

1 SENATE BILL NO. 259
2 INTRODUCED BY WATT
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND MONTANA'S MILK
5 CONTROL ACT BY ABOLISHING CONTROLLED WHOLESAL AND RETAIL
6 PRICES FOR MILK; BY GIVING THE BOARD OF MILK CONTROL STANDBY
7 PRICING AUTHORITY; BY PROVIDING FOR RETAIL LICENSING; AND BY
8 PROHIBITING THE SALE OF MILK BELOW COST; AMENDING SECTIONS
9 27-401, 27-405, 27-407, 27-410, AND 27-414, R.C.M. 1947."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 27-401, R.C.M. 1947, is amended to
13 read as follows:
14 "27-401. Declaration of policy relating to milk. It is
15 hereby declared:
16 (a) That milk is a necessary article of food for human
17 consumption;
18 (b) That the production and maintenance of an adequate
19 supply of healthful milk of proper chemical and physical
20 content, free from contamination, is vital to the public
21 health and welfare;
22 (c) That the production, transportation, processing,
23 storage, distribution and sale of milk, in the state of
24 Montana, is an industry affecting the public health and
25 interest;

1 (d) That unfair, unjust, destructive and demoralizing
2 trade practices have been and are now being carried on in
3 the production, transportation, processing, storage,
4 distribution, and sale of milk, and products manufactured
5 therefrom, which trade practices constitute a constant
6 menace to the health and welfare of the inhabitants of this
7 state and tend to undermine the sanitary regulations and
8 standards of content and purity of milk;
9 (e) That health regulations alone are insufficient to
10 prevent disturbances in the milk industry and to safeguard
11 the consuming public from further inadequacy of a supply of
12 this necessary commodity;
13 (f) That it is the policy of this state to promote,
14 foster and encourage the intelligent production and orderly
15 marketing of milk and cream and products manufactured
16 therefrom; to eliminate speculation and waste, and to make
17 the distribution thereof between the producer and consumer
18 as direct as can be efficiently and economically done, and
19 to stabilize the marketing of such commodities;
20 (g) That investigations have revealed and experience
21 has shown that, due to the nature of milk and the conditions
22 surrounding the production and marketing of milk, and due to
23 the vital importance of milk to the health and well-being of
24 the citizens of this state, it is necessary to invoke the
25 police powers of the state to provide a constant supervision

1 and regulation of the milk industry of the state to prevent
 2 the occurrence and recurrence of those unfair, unjust,
 3 destructive, demoralizing and chaotic conditions and trade
 4 practices within the industry, which have in the past
 5 affected the industry and which constantly threatened to be
 6 revived within the industry and to disrupt or destroy an
 7 adequate supply of pure and wholesome milk to the consuming
 8 public and to the citizens of this state;

9 (h) That milk is a perishable commodity, which is
 10 easily contaminated with harmful bacteria, which cannot be
 11 stored for any great length of time, which must be produced
 12 and distributed fresh daily, and the supply of which cannot
 13 be regulated from day to day, but, due to natural and
 14 seasonal conditions, must be produced on a constantly
 15 uniform and even basis;

16 (i) That the demand for this perishable commodity
 17 fluctuates from day to day and from time to time making it
 18 necessary that the producers ~~and distributors shall~~ produce
 19 a sufficient quantity to enable and carry carrying on hand a
 20 surplus of milk in order to guarantee and insure to the
 21 consuming public an adequate supply at all times, which
 22 surplus must of necessity be converted into by-products of
 23 milk at great expense and oftentimes at a loss to the producer
 24 ~~and distributor~~;

25 (j) That this surplus of milk, though necessary and

1 unavoidable, unless regulated, tends to undermine and
 2 destroy the milk industry, which causes producers to relax
 3 their diligence in complying with the provisions of the
 4 health authorities and oftentimes to produce milk of an
 5 inferior and unsanitary quality;

6 (k) That investigation and experience have further
 7 shown that, due to the nature of milk and the conditions
 8 surrounding its production and marketing, unless the
 9 ~~producers, distributors, and others engaged in the marketing~~
 10 ~~of milk~~ are guaranteed and insured a reasonable profit on
 11 milk, both the supply and quality of milk are affected to
 12 the detriment of, and against the best interest of the
 13 citizens of this state whose health and well-being are
 14 thereby vitally affected;

15 (l) That, where no supervision and regulation are
 16 provided for the orderly and profitable marketing of milk,
 17 past experience has shown that the credit status of both
 18 ~~producers and distributors~~ of milk is adversely affected to
 19 a serious degree thereby entailing loss and hardship upon
 20 all within the community with whom these producers and
 21 ~~distributors~~ carry on business relations;

22 (m) That, due to the nature of milk and the conditions
 23 surrounding its production and distribution, the natural law
 24 of supply and demand has been found inadequate to protect
 25 the industry in this and other states, and in the public

1 interest it is necessary to provide state supervision and
2 regulation of the milk industry in this state."

3 Section 2. Section 27-405, R.C.M. 1947, is amended to
4 read as follows:

5 "27-405. General powers of the department. (1) The
6 department ~~shall~~ may supervise, regulate, and control the
7 milk industry of this state, including the production,
8 transportation, including transportation rates which
9 distributors, contract haulers, and others charge producers,
10 processing, storage, distribution and sale of milk in this
11 state for consumption in this state. Nothing in this
12 chapter abrogates or affects the status, force or operation
13 of any provision of public health laws or the law under
14 which the department of livestock is constituted together
15 with the department of livestock rules or county board of
16 health rules, or municipal ordinances for the promotion or
17 protection of the public health. The department may
18 co-operate with the department of health and environmental
19 sciences, the board of livestock or any county or city board
20 of health or the department of agriculture in enforcing
21 this chapter.

22 (2) The department ~~shall~~ may investigate all matters
23 pertaining to the production, transportation, processing,
24 storage, distribution and sale of milk in this state and
25 conduct hearings upon any subject pertinent to the

1 administration of this chapter. The department may subpoena
2 milk dealers, their records, books, and accounts, and any
3 other person from whom information may be desired or
4 considered necessary to carry out the purposes and intent of
5 this chapter, and may issue commissions to take depositions
6 of witnesses who are sick or absent from the state or who
7 cannot otherwise appear in person before the department at
8 its offices. The department shall give at least ten (10)
9 days' notice to the proposed witness."

10 Section 3. Section 27-407, R.C.M. 1947, is amended to
11 read as follows:

12 "~~27-407. Establishment of minimum prices. (1) The~~
13 ~~board shall institute an orderly process of withdrawal from~~
14 ~~the fixing of minimum wholesale, jobber, and retail prices~~
15 ~~for milk.~~

16 ~~(2) The board may continue to fix minimum wholesale~~
17 ~~and jobber prices for milk until:~~

18 ~~(a) such time that it determines by public hearing~~
19 ~~that the fixing of such minimum wholesale and jobber prices~~
20 ~~for milk is no longer warranted or in the public interest to~~
21 ~~insure an adequate supply of milk; or~~

22 ~~(b) July 1, 1979, whichever time occurs first.~~

23 ~~(3) The board may not fix the minimum retail price for~~
24 ~~milk except upon a determination after a public hearing that~~
25 ~~the absence of minimum retail prices for milk has caused or~~

1 is about to cause a disruption in the Montana milk market or
 2 some segment thereof which is likely to have an adverse
 3 affect on producers or has caused or is likely to cause a
 4 substantial reduction in competition between distributors in
 5 an area, so as to adversely affect the public health and
 6 welfare which requires an adequate supply of milk at
 7 reasonable and fair prices.

8 (4) Should it become necessary, the board may fix
 9 minimum retail prices for milk on an emergency basis, prior
 10 to public hearing in accordance with the Montana
 11 Administrative Procedure Act. If the board considers it
 12 necessary to fix minimum retail prices for milk due to such
 13 circumstances, the minimum retail price for milk shall be
 14 fixed only for an area or political subdivision wherein the
 15 public interest as herein defined justifies the fixing of a
 16 minimum retail price, and only for such period as the
 17 emergency exists, the temporary rule pursuant to the Montana
 18 Administrative Procedure Act expires, or the board conducts
 19 a formal hearing, whichever occurs first.

20 (5) The board shall fix minimum producer
 21 wholesale, jobbery and retail prices for class I₁ milk, and
 22 minimum producer prices only for class II₁ and class III
 23 milk in all areas of the state, by adopting rules in a
 24 manner prescribed by the Montana Administrative Procedure
 25 Act.

1 ~~(6) The board shall establish such prices by means~~
 2 ~~of flexible formulas which shall be devised so that they~~
 3 ~~bring about such automatic changes in all minimum prices as~~
 4 ~~are justified on the basis of changes in production costs~~
 5 ~~and supply, processing and distribution costs, and retailing~~
 6 ~~costs.~~

7 ~~(7) The board shall consider the balance between~~
 8 ~~production and consumption of milk, the costs of production~~
 9 ~~and distribution, and prices in adjacent and neighboring~~
 10 ~~areas and states, so that minimum prices which are fair and~~
 11 ~~equitable to producers, distributors, jobbers, retailers,~~
 12 ~~and consumers may result.~~

13 ~~(8) The board shall, when publishing notice of~~
 14 ~~proposed rule making under authority of this section, set~~
 15 ~~forth the specific factors which shall be taken into~~
 16 ~~consideration in establishing the formulas and in particular~~
 17 ~~in determining costs of production and distribution and of~~
 18 ~~the actual dollars and cents costs of production and~~
 19 ~~distribution which preliminary studies and investigations of~~
 20 ~~auditors or accountants in its employment indicate will or~~
 21 ~~should be shown at the hearing, so that all interested~~
 22 ~~parties will have opportunity to be heard and to question or~~
 23 ~~rebut such considerations as a matter of record.~~

24 ~~(9) Such specific factors may include, but shall~~
 25 ~~not be limited to, the following items:~~

1 (a) Current and prospective supplies of milk in
2 relation to current and prospective demands for such milk
3 for all purposes;

4 (b) The ability and willingness of consumers to
5 purchase, which shall include among other things, per capita
6 disposable income statistics, consumer price indices, and
7 wholesale price indices;

8 (c) The cost factors in producing milk, which shall
9 include among other things the prices paid by farmers
10 generally (as used in parity calculations of the United
11 States Department of Agriculture), prices paid by farmers
12 for dairy feed in particular and farm wage rates in this
13 state;

14 (d) The alternative opportunities, both farm and
15 nonfarm, open to milk producers, which shall include among
16 other things, prices received by farmers for all products
17 other than milk, prices received by farmers for beef cattle,
18 and the percentage of unemployment in the state and nation
19 as determined by appropriate state and federal agencies;

20 (e) The prices of butter-nonfat dry milk, and cheese;

21 ~~{f}--The-cost-factors-in-distributing-milk-which-shall~~
22 ~~include-among-other-things-the-prices-paid-by-distributors~~
23 ~~for-equipment-of-all-types-required-to-process--and--market~~
24 ~~milk-and-prevailing-wage-rates-in-this-state;~~

25 ~~{g}--The-cost-factors-in-jobbing-milk-which-shall~~

1 ~~include-among-other-things-raw-product-and-ingredient-costs,~~
2 ~~carton-or-other-packaging-costs,--processing--cost--and--that~~
3 ~~part--of--general--administrative--costs--of--the--supplying~~
4 ~~distributor-which-may-properly-be-allocated-to-the-handling~~
5 ~~of--milk-to-the-point-at-which-such-milk-is-at-the-supplying~~
6 ~~distributor's-dock,--equipment--of--all--types--required--to~~
7 ~~market-milk-and-prevailing-wage-rates-in-the-state;~~

8 ~~{h}{f}~~ The need, if any, for freight or transportation
9 charges to be deducted by distributors from producer prices
10 for bulk milk;

11 ~~{i}{g}~~ A reasonable return on necessary investment to
12 all ordinarily efficient and economical milk dealers
13 producers.

14 ~~{j}{10}~~ If the board at any time proposes to base all
15 or any part of any official order establishing or revising
16 any milk pricing formulas upon facts within its own
17 knowledge, as distinguished from evidence which may be
18 presented to it by the consuming public or the milk
19 industry, the board shall, when publishing notice of
20 proposed rule making under authority of this section, cause
21 notice to be given to the consuming public and the milk
22 industry of the specific facts within its own knowledge
23 which it will consider, so that all interested parties will
24 have opportunity to be heard and to question or rebut such
25 facts as a matter of record.

1 ~~{7}{11}~~ The board, after consideration of the evidence
 2 produced, shall make written findings and conclusions and
 3 shall fix, by official rule, ~~{a}~~ the the formula whereby
 4 minimum producer prices for milk in classes I, II, and III
 5 shall be computed.

6 ~~{b}--The--formula--whereby--minimum--wholesale--prices--for
 7 milk--in--class--I--shall--be--computed--~~

8 ~~{c}--The--formula--whereby--minimum--jobber--prices--for--milk
 9 in--class--I--shall--be--computed--~~

10 ~~{d}--The--formula--whereby--minimum--retail--prices--for--milk
 11 in--class--I--shall--be--computed--~~

12 ~~{8}{12}~~ This section shall not be construed as
 13 requiring the board to promulgate any specific number of
 14 formulas, but shall be construed liberally so that the board
 15 may adopt any reasonable method of expression to accomplish
 16 the objective set forth in ~~{a}v--{b}v--{c}v--and--{d}~~ ~~{11}~~
 17 above. ~~if--the--evidence--presented--to--the--board--at--any--public
 18 hearing--for--the--establishment--or--revision--of--milk--pricing
 19 formulas--is--found--by--the--board--to--require--the--establishment
 20 of--separate--and--varying--wholesale--prices--for--any--particular
 21 uses--the--board--shall--designate--the--reasons--therefor--and
 22 establish--such--separate--formulas--~~

23 ~~{9}{13}~~ Each rule establishing or revising any milk
 24 pricing formulas shall classify milk by forms, classes,
 25 grades, or uses as the board may deem advisable and shall

1 specify the minimum prices therefor.

2 ~~{10}{14}~~ The milk produced in one natural marketing
 3 area and sold in another natural marketing area shall be
 4 paid for by a distributor or dealer in accordance with the
 5 pricing order of the area where produced at the price
 6 therein specified of the class or use in which it is
 7 ultimately used or sold.

8 ~~{11}{15}~~ No allowance for freight, other than freight
 9 for transportation of milk from the farm to plant, shall be
 10 charged to a producer by a distributor or dealer unless it
 11 is found and ordered by the board, after notice and hearing
 12 in the manner hereinbefore specified, that such an
 13 additional freight allowance is necessary to permit the
 14 movement of milk in the public interest.

15 ~~{12}{16}~~ All milk purchased within a natural marketing
 16 area by a distributor shall be purchased on a uniform basis.
 17 The basis to be used shall be established by the board after
 18 the producers and the distributors of the area have been
 19 consulted.

20 ~~{13}{17}~~ The board may amend any official rule in the
 21 same manner provided herein for the original establishment
 22 of milk pricing formulas; provided, further, the board may
 23 in its discretion, when it determines the need exists,
 24 notice and hold state-wide public hearings affecting
 25 establishment or revision of milk pricing formulas in all

1 market areas of the state.

2 ~~(14)~~(18) Upon petition of a distributor or a majority
3 of his producers, the board shall hold a hearing to receive
4 and consider evidence regarding the advisability and need
5 for a base or quota plan as a method of payment by that
6 distributor of producer prices; and if the board finds that
7 the evidence adduced at such hearing warrants the
8 establishment of a base or quota plan, the board shall
9 proceed by official order to establish the same.

10 ~~(15)~~(19) Upon petition by any producer,
11 producer-distributor or distributor in any marketing area,
12 the board shall hold a hearing to receive and consider
13 evidence regarding the advisability and need for an
14 area-wide or state-wide pooling arrangement as a method of
15 payment of producer prices, provided that at such hearing
16 the board shall among other things specifically receive and
17 consider evidence concerning production and marketing
18 practices which have historically prevailed in the area
19 concerned or state-wide, as the case may be; and if the
20 board finds that the evidence adduced at such hearing
21 warrants the establishment of such an area-wide or
22 state-wide pooling arrangement, the board shall proceed by
23 official order to establish the same, but such official
24 order shall be of no force or effect until it is approved in
25 a referendum conducted by the board among affected

1 producers, producer-distributors, and distributors.

2 ~~(16)~~(20) The requirements hereinabove set forth
3 concerning notices of hearings for the establishment of milk
4 pricing formulas shall apply to any hearings regarding base
5 or quota plans or area-wide or state-wide pooling
6 arrangements, or abandonment thereof."

7 Section 4. There is a new R.C.M. section numbered
8 27-408.1 that reads as follows:

9 27-408.1. Retail license. A retailer may not engage in
10 the business of buying or selling milk subject to this
11 chapter without first having obtained a license from the
12 department. Such license shall be in addition to any other
13 licenses required by law and may not be assigned or
14 transferred. No fee is required for such license, and the
15 license remains in effect until suspended or revoked by the
16 department pursuant to 27-411.

17 Section 5. Section 27-410, R.C.M. 1947, is amended to
18 read as follows:

19 "27-410. Application for licenses. An applicant for
20 license to operate as a producer, producer-distributor,
21 distributor, or jobber, or retailer shall file a signed
22 application upon a blank prepared under authority of the
23 department, and an applicant shall state facts concerning
24 his circumstances and the nature of the business to be
25 conducted which in the opinion of the department are

1 necessary for the administration of this chapter. The
 2 application shall certify the applicant to be the holder of
 3 all licenses required by the department of livestock for
 4 the conduct of his business or, in the case of milk entering
 5 this state from another state or foreign nation, compliance
 6 with the requirements of the Montana Food, Drug and Cosmetic
 7 Act. The application shall be accompanied by the license
 8 fee required to be paid."

9 Section 6. Section 27-414, R.C.M. 1947, is amended to
 10 read as follows:

11 "27-414. Rules of fair trade practices. The department
 12 may ~~shall~~ adopt reasonable rules governing fair trade
 13 practices as they pertain to the transaction of business
 14 among licensees under this chapter and among licensees and
 15 the general public. Those rules shall contain, but are not
 16 limited to, provisions prohibiting the following methods of
 17 doing business which are unfair, unlawful, and not in the
 18 public interest:

19 (1) The ~~the~~ payment, allowance, or acceptance of
 20 secret rebates, secret refunds, or unearned discounts by a
 21 person, whether in the form of money or otherwise;

22 (2) The ~~the~~ giving of milk, cream, dairy products,
 23 services, or articles of any kind, except to bona fide
 24 charities, for the purpose of securing or retaining the
 25 fluid milk or fluid cream business of a customer;

1 (3) The ~~the~~ extension to certain customers of special
 2 prices or services not available to all customers who
 3 purchase milk of like quantity under like terms and
 4 conditions;

5 ~~(4) The purchasing, processing, bottling, packaging,~~
 6 ~~transporting, delivering, or otherwise handling in any~~
 7 ~~marketing area of milk which is to be or is sold or~~
 8 ~~otherwise disposed of at less than the minimum wholesale and~~
 9 ~~minimum retail prices established by the board.~~

10 ~~(5)(4)~~ The ~~the~~ payment of a price lower than the
 11 applicable producer price, established by the board, by a
 12 distributor to a producer for milk which is distributed to
 13 any person, including agencies of the federal, state or
 14 local government;

15 ~~(5) the advertisement, offer of sale, offer to buy, or~~
 16 ~~sale of milk by a licensee at a price which is less than~~
 17 ~~cost to that licensee with the intent or the effect of~~
 18 ~~unfairly diverting trade from a competitor or otherwise~~
 19 ~~injuring a competitor or destroying competition or creating~~
 20 ~~a monopoly except that this prohibition of sales below cost~~
 21 ~~does not apply when sales are made because:~~

22 ~~(a) the merchandise is damaged but the product meets~~
 23 ~~the standards for human consumption;~~

24 ~~(b) the product is sold upon the final liquidation of~~
 25 ~~a business;~~

1 (c) the product is sold for charitable purposes or to
2 relief agencies; or

3 (d) the product is sold in good faith to meet the
4 equally lower price of competition, if the licensee charged
5 with a violation of this section affirmatively demonstrates
6 to the board that the sale is not made with the intent or
7 the effect of unfairly diverting trade from a competitor or
8 otherwise injuring a competitor or destroying competition or
9 creating a monopoly. The burden of proof in this respect is
10 upon the licensee."

-End-

STATE OF MONTANA

REQUEST NO. 332-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 259 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to amend Montana's Milk Control Act by abolishing controlled wholesale and retail prices for milk; by giving the Board of Milk Control standby pricing authority; by providing for retail licensing; and by prohibiting the sale of milk below cost.

ASSUMPTIONS:

1. It is assumed that if Senate Bill 259 becomes law that approximately 4,000 retailers of milk will have to be audited to determine their costs of doing business. It is also assumed that it will take at least one person full time to investigate alleged sales below cost.
2. Two additional auditors and a secretary will be necessary to enforce the requirements of this act.
3. Earmarked revenue to meet the additional costs will be available.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Increase by category:		
Personal services	\$35,458	\$37,940
Operational expenses	22,000	19,500
Capital outlay	<u>2,350</u>	<u>200</u>
Additional cost of proposed legislation	<u>\$59,808</u>	<u>\$57,640</u>

Richard L. Dwyer
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77