milk, by the retail handler. There is no tax on the handling in this State of packaged milk for sale that never becomes subject to minimum retail prices that have been established pursuant to Title 7, chapter 603.

**2. Rate.** The rate of the tax levied under this chapter is established for each tax period on the basis of the basic price of milk in effect on the first day of the tax period in accordance with the following chart:

<u>Basic Price</u>	<u>Rate of Maine Dairy Farm Stabilization Tax</u>
<u>\$16.00 per hundredweight and above</u>	<u>0¢ per quart</u>
<u>\$15.50 to \$15.99 per hundredweight</u>	<u>1¢ per quart</u>
<u>\$15.00 to \$15.49 per hundredweight</u>	<u>2¢ per quart</u>
<u>\$14.50 to \$14.99 per hundredweight</u>	<u>3¢ per quart</u>
<u>\$14.00 to \$14.49 per hundredweight</u>	<u>4¢ per quart</u>
<u>below \$14.00 per hundredweight</u>	<u>5¢ per quart</u>

For any container other than a quart, the tax is computed on a quart equivalent basis.

**3. Calculation of tax.** Handlers shall pay the tax for each tax period on all milk subject to the tax, sold during the tax period, and either:

A. Subject to the minimum wholesale prices paid to dealers established by the Maine Milk Commission pursuant to Title 7, chapter 603; or

B. Not subject to minimum wholesale prices paid to dealers but subject to minimum retail prices established by the Maine Milk Commission pursuant to Title 7, chapter 603.

In calculating the amount of packaged milk handled for sale in this State each tax period, the handler shall deduct any packaged milk returned to the handler during that tax period.

**4. Report.** By February 15th of each year, the Commissioner of Agriculture, Food and Rural Resources shall submit a report to the joint standing committee of the Leg-

islature having jurisdiction over agricultural matters describing the total amount of tax collected and distributed under this chapter during the 12 preceding tax periods, the prices for milk then prevailing on the Maine and Boston markets, the supply and demand for milk in this State and New England and the present condition and future prospects of the State's dairy industry. The commissioner shall include recommendations, if any, concerning changes in the rates of the Maine Dairy Farm Stabilization Tax.

**5. Tax as additional.** Any tax imposed and collected under this chapter is in addition to any other taxes imposed or collected under any other law of the State.

**6. Records, reports and administration.** Every handler subject to the tax imposed under subsection 1 shall register with the State Tax Assessor within 5 business days of becoming subject to the tax and annually thereafter on forms provided by the State Tax Assessor. The list of handlers so registered is available to the public. By the 25th day of each calendar month, every handler subject to the tax imposed under subsection 1 shall report to the State Tax Assessor the quantity of packaged milk handled in this State for sale in this State during the preceding tax period, the quantity of packaged milk handled that was subject to the Maine Dairy Farm Stabilization Tax and any other information the State Tax Assessor determines necessary or useful in the administration of this chapter and enforcement of the Maine Dairy Farm Stabilization Tax.

**7. Due dates.** Handlers shall pay to the State Tax Assessor the tax due for the preceding tax period not later than the 25th day of each calendar month and submit any information required by the State Tax Assessor on the forms provided.

**8. Presumption.** In any proceeding against a retail handler for collection of the tax with respect to any particular container of packaged milk, there is a rebuttable presumption that that retail handler did not purchase that container in a transaction subject to the minimum wholesale prices paid to dealers established pursuant to Title 7, chapter 603. The burden is on the retail handler to show that the retail handler purchased that container of packaged milk in a transaction subject to minimum wholesale prices paid to dealers established pursuant to Title 7, chapter 603.

**§4544. Maine Dairy Farm Stabilization Fund**

**1. Fund created.** The State Tax Assessor shall immediately pay all funds received from the Maine Dairy Farm Stabilization Tax to the Treasurer of State. The Treasurer of State shall keep these funds and all other funds appropriated by the Legislature for the purposes of this chapter in a separate account called the Maine Dairy Farm Stabilization Fund. The Treasurer of State shall invest all money credited to the fund in accordance with applicable provisions of law and all earnings must be credited to the fund. The funds must be invested in a manner that ensures that all deposits and earnings are available for withdrawal on a

monthly basis without penalty. Revenue credited to the fund, including interest accrued by investment of the fund, must be used solely for the purposes of this chapter as provided in subsection 2. The funds credited to the fund do not lapse.

**2. Distribution.** All funds collected under this chapter and all other funds appropriated by the Legislature for the purposes of this chapter and interest earnings on these funds must be distributed by the Treasurer of State on a monthly basis as follows.

A. Ninety-four percent of the funds collected under this chapter and all other funds appropriated by the Legislature for the purposes of this chapter and any earnings on these funds must be paid each month to the Commissioner of Agriculture, Food and Rural Resources for distribution to Maine market producers and Boston market producers equally per hundredweight on the basis of their production during the prior month. Such payments to producers must be made by the 20th day of the month following the month that payment of the tax is due. A payment may not be allocated to that portion of a producer's milk production that is in excess of 400,000 pounds per month. Notwithstanding any other provisions of law, the funds distributed to producers under this paragraph are allotted for the purposes of this paragraph and the Commissioner of Agriculture, Food and Rural Resources or the Maine Milk Pool administrator pursuant to Title 7, section 3154, as the commissioner's designee, is authorized to prepare and sign warrants for the payment of the amounts due to producers from the Maine Dairy Farm Stabilization Fund under this chapter.

B. Four percent of the funds collected each month must be paid into a separate, nonlapsing account to be allocated by the Legislature on an annual basis to supplement the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966 administered by the Department of Human Services.

C. Two percent of the fund must be paid into a separate, nonlapsing account to be allocated by the Legislature on an annual basis to cover the actual costs of the administration and enforcement of this chapter by the Treasurer of State, the State Tax Assessor, the Attorney General and the Commissioner of Agriculture, Food and Rural Resources. Any remaining balance of this account after these allocations must be redeposited in the Maine Dairy Farm Stabilization Fund for distribution to producers.

**§4545. Penalties**

Notwithstanding section 187, any person who fails to file a return required under this chapter, files a return that is materially incorrect or fails to pay the tax due under this

chapter is liable for a penalty not to exceed \$25,000 or 25% of the tax due, whichever is greater. This penalty is applied separately for each month that the person fails to file a return required under this chapter, files a return under this chapter that is materially incorrect or fails to pay the tax due under this chapter. In any action to enforce this chapter, the person liable for the payment of the tax shall in addition pay all costs of enforcement, including attorney's fees.

**§4546. Nonseverability**

If a court of competent jurisdiction in a final judgment not subject to appeal determines that any handler handling packaged milk in this State for sale in this State is not subject to the Maine Dairy Farm Stabilization Tax, then the Maine Dairy Farm Stabilization Tax does not apply to the handling of packaged milk in this State for sale in this State by any other handler and all handlers are relieved of all obligations under this chapter.

**§4547. Repeal**

This chapter is repealed on November 7, 1993.

**Sec. 5. Allocation.** The following funds are allocated from the Maine Dairy Farm Stabilization Fund to carry out the purposes of this Act.

	1991-92	1992-93
<b>AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF</b>		
<b>Maine Dairy Farm Stabilization Fund</b>		
All Other	\$4,136,000	\$4,512,000
Provides funds for distribution to Maine market producers and Boston market producers on the basis of production.		
<b>Maine Dairy Farm Stabilization - Administration</b>		
All Other	\$72,707	\$90,482
Provides funds for the administration and enforcement of the Maine Dairy Farm Stabilization Act.		
<b>DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES TOTAL</b>	<b>\$4,208,707</b>	<b>\$4,602,482</b>
<b>FINANCE, DEPARTMENT OF</b>		
<b>Bureau of Taxation</b>		
Personal Services	\$2,700	\$2,835
All Other	4,513	2,683
Capital Expenditures	8,080	

Provides funds for 4 Tax Examiner positions for 5 weeks per year and general operating expenses to track revenue, contact taxpayers and perform follow-up assistance.

DEPARTMENT OF FINANCE		
TOTAL	\$15,293	\$5,518
HUMAN SERVICES, DEPARTMENT OF		
Bureau of Health		
All Other	\$176,000	\$192,000
Provides funds for the Women, Infants and Children Special Supplemental Food Program.		
DEPARTMENT OF HUMAN SERVICES		
TOTAL	\$176,000	\$192,000
TOTAL ALLOCATIONS	\$4,400,000	\$4,800,000

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect on August 1, 1991.

Effective August 1, 1991.

**CHAPTER 527**

**S.P. 743 - L.D. 1935**

**An Act to Change the State Payment for Health Insurance Benefits for New State Employees with Less than 10 Years of Service and Provide for a Study of Retirement Benefits Provided to New Employees**

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

**Whereas,** changes in the Maine State Retirement System have been suggested as a means of reducing expenditures; and

**Whereas,** changes should not be made without the opportunity for study and identification of the implications of the proposed changes; and

**Whereas,** the study must be completed in time to provide useful information to the Legislature; 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 §285, sub-§8,** as amended by PL 1989, c. 776, §1, is further amended to read:

**8. Payment by Maine State Retirement System for persons who retire before July 1, 1991.** The For persons who were first employed before July 1, 1991, the Maine State Retirement System shall pay 100% of only the retiree's share of the premiums for this health plan for persons who were previously eligible for this health plan pursuant to subsection 1, paragraph A and who have subsequently become eligible pursuant to subsection 1, paragraph G.

**Sec. 2. 5 MRSA §285, sub-§8-A** is enacted to read:

**8-A. Payment by Maine State Retirement System for persons employed after July 1, 1991.** For persons who were first employed by the State after July 1, 1991, the Maine State Retirement System shall pay a pro rata portion of only the retiree's share of the premiums, as described in this section, for this health plan for persons who were previously eligible for this health plan pursuant to subsection 1, paragraph A and who have subsequently become eligible pursuant to subsection 1, paragraph G based on the total number of years of participation in the group health plan prior to retirement as follows.

<u>Years of Participation</u>	<u>State Portion</u>
<u>10 or more years</u>	<u>100% group health plan premium</u>
<u>9 but less than 10 years</u>	<u>90% group health plan premium</u>
<u>8 but less than 9 years</u>	<u>80% group health plan premium</u>
<u>7 but less than 8 years</u>	<u>70% group health plan premium</u>
<u>6 but less than 7 years</u>	<u>60% group health plan premium</u>
<u>5 but less than 6 years</u>	<u>50% group health plan premium</u>
<u>Less than 5 years</u>	<u>No contribution</u>

**Sec. 3. Study.** The Commission to Study the Retirement Benefits Provided by the State, referred to in this section as the "commission," is established.

1. The commission consists of the following 10 members:

- A. Three Legislators appointed jointly by the President of the Senate and the Speaker of the House of Representatives;
- B. Three members appointed jointly by the President of the Senate and the Speaker of the House of Representatives from nominations submitted by labor organizations representing state employees and teachers;
- C. Three members appointed by the Governor; and
- D. The Executive Director of the Maine State Retirement System or the executive director's designee.