

HOUSE BILL 526

IN THE HOUSE

February 2, 1979	Introduced and referred to Committee on Business and Industry.
February 10, 1979	Committee recommend bill, as amended. On motion taken from printing and referred to Committee on Rules.
February 13, 1979	On motion taken from Committee on Rules and referred to Printing.
February 15, 1979	Printed and placed on members' desks.
February 16, 1979	Second reading, do not pass.

1 *HOUSE BILL NO. 526*
 2 INTRODUCED BY *Montwell Hummer Kessler Conroy*
 3 *FAC*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MILK
 5 PRICE CONTROL LAWS AND TO END THE REGULATION OF MINIMUM MILK
 6 PRICES AT THE RETAIL LEVEL BY THE BOARD OF MILK CONTROL;
 7 AMENDING SECTIONS 81-23-101, 81-23-102, 81-23-104,
 8 81-23-105, 81-23-201 THROUGH 81-23-203, 81-23-205, 81-23-301
 9 THROUGH 81-23-305, 81-23-402 AND 81-23-405, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 81-23-101, MCA, is amended to read:

13 "81-23-101. Definitions. (1) Unless the context
 14 requires otherwise, in this chapter the following
 15 definitions apply:

16 (a) "Board" means the board of milk control provided
 17 for in 2-15-1802.

18 (b) "Class I milk" includes all bottled or packaged
 19 milk, low fat, buttermilk, chocolate milk, whipping cream,
 20 commercial cream, half-and-half, skim milk, fortified skim
 21 milk, skim milk flavored drinks, and any other fluid milk
 22 not specifically classified in this chapter, whether raw,
 23 pasteurized, homogenized, sterile, or aseptic.

24 (c) "Class II milk" includes milk used in the
 25 manufacture of ice cream and ice cream mix, ice milk,

1 sherbet, eggnog, cultured sour cream, cottage cheese,
 2 condensed milk, and powdered skim for human consumption.

3 (d) "Class III milk" includes milk used in the
 4 manufacture of butter, cheddar cheese, process cheese,
 5 livestock feed, powdered skim other than for human
 6 consumption, and skim milk dumped.

7 (e) "Consumer" means a person or an government
 8 agency, other than a dealer, who purchases milk for
 9 consumption or use.

10 (f) "Dealer" means a producer dairy farmer,
 11 distributor, producer-distributor dairy farmer-distributor,
 12 jobber, or independent contractor.

13 (g) "Department" means the department of business
 14 regulation provided for in Title 2, chapter 15, part 18.

15 (h) "Distributor" means a person purchasing milk from
 16 any source, either in bulk or in packages, and distributing
 17 it for consumption in this state. The term includes what
 18 are commonly known as jobbers and independent contractors.
 19 The term, however, excludes a person purchasing milk from a
 20 dealer licensed under this chapter, for resale over the
 21 counter at retail or for consumption on the premises.

22 ~~{i} "Jobber-prices" means those prices at which milk~~
 23 ~~owned by a distributor is sold, in bulk or in packages, to a~~
 24 ~~jobber or independent contractor.~~

25 ~~{j}(1)~~ "Licensee" means a person who holds a license

1 from the department.

2 (k)(1) "Market" means an area of the state designated

3 by the department as a natural marketing area.

4 (l)(1) "Milk" means the lacteal secretion of a dairy

5 animal or animals, including those secretions when raw and

6 when cooled, pasteurized, standardized, homogenized,

7 recombined, concentrated fresh, or otherwise processed and

8 all of which is designated as grade A by a duly constituted

9 health authority and also includes those secretions which

10 are in any manner rendered sterile or aseptic,

11 notwithstanding whether they are regulated by any health

12 authority of this or any other state or nation.

13 (m)(1) "Person" means a person, firm, corporation, or

14 cooperative association.

15 (n)(1) "Producer Dairy farmer" means a person who

16 produces milk for consumption in this state, selling it to a

17 distributor.

18 (o)(1) "Producer-distributor Dairy farmer-distributor"

19 means a person both producing and distributing milk for

20 consumption in this state.

21 (p)(1) "Producer Dairy farmer prices" means those

22 prices at which milk owned by a producer dairy farmer is

23 sold in bulk to a distributor.

24 (q)(1) "Retail prices" means those prices at which

25 milk owned by a retailer is sold, in bulk or in packages,

1 over the counter at retail or for consumption on the

2 premises.

3 (r)(1) "Retailer" means a person selling milk in bulk

4 or in packages over the counter at retail or for consumption

5 on the premises and includes but is not limited to retail

6 stores of all types, restaurants, boardinghouses,

7 fraternities, sororities, confectionaries, public and

8 private schools, including colleges and universities, and

9 both public and private institutions and instrumentalities

10 of all types and description.

11 (s)(1) "Wholesale prices" means those prices at which

12 milk owned by a distributor is sold, in bulk or in packages,

13 to a retailer.

14 (2) The department may assign new milk products, not

15 expressly included in one of the classes defined in this

16 section, to the class which in its discretion it determines

17 to be proper."

18 Section 2. Section 81-23-102, NCA, is amended to read:

19 "81-23-102. Policy. (1) It is hereby declared that:

20 (a) milk is a necessary article of food for human

21 consumption;

22 (b) the production and maintenance of an adequate

23 supply of healthful milk of proper chemical and physical

24 content, free from contamination, is vital to the public

25 health and welfare;

1 (c) the production, transportation, processing,
2 storage, distribution, and sale of milk in the state of
3 Montana is an industry affecting the public health and
4 interest;

5 (d) unfair, unjust, destructive, and demoralizing
6 trade practices have been and are now being carried on in
7 the production, transportation, processing, storage,
8 distribution, and sale of milk and products manufactured
9 therefrom, which trade practices constitute a constant
10 menace to the health and welfare of the inhabitants of this
11 state and tend to undermine the sanitary regulations and
12 standards of content and purity of milk;

13 (e) health regulations alone are insufficient to
14 prevent disturbances in the milk industry and to safeguard
15 the consuming public from further inadequacy of a supply of
16 this necessary commodity;

17 (f) it is the policy of this state to promote, foster,
18 and encourage the intelligent production and orderly
19 marketing of milk and cream and products manufactured
20 therefrom, to eliminate speculation and waste, to make the
21 distribution thereof between the producer dairy farmer and
22 consumer as direct as can be efficiently and economically
23 done, and to stabilize the marketing of such commodities;

24 (g) investigations have revealed and experience has
25 shown that, due to the nature of milk and the conditions

1 surrounding the production and marketing of milk and due to
2 the vital importance of milk to the health and well-being of
3 the citizens of this state, it is necessary to invoke the
4 police powers of the state to provide a constant supervision
5 and regulation of the milk industry of the state to prevent
6 the occurrence and recurrence of those unfair, unjust,
7 destructive, demoralizing, and chaotic conditions and trade
8 practices within the industry which have in the past
9 affected the industry and which constantly threaten to be
10 revived within the industry and to disrupt or destroy an
11 adequate supply of pure and wholesome milk to the consuming
12 public and to the citizens of this state;

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

20 (i) the demand for this perishable commodity
21 fluctuates from day to day and from time to time making it
22 necessary that the producers dairy farmers and distributors
23 shall produce and carry on hand a surplus of milk in order
24 to guarantee and insure to the consuming public an adequate
25 supply at all times, which surplus must of necessity be

1 converted into byproducts of milk at great expense and
 2 oftentimes at a loss to the producer dairy farmer and
 3 distributor;

4 (j) this surplus of milk, though necessary and
 5 unavoidable, unless regulated, tends to undermine and
 6 destroy the milk industry, which causes producers to relax
 7 their diligence in complying with the provisions of the
 8 health authorities and oftentimes to produce milk of an
 9 inferior and unsanitary quality;

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

19 (l) where no supervision and regulation are provided
 20 for the orderly and profitable marketing of milk, past
 21 experience has shown that the credit status of both
 22 producers dairy farmers and distributors of milk is
 23 adversely affected to a serious degree, thereby entailing
 24 loss and hardship upon all within the community with whom
 25 these producers dairy farmers and distributors carry on

1 business relations;

2 (a) due to the nature of milk and the conditions
 3 surrounding its production and distribution, the natural law
 4 of supply and demand has been found inadequate to protect
 5 the industry in this and other states and in the public
 6 interest it is necessary to provide state supervision and
 7 regulation of the milk industry in this state.

8 (2) The general purpose of this chapter is to protect
 9 and promote public welfare and to eliminate unfair and
 10 demoralizing trade practices in the milk industry. It is
 11 enacted in the exercise of the police powers of the state."

12 Section 3. Section 81-23-104, MCA, is amended to read:
 13 "81-23-104. Rules and orders. The department may adopt
 14 and enforce rules and orders necessary to carry out the
 15 provisions of this chapter and any orders adopted under it
 16 by the department or the board. A rule or order shall be
 17 posted for public inspection in the main office of t
 18 department for 30 days, and a copy shall be filed in the
 19 office of the department. ~~A copy shall also be sent by~~
 20 ~~registered or certified letter to the secretary of each~~
 21 ~~area, except in the case of an AD order directed only to a~~
 22 person or persons named in it, which shall be served by
 23 personal delivery of a copy or by mailing a copy to each
 24 person to whom the order is directed or, in the case of a
 25 corporation, to any officer or agent of the corporation upon

1 whom a summons may be served in accordance with laws of
2 this state. The posting, in the main office of the
3 department, of a rule or order not required to be personally
4 served as provided in this section and the filing in the
5 office of the department is sufficient notice to all
6 persons affected by the rule or order. A rule or order when
7 properly posted and filed or served, as provided in this
8 section, has the force of law."

9 Section 4. Section 81-23-105, MCA, is amended to read:

10 "81-23-105. Testing of milk. (1) For the purpose of
11 determining the value of milk supplied by producers dairy
12 farmers during routine audits of milk processing plants
13 which receive raw milk directly from producers dairy
14 farmers, the department of business regulation shall
15 establish a program of testing such raw milk.

16 (2) The department of business regulation may levy an
17 assessment on licensed producers dairy farmers to secure the
18 necessary funds to administer this program. This assessment
19 is in addition to those provided in 81-23-202.

20 (3) All personnel employed in the sampling and testing
21 program shall be licensed by the animal health division of
22 the department of livestock.

23 (4) The department of business regulation may conduct
24 all types of sampling, grading, and testing techniques which
25 it considers necessary to carry out the intent of this

1 section."

2 Section 5. Section 81-23-201, MCA, is amended to read:

3 "81-23-201. Licenses to producers
4 ~~producer-distributors~~ dairy farmers, dairy
5 farmer-distributors, distributors, and jobbers. In any
6 market where the provisions of this chapter apply, it is
7 unlawful for a ~~producer-producer-distributor~~ dairy farmer,
8 dairy farmer-distributor, distributor, or jobber to produce,
9 transport, process, store, handle, distribute, buy, or sell
10 milk unless the dealer is properly licensed as provided by
11 this chapter. It is unlawful for a person to buy, sell,
12 handle, process, or distribute milk which he knows or has
13 reason to believe has been previously dealt with or handled
14 in violation of any provision of this chapter. The
15 department may decline to grant a license or may suspend or
16 revoke a license already granted, upon due cause and after
17 hearings."

18 Section 6. Section 81-23-202, MCA, is amended to read:

19 "81-23-202. Licenses -- disposition of income. (1) A
20 ~~producer---~~ producer-distributor dairy farmer, dairy
21 farmer-distributor, distributor, or jobber may not engage in
22 the business of producing or selling milk subject to this
23 chapter in this state without first having obtained a
24 license from the department of livestock or, in the case of
25 milk entering this state from another state or foreign

1 nation, without complying with the requirements of the
 2 Montana Food, Drug, and Cosmetic Act and without being
 3 licensed under this chapter by the department. The annual
 4 fee for the license from the department is \$2 and is due
 5 before July 1 and shall be deposited by the department to
 6 the credit of the general fund. The license required by this
 7 chapter is in addition to any other license required by
 8 state law or any municipality of this state. This chapter
 9 shall apply to every part of the state of Montana.

10 (2) ~~(a)~~ In addition to the annual license fee, the
 11 department shall, ~~in each year,~~ before ~~April~~ July 1 of each
 12 year, for the purpose of securing funds to administer and
 13 enforce this chapter, levy an assessment upon ~~producers,~~
 14 ~~producer-distributors~~ dairy farmers, dairy
 15 farmer-distributors, and distributors as follows:

16 ~~(i)~~ a fee per hundredweight on the total volume of
 17 all milk subject to this chapter produced and sold by a
 18 ~~producer-distributor~~ dairy farmer-distributor;

19 ~~(ii)~~ a fee per hundredweight on the total volume of
 20 all milk subject to this chapter sold by a ~~producer~~ dairy
 21 farmer;

22 ~~(iii)~~ a fee per hundredweight on the total volume of
 23 all milk subject to this chapter sold by a distributor,
 24 excepting that which is sold to another distributor;

25 (iv) a fee per hundredweight on the total volume of

1 fluid milk and milk equivalents on manufactured milk
 2 products sold in this state, subject to this chapter, from
 3 out-of-state.

4 (b) Only a change in the amount on the assessment
 5 requires notice.

6 (3) The department shall adopt rules fixing the amount
 7 of each fee. The amounts may not exceed levels sufficient
 8 to provide for the administration of this chapter. The fee
 9 assessed on a ~~producer~~ dairy farmer or on a distributor may
 10 not be more than one-half the fee assessed on a
 11 ~~producer-distributor~~ dairy farmer-distributor.

12 (4) The assessment upon ~~producer-distributors,~~
 13 ~~producers~~ dairy farmer-distributors, dairy farmers, and
 14 distributors shall be paid quarterly before January 15,
 15 April 15, July 15, and October 15 of each year. The amount
 16 of the assessment shall be computed by applying the fee
 17 designated by the department to the volume of milk sold in
 18 the preceding calendar quarter.

19 (5) Failure of a ~~producer~~ producer-distributor dairy
 20 farmer, dairy farmer-distributor, or distributor to pay an
 21 assessment when due is a violation of this chapter and his
 22 license under this chapter automatically terminates and is
 23 void. A license so terminated shall be reinstated by the
 24 department upon payment of a delinquency fee equal to 30% of
 25 the assessment which was due.

1 (6) All assessments required by this chapter shall be
 2 deposited by the department in the earmarked revenue fund.
 3 All costs of administering this chapter, including the
 4 salaries of employees and assistants, per diem and expenses
 5 of board members, and all other disbursements necessary to
 6 carry out the purpose of this chapter, shall be paid out of
 7 control board moneys in that fund.

8 (7) The department may, if it finds the costs of
 9 administering and enforcing this chapter can be derived from
 10 lower rates, amend its rules to fix the rates at a ~~less~~
 11 lesser amount on or before ~~April~~ July 1 in any year."

12 Section 7. Section 81-23-203, MCA, is amended to read:

13 "81-23-203. Application for licenses. An applicant for
 14 license to operate as a ~~producer, producer-distributor~~ dairy
 15 farmer, dairy farmer-distributor, distributor, or jobber
 16 shall file a signed application upon a blank prepared under
 17 authority of the department, and an applicant shall state
 18 facts concerning his circumstances and the nature of the
 19 business to be conducted which in the opinion of the
 20 department are necessary for the administration of this
 21 chapter. The application shall certify the applicant to be
 22 the holder of all licenses required by the department of
 23 livestock for the conduct of his business or, in the case
 24 of milk entering this state from another state or foreign
 25 nation, compliance with the requirements of the Montana

1 Food, Drug, and Cosmetic Act. The application shall be
 2 accompanied by the license fee required to be paid."

3 Section 8. Section 81-23-205, MCA, is amended to read:

4 "81-23-205. Bonds required of distributors -- amounts
 5 -- forms and conditions. (1) A distributor before purchasing
 6 milk from a producer dairy farmer shall deliver to the
 7 department a surety bond of not less than \$1,000, executed
 8 by the distributor as principal and by a surety company
 9 authorized to do business in this state as surety. The bond
 10 shall be on a form approved by the department and shall be
 11 conditioned upon the payment, in the manner required by this
 12 chapter, of all amounts due to producers dairy farmers for
 13 milk purchased by the distributor during the license year.
 14 The bond shall be to the state in favor of every producer of
 15 milk. In case of failure by a distributor to pay a producer
 16 dairy farmer for milk in the manner required by this
 17 chapter, the department shall proceed immediately to
 18 ascertain the names and addresses of all producer-creditors
 19 dairy farmer-creditors of that distributor, together with
 20 the amounts due them and shall request all those
 21 producer-creditors dairy farmer-creditors to file a verified
 22 statement of their respective claims. The department shall
 23 then sue on the bond on behalf of the producer-creditors
 24 dairy farmer-creditors. Upon suing on the bond, the
 25 department may require the filing of a new bond; and

1 immediately upon a recovery in an action upon the bond, the
 2 distributor shall file a new bond. Upon failure to file a
 3 new bond within 10 days in either case, the failure is
 4 grounds for the revocation or suspension of the license of
 5 the distributor. If recovery on the bond is not sufficient
 6 to pay all of the claims as finally determined by the court,
 7 the amount recovered shall be divided pro rata among the
 8 ~~producer-creditors~~ dairy farmer-creditors.

9 (2) The minimum bond of \$1,000 shall be required of
 10 distributors purchasing an average daily quantity of milk of
 11 less than 100 gallons; distributors purchasing an average
 12 daily quantity of 100 gallons and less than 200 gallons
 13 during any calendar month during a license year shall post a
 14 bond in the amount of \$2,000; distributors purchasing an
 15 average daily quantity of 200 gallons and less than 300
 16 gallons during any calendar month during a license year
 17 shall post a bond in the amount of \$3,000; distributors
 18 purchasing an average daily quantity of 300 gallons or more
 19 during any calendar month during a license year shall post a
 20 bond in the sum of \$5,000.

21 (3) If a distributor increases his purchases of milk
 22 during the license year to exceed the amount for which he is
 23 bonded, he shall immediately post the additional bond
 24 required to comply with this section.

25 (4) The department may require a distributor to

1 furnish a bond in addition to those specified in this
 2 section if, after notice and hearing and upon good cause
 3 shown, it determines the additional bond is required to
 4 assure payment of all amounts due or to become due to
 5 ~~producers~~ dairy farmers.

6 (5) Failure of a distributor who purchases milk from
 7 ~~producers~~ dairy farmers to post a bond required by this
 8 section is a violation of this chapter."

9 Section 9. Section 81-23-301, MCA, is amended to read:

10 "81-23-301. Markets. (1) Pursuant to the declaration
 11 of policy relating to milk set forth in 81-23-102(1), the
 12 department shall designate natural marketing areas which
 13 shall together embrace all the geographical area of the
 14 state and shall enforce minimum ~~producer,~~ dairy farmer and
 15 ~~wholesale-and-retail~~ prices established for those areas by
 16 the board.

17 (2) Natural marketing areas shall be established
 18 throughout the state by the department. Before a propose.
 19 natural marketing area is established, the department, after
 20 notice of at least 30 days, shall hold a hearing or
 21 hearings, at a place or places within the proposed area, at
 22 which ~~producers~~ dairy farmers and distributors doing
 23 business within the proposed natural marketing area, who are
 24 licensed by the department of livestock, and the consuming
 25 public may present evidence and testify. If the hearing or

1 hearings make it evident to the department that the
2 establishment of the proposed natural marketing area is in
3 the public interest, the department shall establish the
4 natural marketing area.

5 (3) The department may from time to time adjust the
6 boundaries of natural marketing areas, if after a hearing
7 upon notice of at least 30 days to all interested parties it
8 finds the adjustment to be in the public interest."

9 Section 10. Section 81-23-302, MCA, is amended to
10 read:

11 "81-23-302. Establishment of minimum prices. (1) The
12 board shall fix minimum ~~producer, dairy farmer and~~
13 ~~wholesale, jobbery, and retail~~ prices for class I milk and
14 minimum ~~producer~~ dairy farmer prices only for class II and
15 class III milk in all areas of the state by adopting rules
16 in a manner prescribed by the Montana Administrative
17 Procedure Act.

18 (2) The board shall establish such prices by means of
19 flexible formulas which shall be devised so that they bring
20 about such automatic changes in all minimum prices as are
21 justified on the basis of changes in production, supply,
22 processing, and distribution, and retailing costs.

23 (3) The board shall consider the balance between
24 production and consumption of milk, the costs of production
25 and distribution, and prices in adjacent and neighboring

1 areas and states so that minimum prices which are fair and
2 equitable to ~~producers, dairy farmers and to distributors,~~
3 ~~jobbers, retailers, and consumers~~ at the wholesale level may
4 result.

5 (4) The board shall, when publishing notice of
6 proposed rulemaking under authority of this section, set
7 forth the specific factors which shall be taken into
8 consideration in establishing the formulas and in particular
9 in determining costs of production and distribution and of
10 the actual dollars and cents costs of production and
11 distribution which preliminary studies and investigations of
12 auditors or accountants in its employment indicate will or
13 should be shown at the hearing so that all interested
14 parties will have opportunity to be heard and to question or
15 rebut such considerations as a matter of record.

16 (5) Such specific factors may include but shall not be
17 limited to the following items:

18 (a) current and prospective supplies of milk in
19 relation to current and prospective demands for such milk
20 for all purposes;

21 ~~(b) the ability and willingness of consumers to~~
22 ~~purchase, which shall include among other things per capita~~
23 ~~disposable income statistics, consumer price indexes, and~~
24 ~~wholesale price indexes~~

25 ~~(c) (b)~~ the cost factors in producing milk, which shall

1 include among other things the prices paid by farmers
2 generally (as used in parity calculations of the United
3 States department of agriculture), prices paid by farmers
4 for dairy feed in particular, and farm wage rates in this
5 state;

6 ~~(d)~~(c) the alternative opportunities, both farm and
7 nonfarm, open to milk producers dairy farmers, which shall
8 include among other things prices received by farmers for
9 all products other than milk, prices received by farmers for
10 beef cattle, and the percentage of unemployment in the state
11 and nation as determined by appropriate state and federal
12 agencies;

13 ~~(e)~~(d) the prices of butter, nonfat dry milk, and
14 cheese;

15 ~~(f)~~(e) the cost factors in distributing milk, which
16 shall include among other things the prices paid by
17 distributors for equipment of all types required to process
18 and market milk and prevailing wage rates in this state;

19 ~~(g) the cost factors in jobbing milk, which shall~~
20 ~~include among other things raw product and ingredient costs~~
21 ~~carton or other packaging costs, processing costs, and that~~
22 ~~part of general administrative costs of the supplying~~
23 ~~distributor which may properly be allocated to the handling~~
24 ~~of milk to the point at which such milk is at the supplying~~
25 ~~distributor's dock, equipment of all types required to~~

1 ~~market milk and prevailing wage rates in the state;~~

2 ~~(h)~~(f) the need, if any, for freight or transportation
3 charges to be deducted by distributors from producer dairy
4 farmer prices for bulk milk;

5 ~~(i) a reasonable return on necessary investment to all~~
6 ~~ordinarily efficient and economical milk dealers;~~

7 (6) If the board at any time proposes to base all or
8 any part of any official order establishing or revising any
9 milk pricing formulas upon facts within its own knowledge,
10 as distinguished from evidence which may be presented to it
11 by the consuming public or the milk industry, the board
12 shall, when publishing notice of proposed rulemaking under
13 authority of this section, cause notice to be given to the
14 consuming public and the milk industry of the specific facts
15 within its own knowledge which it will consider, so that all
16 interested parties will have opportunity to be heard and to
17 question or rebut such facts as a matter of record.

18 (7) The board, after consideration of the evidence
19 produced, shall make written findings and conclusions and
20 shall fix by official rule the formula whereby minimum:

21 (a) producer dairy farmer prices for milk in classes
22 I, II, and III shall be computed;

23 (b) wholesale prices for milk in class I shall be
24 computed;

25 ~~(c) jobber prices for milk in class I shall be~~

1 computed;

2 ~~(d) retail prices for milk in class i shall be~~
3 ~~computed.~~

4 (8) This section shall not be construed as requiring
5 the board to promulgate any specific number of formulas, but
6 shall be construed liberally so that the board may adopt any
7 reasonable method of expression to accomplish the objective
8 set forth in subsection (7). If the evidence presented to
9 the board at any public hearing for the establishment or
10 revision of milk pricing formulas is found by the board to
11 require the establishment of separate and varying wholesale
12 prices for any particular uses, the board shall designate
13 the reasons therefor and establish such separate formulas.

14 (9) Each rule establishing or revising any milk
15 pricing formulas shall classify milk by forms, classes,
16 grades, or uses as the board may deem advisable and shall
17 specify the minimum prices therefor.

18 (10) The milk produced in one natural marketing area
19 and sold in another natural marketing area shall be paid for
20 by a distributor or dealer in accordance with the pricing
21 order of the area where produced at the price therein
22 specified of the class or use in which it is ultimately used
23 or sold.

24 (11) The board shall adopt rules after notice and
25 hearing in the manner prescribed by the Montana

1 Administrative Procedure Act to regulate transportation
2 rates which distributors, contract haulers, and others
3 charge producers dairy farmers for both farm-to-plant and
4 interplant transportation of milk. No allowance for
5 transportation of milk between plants may be permitted
6 unless it is found by the board to be necessary to permit
7 the movement of milk in the public interest.

8 (12) All milk purchased within a natural marketing area
9 by a distributor shall be purchased on a uniform basis. The
10 basis to be used shall be established by the board after the
11 producers dairy farmers and the distributors of the area
12 have been consulted.

13 (13) The board may amend any official rule in the same
14 manner provided herein for the original establishment of
15 milk pricing formulas. The board may in its discretion,
16 when it determines the need exists, give notice of and hold
17 statewide public hearings affecting establishment or
18 revision of milk pricing formulas in all market areas of the
19 state.

20 (14) Upon petition of a distributor or a majority of
21 his producers dairy farmers, the board shall hold a hearing
22 to receive and consider evidence regarding the advisability
23 and need for a base or quota plan as a method of payment by
24 that distributor of producer dairy farmer prices; and if the
25 board finds that the evidence adduced at such hearing

1 warrants the establishment of a base or quota plan, the
2 board shall proceed by official order to establish the same.

3 (15) Upon petition by any producer
4 ~~producer-distributor dairy farmer, dairy farmer-distributor,~~
5 or distributor in any marketing area, the board shall hold a
6 hearing to receive and consider evidence regarding the
7 advisability and need for an areawide or statewide pooling
8 arrangement as a method of payment of producer dairy farmer
9 prices, provided that at such hearing the board shall among
10 other things specifically receive and consider evidence
11 concerning production and marketing practices which have
12 historically prevailed in the area concerned or statewide,
13 as the case may be. If the board finds that the evidence
14 adduced at such hearing warrants the establishment of such
15 an areawide or statewide pooling arrangement, the board
16 shall proceed by official order to establish the same; but
17 such official order shall be of no force or effect until it
18 is approved in a referendum conducted by the board among
19 affected producers, producer-distributors, and distributors.

20 (16) The requirements hereinabove set forth concerning
21 notices of hearings for the establishment of milk pricing
22 formulas shall apply to any hearings regarding base or quota
23 plans or areawide or statewide pooling arrangements or
24 abandonment thereof.

25 (17) Rules adopted pursuant to this section shall be

1 enforced and audited for compliance by the milk control
2 division of the department of business regulation."

3 NEW SECTION. Section 11. Decontrol at the retail
4 level. Beginning July 1, 1979, the board shall start a
5 program of orderly decontrol of milk prices at the retail
6 level. This program is at the discretion of the board and
7 may be instituted without a public hearing but must be
8 completed before January 1, 1980.

9 Section 12. Section 81-23-303, MCA, is amended to
10 read:

11 "81-23-303. Rules of fair trade practices. The
12 department may 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 payment, allowance, or acceptance of secret
20 rebates, secret refunds, or unearned discounts by a person,
21 whether in the form of money or otherwise;

22 (2) 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 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) the payment of a price lower than the applicable
11 producer ~~dairy farmer~~ price, established by the board, by a
12 distributor to a producer ~~dairy farmer~~ for milk which is
13 distributed to any person, including agencies of the
14 federal, state, or local government."

15 Section 13. Section 81-23-304, MCA, is amended to
16 read:

17 "81-23-304. Limitation on extension of credit to
18 retailers. A sale or delivery may not be made by a
19 ~~producer-distributor dairy farmer-distributor~~, distributor,
20 or jobber to a retailer, except for cash or payment within
21 15 days after regular billings, and all
22 ~~producer-distributors dairy farmer-distributors~~,
23 distributors, and jobbers shall bill retailers at least
24 monthly. A ~~producer-distributor dairy farmer-distributor~~,
25 distributor, or jobber may not extend more than 15 days"

1 credit after billing to a retailer. A retailer may not
2 receive delivery of milk without agreement to pay for it in
3 cash within 15 days after regular billing. A correctly
4 dated check which is honored upon presentment is cash within
5 the meaning of this section. An extension or acceptance of
6 credit in violation of this section shall be construed as
7 rendering or receiving financial assistance. The licenses
8 of ~~producer-distributors dairy farmer-distributors~~,
9 distributors, or jobbers involved in violation of this
10 section shall be suspended or revoked as determined by the
11 department in its discretion."

12 Section 14. Section 81-23-305, MCA, is amended to
13 read:

14 "81-23-305. Financing prohibitions -- ~~producer dairy~~
15 ~~farmer~~ and retailer. (1) A ~~producer, producer-distributor~~
16 ~~dairy farmer, dairy farmer-distributor~~, distributor, or
17 jobber licensed under this chapter may not advance or loan
18 money or credit to or furnish money or credit for or
19 refinance or cosign or guarantee promissory notes, security
20 agreements, conditional sales contracts, or other commercial
21 paper for or on behalf of a retailer. A ~~producer~~
22 ~~producer-distributor dairy farmer, dairy farmer-distributor~~,
23 distributor, or jobber may not be financially interested,
24 either directly or indirectly, in the conduct or operation
25 of the business of a retailer. A ~~producer-distributor dairy~~

1 ~~farmer-distributor~~, distributor, or jobber licensed under
 2 this chapter may not advance or loan money or credit to or
 3 furnish money or credit for or refinance or cosign or
 4 guarantee promissory notes, security agreements, conditional
 5 sales contracts, or other commercial paper for or on behalf
 6 of a ~~producer dairy farmer~~. A ~~producer-distributor dairy~~
 7 ~~farmer-distributor~~, distributor, or jobber may not be
 8 financially interested, either directly or indirectly, in
 9 the conduct or operation of the business of a ~~producer dairy~~
 10 ~~farmer~~. This section does not prohibit a ~~producer dairy~~
 11 ~~farmer~~ from belonging to, participating in, or patronizing a
 12 cooperative corporation or a ~~producer--producer-distributor~~
 13 ~~dairy farmer, dairy farmer-distributor~~, distributor, or
 14 jobber from operating his own wholly-owned dairy products or
 15 other retail store or home-delivery retail routes.

16 (2) This section does not prohibit a ~~producer dairy~~
 17 ~~farmer~~ from requesting and a distributor from granting an
 18 advance payment for milk before the regular date of payment
 19 for milk or limit in any way the right of a ~~producer dairy~~
 20 ~~farmer~~ to assign part or all of moneys which are or may
 21 become due to him from a distributor."

22 Section 15. Section 81-23-402, MCA, is amended to
 23 read:

24 "81-23-402. Reports of dealers -- accounting system --
 25 records. (1) The department may require licensees to file

1 with its reports at reasonable or regular times which the
 2 department may require, showing the licensee's production,
 3 sale, or distribution of milk and any information considered
 4 by the department necessary which pertains to the
 5 production, sale, or distribution of milk, either under oath
 6 or otherwise, as the department may direct. Failure or
 7 refusal to file a report when directed to do so is grounds
 8 for the revocation of the license and is a violation for
 9 which the licensee may be fined as provided by this chapter,
 10 one or both, at the discretion of the department.

11 (2) The department shall adopt a uniform system of
 12 accounting to be used by the distributor to account for the
 13 usage of all milk received by the distributor.

14 (3) A distributor and ~~producer-distributor dairy~~
 15 ~~farmer-distributor~~ shall keep:

16 (a) a record of all milk, cream, or dairy products
 17 received, detailed as to location, names and addresses of
 18 suppliers, prices paid, deductions or charges made, and the
 19 use to which the milk or cream was put;

20 (b) a record of the quantity of each kind of milk or
 21 dairy product manufactured and the quantity and price of
 22 milk or dairy products sold;

23 (c) a complete record of all milk, cream, or dairy
 24 products sold, classified as to kind and grade, showing
 25 where sold, and the amount received in payment;

1 (d) a record of the wastage or loss of milk or dairy
2 products;

3 (e) a record of the items of handling expense;

4 (f) a record of all refrigeration facilities sold for
5 storage purposes to any person, showing types, sizes, and
6 location of the facilities and the original or duplicate
7 original of all agreements covering sales for them;

8 (g) other records which the department considers
9 necessary for the proper enforcement of this chapter."

10 Section 16. Section 81-23-405, MCA, is amended to
11 read:

12 "81-23-405. Violations made misdemeanors -- penalties.

13 (1) A person who produces, sells, distributes, or handles
14 milk in any way, except as a consumer, without a license
15 from the department as required by this chapter or who
16 violates a lawful rule of the department or board is guilty
17 of a misdemeanor punishable by a fine not exceeding \$600.
18 Each day's violation is a separate offense.

19 (2) The district courts have original jurisdiction in
20 all criminal actions for violations of this chapter and in
21 all civil actions for the recovery or enforcement of
22 penalties provided for in this chapter. All of those
23 actions, both criminal and civil, shall be tried in the
24 district court.

25 (3) The county attorneys, in their respective

1 counties, shall diligently prosecute all violations of this
2 chapter.

3 ~~(4) The penalties provided by this chapter extend to~~
4 ~~retailers."~~

-End-

HB 526

Approved by Comm.
on Rules

HOUSE BILL NO. 526

INTRODUCED BY NORDTVEDT, HUENNEKENS, KESSLER, COONEY, FAGG

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MILK PRICE CONTROL LAWS AND TO END THE REGULATION OF MINIMUM MILK PRICES AT THE WHOLESALE, DISTRIBUTOR, AND RETAIL LEVEL BY THE BOARD OF MILK CONTROL; AMENDING SECTIONS 81-23-101, 81-23-102, 81-23-104, 81-23-105, 81-23-201 THROUGH 81-23-203, 81-23-205, 81-23-301 THROUGH 81-23-305, 81-23-402 AND 81-23-405, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 81-23-101, MCA, is amended to read:

"81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all bottled or packaged milk, low fat, butter milk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the

manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an a government agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer dairy farmer, distributor, producer-distributor dairy farmer-distributor, jobber, or independent contractor.

(g) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(h) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

~~(i) "Jobber--prices"--means those prices at which milk owned by a distributor is sold in bulk or in packages to a jobber or independent contractor.~~

1 (j)(l) "Licensee" means a person who holds a license
2 from the department.

3 (k)(l) "Market" means an area of the state designated
4 by the department as a natural marketing area.

5 (l)(k) "Milk" means the lacteal secretion of a dairy
6 animal or animals, including those secretions when raw and
7 when cooled, pasteurized, standardized, homogenized,
8 recombined, concentrated fresh, or otherwise processed and
9 all of which is designated as grade A by a duly constituted
10 health authority and also includes those secretions which
11 are in any manner rendered sterile or aseptic,
12 notwithstanding whether they are regulated by any health
13 authority of this or any other state or nation.

14 (m)(l) "Person" means a person, firm, corporation, or
15 cooperative association.

16 (n)(l) "Producer Dairy farmer" means a person who
17 produces milk for consumption in this state, selling it to a
18 distributor.

19 (o)(n) "Producer-distributor Dairy farmer-distributor"
20 means a person both producing and distributing milk for
21 consumption in this state.

22 (p)(q) "Producer Dairy farmer prices" means those
23 prices at which milk owned by a producer dairy farmer is
24 sold in bulk to a distributor.

25 (q)(p) "Retail prices" means those prices at which

1 milk owned by a retailer is sold, in bulk or in packages,
2 over the counter at retail or for consumption on the
3 premises.

4 (r)(q) "Retailer" means a person selling milk in bulk
5 or in packages over the counter at retail or for consumption
6 on the premises and includes but is not limited to retail
7 stores of all types, restaurants, boardinghouses,
8 fraternities, sororities, confectionaries, public and
9 private schools, including colleges and universities, and
10 both public and private institutions and instrumentalities
11 of all types and description.

12 (s)(r) "Wholesale prices" means those prices at which
13 milk owned by a distributor is sold, in bulk or in packages,
14 to a retailer.

15 (2) The department may assign new milk products, not
16 expressly included in one of the classes defined in this
17 section, to the class which in its discretion it determines
18 to be proper."

19 Section 2. Section 81-23-102, MCA, is amended to read:
20 "81-23-102. Policy. (1) It is hereby declared that:

21 (a) milk is a necessary article of food for human
22 consumption;

23 (b) the production and maintenance of an adequate
24 supply of healthful milk of proper chemical and physical
25 content, free from contamination, is vital to the public

1 health and welfare;

2 (c) the production, transportation, processing,
3 storage, distribution, and sale of milk in the state of
4 Montana is an industry affecting the public health and
5 interest;

6 (d) unfair, unjust, destructive, and demoralizing
7 trade practices have been and are now being carried on in
8 the production, transportation, processing, storage,
9 distribution, and sale of milk and products manufactured
10 therefrom, which trade practices constitute a constant
11 menace to the health and welfare of the inhabitants of this
12 state and tend to undermine the sanitary regulations and
13 standards of content and purity of milk;

14 (e) health regulations alone are insufficient to
15 prevent disturbances in the milk industry and to safeguard
16 the consuming public from further inadequacy of a supply of
17 this necessary commodity;

18 (f) it is the policy of this state to promote, foster,
19 and encourage the intelligent production and orderly
20 marketing of milk and cream and products manufactured
21 therefrom, to eliminate speculation and waste, to make the
22 distribution thereof between the producer dairy farmer and
23 consumer as direct as can be efficiently and economically
24 done, and to stabilize the marketing of such commodities;

25 (g) investigations have revealed and experience has

1 shown that, due to the nature of milk and the conditions
2 surrounding the production and marketing of milk and due to
3 the vital importance of milk to the health and well-being of
4 the citizens of this state, it is necessary to invoke the
5 police powers of the state to provide a constant supervision
6 and regulation of the milk industry of the state to prevent
7 the occurrence and recurrence of those unfair, unjust,
8 destructive, demoralizing, and chaotic conditions and trade
9 practices within the industry which have in the past
10 affected the industry and which constantly threaten to be
11 revived within the industry and to disrupt or destroy an
12 adequate supply of pure and wholesome milk to the consuming
13 public and to the citizens of this state;

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

21 (i) the demand for this perishable commodity
22 fluctuates from day to day and from time to time making it
23 necessary that the producers dairy farmers and distributors
24 shall produce and carry on hand a surplus of milk in order
25 to guarantee and insure to the consuming public an adequate

1 supply at all times, which surplus must of necessity be
2 converted into hyproducts of milk at great expense and
3 oftentimes at a loss to the producer dairy_farmers and
4 distributor;

5 (j) this surplus of milk, though necessary and
6 unavoidable, unless regulated, tends to undermine and
7 destroy the milk industry, which causes producers to relax
8 their diligence in complying with the provisions of the
9 health authorities and oftentimes to produce milk of an
10 inferior and unsanitary quality;

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

20 (l) where no supervision and regulation are provided
21 for the orderly and profitable marketing of milk, past
22 experience has shown that the credit status of both
23 producers dairy_farmers and distributors of milk is
24 adversely affected to a serious degree, thereby entailing
25 loss and hardship upon all within the community with whom

1 these producers dairy_farmers and distributors carry on
2 business relations;

3 (m) due to the nature of milk and the conditions
4 surrounding its production and distribution, the natural law
5 of supply and demand has been found inadequate to protect
6 the industry in this and other states and in the public
7 interest it is necessary to provide state supervision and
8 regulation of the milk industry in this state.

9 (2) The general purpose of this chapter is to protect
10 and promote public welfare and to eliminate unfair and
11 demoralizing trade practices in the milk industry. It is
12 enacted in the exercise of the police powers of the state."

13 Section 3. Section 81-23-104, MCA, is amended to read:

14 "81-23-104. Rules and orders. The department may adopt
15 and enforce rules and orders necessary to carry out the
16 provisions of this chapter and any orders adopted under it
17 by the department or the board. A rule or order shall be
18 posted for public inspection in the main office of the
19 department for 30 days, and a copy shall be filed in the
20 office of the department. ~~A copy shall also be sent by~~
21 ~~registered or certified letter to the secretary of each~~
22 ~~agency except in the case of an~~ order directed only to a
23 person or persons named in it which shall be served by
24 personal delivery of a copy or by mailing a copy to each
25 person to whom the order is directed or, in the case of a

1 corporation, to any officer or agent of the corporation upon
 2 whom a summons may be served in accordance with laws of
 3 this state. The posting, in the main office of the
 4 department, of a rule or order not required to be personally
 5 served as provided in this section and the filing in the
 6 office of the department is sufficient notice to all
 7 persons affected by the rule or order. A rule or order when
 8 properly posted and filed or served, as provided in this
 9 section, has the force of law."

10 Section 4. Section 81-23-105, MCA, is amended to read:

11 "81-23-105. Testing of milk. (1) For the purpose of
 12 determining the value of milk supplied by producers ~~dairy~~
 13 ~~farmers~~ during routine audits of milk processing plants
 14 which receive raw milk directly from producers ~~dairy~~
 15 ~~farmers~~, the department of business regulation shall
 16 establish a program of testing such raw milk.

17 (2) The department of business regulation may levy an
 18 assessment on licensed producers ~~dairy farmers~~ to secure the
 19 necessary funds to administer this program. This assessment
 20 is in addition to those provided in 81-23-202.

21 (3) All personnel employed in the sampling and testing
 22 program shall be licensed by the animal health division of
 23 the department of livestock.

24 (4) The department of business regulation may conduct
 25 all types of sampling, grading, and testing techniques which

1 it considers necessary to carry out the intent of this
 2 section."

3 Section 5. Section 81-23-201, MCA, is amended to read:

4 "81-23-201. Licenses to producers
 5 ~~producer-distributors~~ ~~dairy~~ ~~farmers~~, ~~dairy~~
 6 ~~farmer-distributors~~, distributors, and jobbers. In any
 7 market where the provisions of this chapter apply, it is
 8 unlawful for a producer, ~~producer-distributor~~ ~~dairy farmers~~,
 9 ~~dairy farmer-distributor~~, distributor, or jobber to produce,
 10 transport, process, store, handle, distribute, buy, or sell
 11 milk unless the dealer is properly licensed as provided by
 12 this chapter. It is unlawful for a person to buy, sell,
 13 handle, process, or distribute milk which he knows or has
 14 reason to believe has been previously dealt with or handled
 15 in violation of any provision of this chapter. The
 16 department may decline to grant a license or may suspend or
 17 revoke a license already granted, upon due cause and after
 18 hearings."

19 Section 6. Section 81-23-202, MCA, is amended to read:

20 "81-23-202. Licenses -- disposition of income. (1) A
 21 ~~producer~~ ~~producer-distributor~~ ~~dairy~~ ~~farmer~~, ~~dairy~~
 22 ~~farmer-distributor~~, distributor, or jobber may not engage in
 23 the business of producing or selling milk subject to this
 24 chapter in this state without first having obtained a
 25 license from the department of livestock or, in the case of

1 milk entering this state from another state or foreign
 2 nation, without complying with the requirements of the
 3 Montana Food, Drug, and Cosmetic Act and without being
 4 licensed under this chapter by the Department. The annual
 5 fee for the license from the department is \$2 and is due
 6 before July 1 and shall be deposited by the department to
 7 the credit of the general fund. The license required by this
 8 chapter is in addition to any other license required by
 9 state law or any municipality of this state. This chapter
 10 shall apply to every part of the state of Montana.

11 (2) ~~(a)~~ In addition to the annual license fee, the
 12 department shall, ~~in each year~~ before April ~~July 1 of each~~
 13 ~~year~~, for the purpose of securing funds to administer and
 14 enforce this chapter, levy an assessment upon ~~producers~~
 15 ~~producer-distributors~~ dairy farmers, dairy
 16 farmer-distributors, and distributors as follows:

17 (a) ~~(i)~~ a fee per hundredweight on the total volume of
 18 all milk subject to this chapter produced and sold by a
 19 ~~producer-distributor~~ dairy farmer-distributor;

20 (b) ~~(ii)~~ a fee per hundredweight on the total volume of
 21 all milk subject to this chapter sold by a ~~producer~~ dairy
 22 farmer;

23 (c) ~~(iii)~~ a fee per hundredweight on the total volume of
 24 all milk subject to this chapter sold by a distributor,
 25 excepting that which is sold to another distributor;

1 ~~(iv) a fee per hundredweight on the total volume of~~
 2 ~~fluid milk and milk equivalents on manufactured milk~~
 3 ~~products sold in this state, subject to this chapter, from~~
 4 ~~out-of-state.~~

5 ~~(b) Only a change in the amount on the assessment~~
 6 ~~requires notice.~~

7 (3) The department shall adopt rules fixing the amount
 8 of each fee. The amounts may not exceed levels sufficient
 9 to provide for the administration of this chapter. The fee
 10 assessed on a ~~producer~~ dairy farmer or on a distributor may
 11 not be more than one-half the fee assessed on a
 12 ~~producer-distributor~~ dairy farmer-distributor.

13 (4) The assessment upon ~~producer-distributors~~
 14 ~~producers~~ dairy farmer-distributors, dairy farmers, and
 15 distributors shall be paid quarterly before January 15,
 16 April 15, July 15, and October 15 of each year. The amount
 17 of the assessment shall be computed by applying the fee
 18 designated by the department to the volume of milk sold in
 19 the preceding calendar quarter.

20 (5) Failure of a ~~producer~~-~~producer-distributor~~ dairy
 21 farmer, dairy farmer-distributor, or distributor to pay an
 22 assessment when due is a violation of this chapter and his
 23 license under this chapter automatically terminates and is
 24 void. A license so terminated shall be reinstated by the
 25 department upon payment of a delinquency fee equal to 30% of

1 the assessment which was due.

2 (6) All assessments required by this chapter shall be
3 deposited by the department in the earmarked revenue fund.
4 All costs of administering this chapter, including the
5 salaries of employees and assistants, per diem and expenses
6 of board members, and all other disbursements necessary to
7 carry out the purpose of this chapter, shall be paid out of
8 control board moneys in that fund.

9 (7) The department may, if it finds the costs of
10 administering and enforcing this chapter can be derived from
11 lower rates, amend its rules to fix the rates at a ~~less~~
12 ~~lesser~~ amount on or before ~~April~~ July 1 in any year."

13 Section 7. Section 81-23-203, MCA, is amended to read:

14 "81-23-203. Application for licenses. An applicant for
15 license to operate as a ~~producer-producer-distributor~~ dairy
16 farmer, dairy farmer-distributor, distributor, or jobber
17 shall file a signed application upon a blank prepared under
18 authority of the department, and an applicant shall state
19 facts concerning his circumstances and the nature of the
20 business to be conducted which in the opinion of the
21 department are necessary for the administration of this
22 chapter. The application shall certify the applicant to be
23 the holder of all licenses required by the department of
24 livestock for the conduct of his business or, in the case
25 of milk entering this state from another state or foreign

1 nation, compliance with the requirements of the Montana
2 Food, Drug, and Cosmetic Act. The application shall be
3 accompanied by the license fee required to be paid."

4 Section 8. Section 81-23-205, MCA, is amended to read:

5 "81-23-205. Bonds required of distributors -- amounts
6 -- forms and conditions. (1) A distributor before purchasing
7 milk from a ~~producer~~ dairy farmer shall deliver to the
8 department a surety bond of not less than \$1,000, executed
9 by the distributor as principal and by a surety company
10 authorized to do business in this state as surety. The bond
11 shall be on a form approved by the department and shall be
12 conditioned upon the payment, in the manner required by this
13 chapter, of all amounts due to ~~producers~~ dairy farmers for
14 milk purchased by the distributor during the license year.
15 The bond shall be to the state in favor of every producer of
16 milk. In case of failure by a distributor to pay a ~~producer~~
17 dairy farmer for milk in the manner required by this
18 chapter, the department shall proceed immediately to
19 ascertain the names and addresses of all ~~producer-creditors~~
20 dairy farmer-creditors of that distributor, together with
21 the amounts due them and shall request all those
22 ~~producer-creditors~~ dairy farmer-creditors to file a verified
23 statement of their respective claims. The department shall
24 then sue on the bond on behalf of the ~~producer-creditors~~
25 dairy farmer-creditors. Upon suing on the bond, the

1 department may require the filing of a new bond; and
 2 immediately upon a recovery in an action upon the bond, the
 3 distributor shall file a new bond. Upon failure to file a
 4 new bond within 10 days in either case, the failure is
 5 grounds for the revocation or suspension of the license of
 6 the distributor. If recovery on the bond is not sufficient
 7 to pay all of the claims as finally determined by the court,
 8 the amount recovered shall be divided pro rata among the
 9 producer-creditors dairy farmer-creditors.

10 (2) The minimum bond of \$1,000 shall be required of
 11 distributors purchasing an average daily quantity of milk of
 12 less than 100 gallons; distributors purchasing an average
 13 daily quantity of 100 gallons and less than 200 gallons
 14 during any calendar month during a license year shall post a
 15 bond in the amount of \$2,000; distributors purchasing an
 16 average daily quantity of 200 gallons and less than 300
 17 gallons during any calendar month during a license year
 18 shall post a bond in the amount of \$3,000; distributors
 19 purchasing an average daily quantity of 300 gallons or more
 20 during any calendar month during a license year shall post a
 21 bond in the sum of \$5,000.

22 (3) If a distributor increases his purchases of milk
 23 during the license year to exceed the amount for which he is
 24 bonded, he shall immediately post the additional bond
 25 required to comply with this section.

1 (4) The department may require a distributor to
 2 furnish a bond in addition to those specified in this
 3 section if, after notice and hearing and upon good cause
 4 shown, it determines the additional bond is required to
 5 assure payment of all amounts due or to become due to
 6 producers dairy farmers.

7 (5) Failure of a distributor who purchases milk from
 8 producers dairy farmers to post a bond required by this
 9 section is a violation of this chapter."

10 Section 9. Section 81-23-301, MCA, is amended to read:

11 "81-23-301. Markets. (1) Pursuant to the declaration
 12 of policy relating to milk set forth in 81-23-102(1), the
 13 department shall designate natural marketing areas which
 14 shall together embrace all the geographical area of the
 15 state and shall enforce minimum producer dairy farmer and
 16 wholesaler--and-retail prices established for those areas by
 17 the board.

18 (2) Natural marketing areas shall be established
 19 throughout the state by the department. Before a proposed
 20 natural marketing area is established, the department, after
 21 notice of at least 30 days, shall hold a hearing or
 22 hearings, at a place or places within the proposed area, at
 23 which producers dairy farmers and distributors doing
 24 business within the proposed natural marketing area, who are
 25 licensed by the department of livestock, and the consuming

1 public may present evidence and testify. If the hearing or
 2 hearings make it evident to the department that the
 3 establishment of the proposed natural marketing area is in
 4 the public interest, the department shall establish the
 5 natural marketing area.

6 (3) The department may from time to time adjust the
 7 boundaries of natural marketing areas, if after a hearing
 8 upon notice of at least 30 days to all interested parties it
 9 finds the adjustment to be in the public interest."

10 Section 10. Section 81-23-302, MCA, is amended to
 11 read:

12 "81-23-302. Establishment of minimum prices. (1) The
 13 board shall fix minimum producer ~~wholesale~~ dairy farmer and
 14 ~~wholesale--jobbery--and-retail~~ prices for class I₁ milk and
 15 ~~minimum-producer dairy-farmer~~ prices-only-for class II₁ and
 16 class III milk in all areas of the state by adopting rules
 17 in a manner prescribed by the Montana Administrative
 18 Procedure Act.

19 (2) The board shall establish such prices by means of
 20 flexible formulas which shall be devised so that they bring
 21 about such automatic changes in all minimum prices as are
 22 justified on the basis of changes in production, supply,
 23 processing, and distribution ~~and-retailing~~ costs.

24 (3) The board shall consider the balance between
 25 production and consumption of milk, the costs of production

1 and distribution, and prices in adjacent and neighboring
 2 areas and states so that minimum prices which are fair and
 3 equitable to producers dairy farmers and-to distributors
 4 ~~jobbers--retailers--and-consumers at-the-wholesale-level~~ may
 5 result.

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

17 (5) Such specific factors may include but shall not be
 18 limited to the following items:

19 (a) current and prospective supplies of milk in
 20 relation to current and prospective demands for such milk
 21 for all purposes;

22 (b) ~~the--ability--and--willingness--of--consumers--to~~
 23 ~~purchase--which--shall--include--among--other--things--per--capita~~
 24 ~~disposable--income--statistics--consumer-price-indexes--and~~
 25 ~~wholesale-price-indexes~~

1 ~~(c)(b)~~ the cost factors in producing milk, which shall
 2 include among other things the prices paid by farmers
 3 generally (as used in parity calculations of the United
 4 States department of agriculture), prices paid by farmers
 5 for dairy feed in particular, and farm wage rates in this
 6 state;

7 ~~(c)(c)~~ the alternative opportunities, both farm and
 8 nonfarm, open to milk producers dairy farmers, which shall
 9 include among other things prices received by farmers for
 10 all products other than milk, prices received by farmers for
 11 beef cattle, and the percentage of unemployment in the state
 12 and nation as determined by appropriate state and federal
 13 agencies;

14 ~~(c)(d)~~ the prices of butter, nonfat dry milk, and
 15 cheese;

16 ~~(c)(e)~~ the cost factors in distributing milk, which
 17 shall include among other things the prices paid by
 18 distributors for equipment of all types required to process
 19 and market milk and prevailing wage rates in this state;

20 ~~(c)(f)~~ the cost factors in jobbing milk, which shall
 21 include among other things raw product and ingredient costs
 22 carton or other packaging costs, processing costs, and that
 23 part of general administrative costs of the supplying
 24 distributor which may properly be allocated to the handling
 25 of milk to the point at which such milk is at the supplying

1 ~~distributors' docks, equipment of all types required to~~
 2 ~~market milk, and prevailing wage rates in the state;~~

3 ~~(c)(g)~~ the need, if any, for freight or transportation
 4 charges to be deducted by distributors from producer dairy
 5 farmer prices for bulk milk;

6 ~~(c)(h)~~ a reasonable return on necessary investment to all
 7 ~~ordinarily efficient and economical milk dealers;~~

8 (6) If the board at any time proposes to base all or
 9 any part of any official order establishing or revising any
 10 milk pricing formulas upon facts within its own knowledge,
 11 as distinguished from evidence which may be presented to it
 12 by the consuming public or the milk industry, the board
 13 shall, when publishing notice of proposed rulemaking under
 14 authority of this section, cause notice to be given to the
 15 consuming public and the milk industry of the specific facts
 16 within its own knowledge which it will consider, so that all
 17 interested parties will have opportunity to be heard and to
 18 question or rebut such facts as a matter of record.

19 (7) The board, after consideration of the evidence
 20 produced, shall make written findings and conclusions and
 21 shall fix by official rule the formula whereby minimum

22 ~~(c)(i)~~ producer dairy farmer prices for milk in classes
 23 I, II, and III shall be computed;

24 ~~(c)(j)~~ wholesale prices for milk in class I shall be
 25 computed;

1 ~~(c) jobber prices for milk in class i shall be~~
 2 ~~computed.~~

3 ~~(d) retailer prices for milk in class i shall be~~
 4 ~~computed.~~

5 (8) This section shall not be construed as requiring
 6 the board to promulgate any specific number of formulas, but
 7 shall be construed liberally so that the board may adopt any
 8 reasonable method of expression to accomplish the objective
 9 set forth in subsection (7). If the evidence presented to
 10 the board at any public hearing for the establishment or
 11 revision of milk pricing formulas is found by the board to
 12 require the establishment of separate and varying wholesale
 13 prices for any particular uses, the board shall designate
 14 the reasons therefor and establish such separate formulas.

15 (9) Each rule establishing or revising any milk
 16 pricing formulas shall classify milk by forms, classes,
 17 grades, or uses as the board may deem advisable and shall
 18 specify the minimum prices therefor.

19 (10) The milk produced in one natural marketing area
 20 and sold in another natural marketing area shall be paid for
 21 by a distributor or dealer in accordance with the pricing
 22 order of the area where produced at the price therein
 23 specified of the class or use in which it is ultimately used
 24 or sold.

25 (11) The board shall adopt rules after notice and

1 hearing in the manner prescribed by the Montana
 2 Administrative Procedure Act to regulate transportation
 3 rates which distributors, contract haulers, and others
 4 charge producers dairy farmers for both farm-to-plant and
 5 interplant transportation of milk. No allowance for
 6 transportation of milk between plants may be permitted
 7 unless it is found by the board to be necessary to permit
 8 the movement of milk in the public interest.

9 ~~(12) All milk purchased within a natural marketing area~~
 10 ~~by a distributor shall be purchased on a uniform basis. The~~
 11 ~~basis to be used shall be established by the board after the~~
 12 ~~producers dairy farmers and the distributors of the area~~
 13 ~~have been consulted.~~

14 ~~(13)~~(12) The board may amend any official rule in the
 15 same manner provided herein for the original establishment
 16 of milk pricing formulas. The board may in its discretion,
 17 when it determines the need exists, give notice of and hold
 18 statewide public hearings affecting establishment or
 19 revision of milk pricing formulas in all market areas of the
 20 state.

21 ~~(14)~~(13) Upon petition of a distributor or a majority
 22 of his producers dairy farmers, the board shall hold a
 23 hearing to receive and consider evidence regarding the
 24 advisability and need for a base or quota plan as a method
 25 of payment by that distributor of producer dairy farmer

1 prices; and if the board finds that the evidence adduced at
 2 such hearing warrants the establishment of a base or quota
 3 plan, the board shall proceed by official order to establish
 4 the same.

5 ~~†15†(14)~~ Upon petition by any producer
 6 ~~producer-distributor dairy farmer dairy farmer distributor~~
 7 ~~or-distributor~~ in any marketing area, the board shall hold a
 8 hearing to receive and consider evidence regarding the
 9 advisability and need for an areawide or statewide pooling
 10 arrangement as a method of payment of producer ~~dairy farmer~~
 11 prices, provided that at such hearing the board shall among
 12 other things specifically receive and consider evidence
 13 concerning production and marketing practices which have
 14 historically prevailed in the area concerned or statewide,
 15 as the case may be. If the board finds that the evidence
 16 adduced at such hearing warrants the establishment of such
 17 an areawide or statewide pooling arrangement, the board
 18 shall proceed by official order to establish the same; but
 19 such official order shall be of no force or effect until it
 20 is approved in a referendum conducted by the board among
 21 affected ~~producers, producer-distributors, and distributors~~
 22 DAIRY FARMERS.

23 ~~†16†(15)~~ The requirements hereinabove set forth
 24 concerning notices of hearings for the establishment of milk
 25 pricing formulas shall apply to any hearings regarding base

1 or quota plans or areawide or statewide pooling arrangements
 2 or abandonment thereof.

3 ~~†17†(16)~~ Rules adopted pursuant to this section shall
 4 be enforced and audited for compliance by the milk control
 5 division of the department of business regulation."

6 NEW SECTION. Section 11. Decontrol at the WHOLESALE,
 7 DISTRIBUTOR, AND retail level. Beginning July 1, 1979, the
 8 board shall start a program of orderly decontrol of milk
 9 prices at the WHOLESALE, DISTRIBUTOR, AND retail level. This
 10 program is at the discretion of the board and may be
 11 instituted without a public hearing but must be completed
 12 before January 1, 1980.

13 Section 12. Section 81-23-303, MCA, is amended to
 14 read:

15 "81-23-303. Rules of fair trade practices. The
 16 department may adopt reasonable rules governing fair trade
 17 practices as they pertain to the transaction of busine
 18 among licensees under this chapter and among licensees and
 19 the general public. Those rules shall contain but are not
 20 limited to provisions prohibiting the following methods of
 21 doing business which are unfair, unlawful, and not in the
 22 public interest:

23 (1) the payment, allowance, or acceptance of secret
 24 rebates, secret refunds, or unearned discounts by a person,
 25 whether in the form of money or otherwise;

1 (2) the giving of milk, cream, dairy products,
 2 services, or articles of any kind, except to bona fide
 3 charities, for the purpose of securing or retaining the
 4 fluid milk or fluid cream business of a customer;

5 (3) the extension to certain customers of special
 6 prices or services not available to all customers who
 7 purchase milk of like quantity under like terms and
 8 conditions;

9 (4) the purchasing, processing, bottling, packaging,
 10 transporting, delivering, or otherwise handling in any
 11 marketing area of milk which is to be or is sold or
 12 otherwise disposed of at less than the minimum wholesale and
 13 minimum-retail prices established by the board;

14 (5) the payment of a price lower than the applicable
 15 producer ~~dairy farmer~~ price, established by the board, by a
 16 distributor to a producer ~~dairy farmer~~ for milk which is
 17 distributed to any person, including agencies of the
 18 federal, state, or local government."

19 Section 13. Section 81-23-304, MCA, is amended to
 20 read:

21 "81-23-304. Limitation on extension of credit to
 22 retailers. A sale or delivery may not be made by a
 23 producer-distributor ~~dairy farmer-distributor~~, distributor,
 24 or jobber to a retailer, except for cash or payment within
 25 15 days after regular billings, and all

1 producer-distributors ~~dairy farmer-distributors~~,
 2 distributors, and jobbers shall bill retailers at least
 3 monthly. A producer-distributor ~~dairy farmer-distributor~~,
 4 distributor, or jobber may not extend more than 15 days'
 5 credit after billing to a retailer. A retailer may not
 6 receive delivery of milk without agreement to pay for it in
 7 cash within 15 days after regular billing. A correctly
 8 dated check which is honored upon presentment is cash within
 9 the meaning of this section. An extension or acceptance of
 10 credit in violation of this section shall be construed as
 11 rendering or receiving financial assistance. The licenses
 12 of producer-distributors ~~dairy farmer-distributors~~,
 13 distributors, or jobbers involved in violation of this
 14 section shall be suspended or revoked as determined by the
 15 department in its discretion."

16 Section 14. Section 81-23-305, MCA, is amended to
 17 read:

18 "81-23-305. Financing prohibitions -- producer ~~dairy~~
 19 ~~farmer~~ and retailer. (1) A producer, ~~producer-distributor~~
 20 ~~dairy farmer~~, ~~dairy farmer-distributor~~, distributor, or
 21 jobber licensed under this chapter may not advance or loan
 22 money or credit to or furnish money or credit for or
 23 refinance or cosign or guarantee promissory notes, security
 24 agreements, conditional sales contracts, or other commercial
 25 paper for or on behalf of a retailer. A producer

1 ~~producer-distributor dairy farmer, dairy farmer-distributor,~~
 2 ~~distributor, or jobber may not be financially interested,~~
 3 ~~either directly or indirectly, in the conduct or operation~~
 4 ~~of the business of a retailer. A producer-distributor dairy~~
 5 ~~farmer-distributor, distributor, or jobber licensed under~~
 6 ~~this chapter may not advance or loan money or credit to or~~
 7 ~~furnish money or credit for or refinance or cosign or~~
 8 ~~guarantee promissory notes, security agreements, conditional~~
 9 ~~sales contracts, or other commercial paper for or on behalf~~
 10 ~~of a producer dairy farmer. A producer-distributor dairy~~
 11 ~~farmer-distributor, distributor, or jobber may not be~~
 12 ~~financially interested, either directly or indirectly, in~~
 13 ~~the conduct or operation of the business of a producer dairy~~
 14 ~~farmer. This section does not prohibit a producer dairy~~
 15 ~~farmer from belonging to, participating in, or patronizing a~~
 16 ~~cooperative corporation or a producer--producer-distributor~~
 17 ~~dairy farmer, dairy farmer-distributor, distributor, or~~
 18 ~~jobber from operating his own wholly-owned dairy products or~~
 19 ~~other retail store or home-delivery retail routes.~~

20 (2) This section does not prohibit a producer dairy
 21 farmer from requesting and a distributor from granting an
 22 advance payment for milk before the regular date of payment
 23 for milk or limit in any way the right of a producer dairy
 24 farmer to assign part or all of moneys which are or may
 25 become due to him from a distributor."

1 Section 15. Section 81-23-402, MCA, is amended to
 2 read:

3 "81-23-402. Reports of dealers -- accounting system --
 4 records. (1) The department may require licensees to file
 5 with it reports at reasonable or regular times which the
 6 department may require, showing the licensee's production,
 7 sale, or distribution of milk and any information considered
 8 by the department necessary which pertains to the
 9 production, sale, or distribution of milk, either under oath
 10 or otherwise, as the department may direct. Failure or
 11 refusal to file a report when directed to do so is grounds
 12 for the revocation of the license and is a violation for
 13 which the licensee may be fined as provided by this chapter,
 14 one or both, at the discretion of the department.

15 (2) The department shall adopt a uniform system of
 16 accounting to be used by the distributor to account for the
 17 usage of all milk received by the distributor.

18 (3) A distributor and producer-distributor dairy
 19 farmer-distributor shall keep:

20 (a) a record of all milk, cream, or dairy products
 21 received, detailed as to location, names and addresses of
 22 suppliers, prices paid, deductions or charges made, and the
 23 use to which the milk or cream was put;

24 (b) a record of the quantity of each kind of milk or
 25 dairy product manufactured and the quantity and price of

1 milk or dairy products sold;

2 (c) a complete record of all milk, cream, or dairy

3 products sold, classified as to kind and grade, showing

4 where sold, and the amount received in payment;

5 (d) a record of the wastage or loss of milk or dairy

6 products;

7 (e) a record of the items of handling expense;

8 (f) a record of all refrigeration facilities sold for

9 storage purposes to any person, showing types, sizes, and

10 location of the facilities and the original or duplicate

11 original of all agreements covering sales for them;

12 (g) other records which the department considers

13 necessary for the proper enforcement of this chapter."

14 Section 16. Section 81-23-405, MCA, is amended to

15 read:

16 "81-23-405. Violations made misdemeanors -- penalties.

17 (1) A person who produces, sells, distributes, or handles

18 milk in any way, except as a consumer, without a license

19 from the department as required by this chapter or who

20 violates a lawful rule of the department or board is guilty

21 of a misdemeanor punishable by a fine not exceeding \$600.

22 Each day's violation is a separate offense.

23 (2) The district courts have original jurisdiction in

24 all criminal actions for violations of this chapter and in

25 all civil actions for the recovery or enforcement of

1 penalties provided for in this chapter. All of those

2 actions, both criminal and civil, shall be tried in the

3 district court.

4 (3) The county attorneys, in their respective

5 counties, shall diligently prosecute all violations of this

6 chapter.

7 ~~(4) The penalties provided by this chapter extend to~~

8 ~~retailers."~~

-End-