

SENATE BILL 365

IN THE SENATE

February 5, 1979	Introduced and referred to Committee on Business and Industry.
February 6, 1979	Rereferred to Committee on Agriculture, Livestock and Irrigation.
February 20, 1979	Committee recommend bill, do not pass.

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 2 INTRODUCED BY *Sen. Hager* BILL NO. *365*  
 3 *Boylan, Festerlin, Orr*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 MILK CONTROL LAWS TO AUTHORIZE A MILK MARKETING  
 6 ADMINISTRATOR IN THE DEPARTMENT OF BUSINESS REGULATION WHO  
 7 MAY ESTABLISH MINIMUM WHOLESALE AND PRODUCER MILK PRICES  
 8 AND, IN AN EMERGENCY, MAY ESTABLISH RETAIL MILK PRICES;  
 9 REPEALING SECTIONS 2-15-1802, 81-23-101 THROUGH 81-23-106,  
 10 81-23-201 THROUGH 81-23-205, 81-23-301 THROUGH 81-23-305,  
 11 AND 81-23-401 THROUGH 81-23-406, MCA."

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

14 Section 1. Definitions. As used in [this act], the  
 15 following definitions apply:

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

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

25 (3) "Milk" means the lacteal secretion of a dairy

1 animal or animals, including those secretions when raw and  
 2 when cooled, pasteurized, standardized, homogenized,  
 3 recombined, concentrated fresh, or otherwise processed and  
 4 all of which is designated as grade A by a duly constituted  
 5 health authority and also includes those secretions which  
 6 are in any manner rendered sterile or aseptic,  
 7 notwithstanding whether they are regulated by any health  
 8 authority of this or any other state or nation.

9 (4) "Producer" means a person who produces milk for  
 10 consumption in this state, selling it to a distributor.

11 (5) "Producer-distributor" means a person both  
 12 producing and distributing milk for consumption in this  
 13 state.

14 (6) "Retailer" means a person selling milk in bulk or  
 15 in packages over the counter at retail or for consumption on  
 16 the premises and includes but is not limited to retail  
 17 stores of all types, restaurants, boardinghouses,  
 18 fraternities, sororities, confectionaries, public and  
 19 private schools, including colleges and universities, and  
 20 both public and private institutions and instrumentalities  
 21 of all types and description.

22 Section 2. Milk marketing administrator authorized.  
 23 The department of business regulation may employ a milk  
 24 marketing administrator.

25 Section 3. Milk prices to be established by rule. The

1 milk marketing administrator authorized by [section 1] may  
2 establish by rule in accordance with the Montana  
3 Administrative Procedure Act:

4 (1) uniform minimum wholesale and producer prices for  
5 all classes of grade A milk sold in the state;

6 (2) emergency minimum retail milk prices for a period  
7 not to exceed 5 months if, in the judgment of the  
8 administrator:

9 (a) a price war at the retail level is imminent;

10 (b) the stability of the production of milk within the  
11 state is endangered; and

12 (c) the supply of milk to the public is endangered.

13 Section 4. Guidelines for the establishment of minimum  
14 prices. (1) The milk marketing administrator shall fix  
15 uniform minimum prices by means of flexible formulas devised  
16 so that they bring about such automatic changes in all  
17 minimum prices as are justified based on changes in  
18 production, supply, processing, distribution and retailing  
19 costs.

20 (2) In determining minimum milk prices the milk  
21 marketing administrator must set forth the specific factors  
22 taken into consideration in establishing the formulas,  
23 including but not limited to the following items:

24 (a) current and prospective supplies of milk in  
25 relation to current and prospective demands for such milk

1 for all purposes;

2 (b) the ability and willingness of consumers to  
3 purchase, which shall include among other things per capita  
4 disposable income statistics, consumer price indexes, and  
5 wholesale price indexes;

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

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

18 (e) the prices of butter, nonfat dry milk, and cheese;

19 (f) the cost factors in distributing milk, which shall  
20 include among other things the prices paid by distributors  
21 for equipment of all types required to process and market  
22 milk and prevailing wage rates in this state;

23 (g) the cost factors in jobbing milk, which shall  
24 include among other things raw product and ingredient costs,  
25 carton or other packaging cost, processing cost, and that

1 part of general administrative costs of the supplying  
 2 distributor which may properly be allocated to the handling  
 3 of milk to the point at which such milk is at the supplying  
 4 distributor's dock, equipment of all types required to  
 5 market milk, and prevailing wage rates in the state; and

6 (h) the need, if any, for freight or transportation  
 7 charges to be deducted by distributors from producer prices  
 8 for bulk milk.

9 Section 5. Testing of milk. (1) For the purpose of  
 10 determining the value of milk supplied by producers during  
 11 routine audits of milk processing plants which receive raw  
 12 milk directly from producers, the department of business  
 13 regulation shall establish a program of testing such raw  
 14 milk.

15 (2) The department of business regulation may levy an  
 16 assessment on licensed producers to secure the necessary  
 17 funds to administer this program. This assessment is in  
 18 addition to those provided in [section 7].

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

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

1 Section 6. Licenses to producers,  
 2 producer-distributors, distributors, and jobbers. It is  
 3 unlawful for a producer, producer-distributor, distributor,  
 4 or jobber to produce, transport, process, store, handle,  
 5 distribute, buy, or sell milk unless the dealer is properly  
 6 licensed as provided by [this act]. It is unlawful for a  
 7 person to buy, sell, handle, process, or distribute milk  
 8 which he knows or has reason to believe has been previously  
 9 dealt with or handled in violation of any provision of [this  
 10 act]. The department may decline to grant a license or may  
 11 suspend or revoke a license already granted, upon due cause  
 12 and after hearings.

13 Section 7. Licenses -- disposition of income. (1) A  
 14 producer, producer-distributor, distributor, or jobber may  
 15 not engage in the business of producing or selling milk  
 16 subject to [this act] in this state without first having  
 17 obtained a license from the department of livestock or, in  
 18 the case of milk entering this state from another state or  
 19 foreign nation, without complying with the requirements of  
 20 the Montana Food, Drug, and Cosmetic Act and without being  
 21 licensed by the department. The annual fee for the license  
 22 from the department is \$2 and is due before July 1 and  
 23 shall be deposited by the department to the credit of the  
 24 general fund. The license required by [this act] is in  
 25 addition to any other license required by state law or any

1 municipality of this state. [This act] applies to every part  
2 of the state of Montana.

3 (2) In addition to the annual license fee, the  
4 department shall, in each year, before April 1, for the  
5 purpose of securing funds to administer and enforce [this  
6 act], levy an assessment upon producers,  
7 producer-distributors, and distributors as follows:

8 (a) a fee per hundredweight on the total volume of all  
9 milk subject to [this act] produced and sold by a  
10 producer-distributor;

11 (b) a fee per hundredweight on the total volume of all  
12 milk subject to [this act] sold by a producer;

13 (c) a fee per hundredweight on the total volume of all  
14 milk subject to [this act] sold by a distributor, excepting  
15 that which is sold to another distributor.

16 (3) The department shall adopt rules fixing the amount  
17 of each fee. The amounts may not exceed levels sufficient  
18 to provide for the administration of [this act]. The fee  
19 assessed on a producer or on a distributor may not be more  
20 than one-half the fee assessed on a producer-distributor.

21 (4) The assessment upon producer-distributors,  
22 producers, and distributors shall be paid quarterly before  
23 January 15, April 15, July 15, and October 15 of each year.  
24 The amount of the assessment shall be computed by applying  
25 the fee designated by the department to the volume of milk

1 sold in the preceding calendar quarter.

2 (5) Failure of a producer, producer-distributor, or  
3 distributor to pay an assessment when due is a violation of  
4 [this act] and his license under [this act] automatically  
5 terminates and is void. A license so terminated shall be  
6 reinstated by the department upon payment of a delinquency  
7 fee equal to 30% of the assessment which was due.

8 (6) All assessments required by [this act] shall be  
9 deposited by the department in the earmarked revenue fund.  
10 All costs of administering [this act], including the  
11 salaries of employees and assistants, and all other  
12 disbursements necessary to carry out the purpose of [this  
13 act], shall be paid out of that fund.

14 (7) The department may, if it finds the costs of  
15 administering and enforcing [this act] can be derived from  
16 lower rates, amend its rules to fix the rates at a less  
17 amount on or before April 1 in any year.

18 Section 8. Rules of fair trade practices. The milk  
19 marketing administrator may adopt reasonable rules  
20 governing fair trade practices as they pertain to the  
21 transaction of business among licensees under [this act] and  
22 among licensees and the general public. Those rules shall  
23 contain but are not limited to provisions prohibiting the  
24 following methods of doing business which are unfair,  
25 unlawful, and not in the public interest:

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

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

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

12 (4) the purchasing, processing, bottling, packaging,  
13 transporting, delivering, or otherwise handling in any  
14 marketing area of milk which is to be or is sold or  
15 otherwise disposed of at less than the minimum wholesale  
16 prices established by the milk marketing administrator;

17 (5) the payment of a price lower than the applicable  
18 producer price, established by the milk marketing  
19 administrator, by a distributor to a producer for milk which  
20 is distributed to any person, including agencies of the  
21 federal, state, or local government.

22 Section 9. Violations made misdemeanors -- penalties.

23 (1) A person who produces, sells, distributes, or handles  
24 milk in any way, except as a consumer, without a license  
25 from the department as required by [this act] or who

1 violates a lawful rule of the milk marketing administrator  
2 is guilty of a misdemeanor punishable by a fine not  
3 exceeding \$600. Each day's violation is a separate offense.

4 (2) The district courts have original jurisdiction in  
5 all criminal actions for violations of [this act] and in all  
6 civil actions for the recovery or enforcement of penalties  
7 provided for in [this act]. All of those actions, both  
8 criminal and civil, shall be tried in the district court.

9 (3) The county attorneys, in their respective  
10 counties, shall diligently prosecute all violations of [this  
11 act].

12 Section 10. Additional remedies. The department may  
13 begin any proceeding at law or in equity as may appear  
14 necessary to enforce compliance with [this act] or to  
15 enforce compliance with a rule of the milk marketing  
16 administrator adopted under [this act] or to obtain a  
17 judicial interpretation of any of them. In addition to any  
18 other remedy, the department may apply to the district court  
19 of the district where the action arises for relief by  
20 injunction, mandamus, or any other appropriate remedy in  
21 equity without being compelled to allege or prove that an  
22 adequate remedy at law does not otherwise exist. The  
23 department may not be required to post bond in an action to  
24 which it is a party whether upon appeal or otherwise. All  
25 legal actions may be brought by or against the department in

1 the name of the department of business regulation, and it is  
2 not necessary in an action to which the department is a  
3 party that the action be brought by or against this state on  
4 relation of the department. The department may sue by its  
5 own attorney, and it may also call upon a county attorney to  
6 represent it in the district court of his county or the  
7 attorney general to represent it on appeal to the supreme  
8 court, or it may associate its own attorney with either in  
9 any court.

10 Section 11. Repealer. Sections 2-15-1802, 81-23-101  
11 through 81-23-106, 81-23-201 through 81-23-205, 81-23-301  
12 through 81-23-305, and 81-23-401 through 81-23-406, MCA, are  
13 repealed.

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