

House Bill 151

In The House

January 10, 1981	Introduced and referred to Committee on Business and Industry.
	On motion by Chief Sponsor five Representatives were added as authors to the pre-filed bill.
January 12, 1981	Fiscal note requested.
January 16, 1981	Fiscal note returned.
January 23, 1981	Committee recommend bill do not pass.

1 HOUSE BILL NO. 151
 2 INTRODUCED BY Thomas E. Hanna
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE BOARD OF
 5 MILK CONTROL AND ELIMINATE ITS FUNCTIONS; AMENDING SECTIONS
 6 2-8-103, 81-23-101, 81-23-104, 81-23-202, 81-23-204,
 7 81-23-303, 81-23-405, AND 81-23-406, MCA; AND REPEALING
 8 SECTIONS 2-15-1802, 81-23-301, AND 81-23-302, MCA."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 2-8-103, MCA, is amended to read:
 12 "2-8-103. Agencies to terminate. (1) The following
 13 agencies shall terminate on July 1, 1979:
 14 (a) board of abstracters, department of professional
 15 and occupational licensing, created by 2-15-1643;
 16 (b) board of real estate, department of professional
 17 and occupational licensing, created by 2-15-1642;
 18 (c) state board of warm air heating, ventilation, and
 19 air conditioning, department of professional and
 20 occupational licensing, created by 2-15-1656;
 21 (d) board of institutions, department of institutions,
 22 created by 2-15-2303.
 23 (2) The following agencies shall terminate on July 1,
 24 1981:
 25 (a) commission for human rights, department of labor

1 and industry, created by 2-15-1706;
 2 (b) board of athletics, department of professional and
 3 occupational licensing, created by 2-15-1661;
 4 (c) board of barbers, department of professional and
 5 occupational licensing, created by 2-15-1625;
 6 (d) board of chiropractors, department of professional
 7 and occupational licensing, created by 2-15-1613;
 8 (e) board of cosmetologists, department of
 9 professional and occupational licensing, created by
 10 2-15-1626;
 11 (f) board of dentists, department of professional and
 12 occupational licensing, created by 2-15-1606;
 13 (g) board of hearing aid dispensers, department of
 14 professional and occupational licensing, created by
 15 2-15-1616;
 16 (h) board of massage therapists, department of
 17 professional and occupational licensing, created by
 18 2-15-1627;
 19 (i) Montana state board of medical examiners,
 20 department of professional and occupational licensing,
 21 created by 2-15-1605;
 22 (j) board of morticians, department of professional
 23 and occupational licensing, created by 2-15-1619;
 24 (k) board of nursing, department of professional and
 25 occupational licensing, created by 2-15-1610;

1 (l) board of nursing home administrators, department
2 of professional and occupational licensing, created by
3 2-15-1611;

4 (m) board of optometrists, department of professional
5 and occupational licensing, created by 2-15-1612;

6 (n) board of osteopathic physicians, department of
7 professional and occupational licensing, created by
8 2-15-1607;

9 (o) board of pharmacists, department of professional
10 and occupational licensing, created by 2-15-1609;

11 (p) board of podiatry examiners, department of
12 professional and occupational licensing, created by
13 2-15-1608;

14 (q) board of psychologists, department of professional
15 and occupational licensing, created by 2-15-1617;

16 (r) board of radiologic technologists, department of
17 professional and occupational licensing, created by
18 2-15-1614;

19 (s) board of speech pathologists and audiologists,
20 department of professional and occupational licensing,
21 created by 2-15-1615;

22 (t) board of veterinarians, department of professional
23 and occupational licensing, created by 2-15-1618;

24 (u) board of veterans' affairs, department of social
25 and rehabilitation services, created by 2-15-2202;

1 (v) board of sanitarians, department of professional
2 and occupational licensing, created by 2-15-1631.

3 (3) The following units of state government shall
4 terminate on July 1, 1983:

5 (a) board of aeronautics, department of community
6 affairs, created by 2-15-1103;

7 (b) state board of hail insurance, department of
8 agriculture, created by 2-15-3003;

9 (c) board of horse racing, department of professional
10 and occupational licensing, created by 2-15-1662;

11 (d) board of livestock, department of livestock,
12 created by 2-15-3102;

13 ~~(e) board of milk control, department of business~~
14 ~~regulation, created by 2-15-1002;~~

15 ~~(f)(g)~~ board of oil and gas conservation, department
16 of natural resources and conservation, created by 2-15-3303;

17 ~~(g)(f)~~ Montana outfitters council, department of fish,
18 wildlife, and parks, created by 2-15-3403;

19 ~~(h)(g)~~ public service commission, department of public
20 service regulation, created by 69-1-102;

21 ~~(i)(h)~~ board of water and wastewater operators,
22 department of health and environmental sciences, created by
23 2-15-2105;

24 ~~(j)(i)~~ board of water well contractors, department of
25 professional and occupational licensing, created by

1 2-15-1632.

2 (4) The following agencies terminate on July 1, 1985:

3 (a) the board of public accountants, created by

4 2-15-1641;

5 (b) the board of architects, created by 2-15-1651;

6 (c) state banking board, department of business

7 regulation, created by 2-15-1803;

8 (d) the state electrical board, created by 2-15-1654;

9 (e) the board of professional engineers and land

10 surveyors, created by 2-15-1653;

11 (f) office of commissioner of insurance and the

12 insurance department, state auditor's office, created by

13 2-15-1902 and 2-15-1903;

14 (g) office of the securities commissioner, state

15 auditor's office, created by 2-15-1901;

16 (h) the board of landscape architects, created by

17 2-15-1652;

18 (i) the board of county printing, created by

19 2-15-1102;

20 (j) the board of plumbers, created by 2-15-1655;

21 (k) board of physical therapy examiners, created by

22 2-15-1628."

23 Section 2. Section 81-23-101, MCA, is amended to read:

24 "81-23-101. Definitions. (1) Unless the context

25 requires otherwise, in this chapter the following

1 definitions apply:

2 ~~(e) -- "Board" -- means -- the board of milk control provided~~

3 ~~for in 2-15-1802.~~

4 ~~(b)(a)~~ "Class I milk" includes all bottled or packaged

5 milk, low fat, buttermilk, chocolate milk, whipping cream,

6 commercial cream, half-and-half, skim milk, fortified skim

7 milk, skim milk flavored drinks, and any other fluid milk

8 not specifically classified in this chapter, whether raw,

9 pasteurized, homogenized, sterile, or aseptic.

10 ~~(e)(b)~~ "Class II milk" includes milk used in the

11 manufacture of ice cream and ice cream mix, ice milk,

12 sherbet, eggnog, cultured sour cream, cottage cheese,

13 condensed milk, and powdered skim for human consumption.

14 ~~(e)(c)~~ "Class III milk" includes milk used in the

15 manufacture of butter, cheddar cheese, process cheese,

16 livestock feed, powdered skim other than for human

17 consumption, and skim milk dumped.

18 ~~(e)(d)~~ "Consumer" means a person or an agency, other

19 than a dealer, who purchases milk for consumption or use.

20 ~~(f)(a)~~ "Dealer" means a producer, distributor,

21 producer-distributor, jobber, or independent contractor.

22 ~~(g)(f)~~ "Department" means the department of business

23 regulation provided for in Title 2, chapter 15, part 18.

24 ~~(h)(g)~~ "Distributor" means a person purchasing milk

25 from any source, either in bulk or in packages, and

1 distributing it for consumption in this state. The term
 2 includes what are commonly known as jobbers and independent
 3 contractors. The term, however, excludes a person
 4 purchasing milk from a dealer licensed under this chapter,
 5 for resale over the counter at retail or for consumption on
 6 the premises.

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

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

12 (k)(i) "Market" means an area of the state designated
 13 by the department as a natural marketing area.

14 (l)(j) "Milk" means the lacteal secretion of a dairy
 15 animal or animals, including those secretions when raw and
 16 when cooled, pasteurized, standardized, homogenized,
 17 recombined, concentrated fresh, or otherwise processed and
 18 all of which is designated as grade A by a duly constituted
 19 health authority and also includes those secretions which
 20 are in any manner rendered sterile or aseptic,
 21 notwithstanding whether they are regulated by any health
 22 authority of this or any other state or nation.

23 (m)(k) "Person" means a person, firm, corporation, or
 24 cooperative association.

25 (n)(1) "Producer" means a person who produces milk

1 for consumption in this state, selling it to a distributor.
 2 (o)(m) "Producer-distributor" means a person both
 3 producing and distributing milk for consumption in this
 4 state.

5 ~~(p) "Producer prices" means those prices at which milk
 6 owned by a producer is sold in bulk to a distributor.~~

7 ~~(q) "Retail prices" means those prices at which milk
 8 owned by a retailer is sold, in bulk or in packages, over
 9 the counter at retail or for consumption on the premises.~~

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

18 ~~(s) "Wholesale prices" means those prices at which
 19 milk owned by a distributor is sold, in bulk or in packages
 20 to a retailer.~~

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

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

1 "81-23-104. Rules and orders. The department may adopt
 2 and enforce rules and orders necessary to carry out the
 3 provisions of this chapter and any orders adopted under it
 4 by the department ~~or--the-board~~. A rule or order shall be
 5 posted for public inspection in the main office of the
 6 department for 30 days, and a copy shall be filed in the
 7 office of the department. A copy shall also be sent by
 8 registered or certified letter to the secretary of each
 9 area, except in the case of an order directed only to a
 10 person or persons named in it, which shall be served by
 11 personal delivery of a copy or by mailing a copy to each
 12 person to whom the order is directed or, in the case of a
 13 corporation, to any officer or agent of the corporation upon
 14 whom a summons may be served in accordance with laws of
 15 this state. The posting, in the main office of the
 16 department, of a rule or order not required to be personally
 17 served as provided in this section and the filing in the
 18 office of the department is sufficient notice to all
 19 persons affected by the rule or order. A rule or order when
 20 properly posted and filed or served, as provided in this
 21 section, has the force of law."

22 Section 4. Section 81-23-202, MCA, is amended to read:

23 "81-23-202. Licenses — disposition of income. (1) A
 24 producer, producer-distributor, distributor, or jobber may
 25 not engage in the business of producing or selling milk

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

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

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

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

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

1 (3) The department shall adopt rules fixing the amount
2 of each fee. The amounts may not exceed levels sufficient
3 to provide for the administration of this chapter. The fee
4 assessed on a producer or on a distributor may not be more
5 than one-half the fee assessed on a producer-distributor.

6 (4) The assessment upon producer-distributors,
7 producers, and distributors shall be paid quarterly before
8 January 15, April 15, July 15, and October 15 of each year.
9 The amount of the assessment shall be computed by applying
10 the fee designated by the department to the volume of milk
11 sold in the preceding calendar quarter.

12 (5) Failure of a producer, producer-distributor, or
13 distributor to pay an assessment when due is a violation of
14 this chapter and his license under this chapter
15 automatically terminates and is void. A license so
16 terminated shall be reinstated by the department upon
17 payment of a delinquency fee equal to 30% of the assessment
18 which was due.

19 (6) All assessments required by this chapter shall be
20 deposited by the department in the earmarked revenue fund.
21 All costs of administering this chapter, including the
22 salaries of employees and assistants, ~~per diem and expenses~~
23 ~~of board members~~, and all other disbursements necessary to
24 carry out the purpose of this chapter, shall be paid out of
25 ~~control-board~~ moneys in that fund.

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

5 Section 5. Section 81-23-204, MCA, is amended to read:
6 "81-23-204. Declining, suspending, and revoking
7 licenses -- penalties in lieu of suspension or revocation.
8 (1) The department may refuse to grant a license or may
9 suspend or revoke a license already granted for due cause
10 upon due notice and after hearing. The violation of any
11 provisions of this chapter or of any lawful order or rule of
12 the ~~board--or~~ department, the failure or refusal to make
13 required statements or reports, or failure to pay license or
14 assessment fees are causes for which the department may, at
15 its discretion, suspend or revoke a license.

16 (2) In place of suspension or revocation of a license,
17 the department may assess a civil penalty not to exceed \$500
18 per day for each daily failure to comply with or each daily
19 violation of the provisions of this chapter or of any lawful
20 order or rule of the department ~~or--board~~. If the person
21 against whom a civil penalty is assessed fails to pay the
22 civil penalty immediately, the department shall collect the
23 civil penalty by a civil proceeding in the district court of
24 the first judicial district. This penalty shall be construed
25 as civil and not criminal in nature. Any moneys received by

1 the department as a result of collection of civil penalties
2 shall be paid into the earmarked revenue fund as provided by
3 81-23-403."

4 Section 6. Section 81-23-303, MCA, is amended to read:
5 "81-23-303. Rules of fair trade practices. The
6 department may adopt reasonable rules governing fair trade
7 practices as they pertain to the transaction of business
8 among licensees under this chapter and among licensees and
9 the general public. Those rules shall contain but are not
10 limited to provisions prohibiting the following methods of
11 doing business which are unfair, unlawful, and not in the
12 public interest:

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

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

20 (3) the extension to certain customers of special
21 prices or services not available to all customers who
22 purchase milk of like quantity under like terms and
23 conditions;

24 ~~{4}--the-purchasing,--processing,--bottling,--packaging,~~
25 ~~transporting,--delivering,--or--otherwise--handling--in--any~~

1 ~~marketing-area-of--milk--which--is--to--be--or--is--sold--or~~
2 ~~otherwise-disposed-of-at-less-than-the-minimum-wholesale-and~~
3 ~~minimum-retail-prices-established-by-the-board;~~

4 ~~{5}--the--payment--of--a--price--lower--than--the--applicable~~
5 ~~producer-price,--established--by--the--board,--by--a--distributor~~
6 ~~to--a--producer--for--milk--which--is--distributed--to--any--person,~~
7 ~~including--agencies--of--the--federal,--state,--or--local~~
8 ~~governments."~~

9 Section 7. Section 81-23-405, MCA, is amended to read:
10 "81-23-405. Violations made misdemeanors -- penalties.

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

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

23 (3) The county attorneys, in their respective
24 counties, shall diligently prosecute all violations of this
25 chapter."

1 Section 8. Section 81-23-406, MCA, is amended to read:

2 *81-23-406. Additional remedies. The department may
3 begin any proceeding at law or in equity as may appear
4 necessary to enforce compliance with this chapter or to
5 enforce compliance with an order or rule of the ~~board--or~~
6 department adopted under this chapter or to obtain a
7 judicial interpretation of any of them. In addition to any
8 other remedy, the department may apply to the district court
9 of the district where the action arises for relief by
10 injunction, mandamus, or any other appropriate remedy in
11 equity without being compelled to allege or prove that an
12 adequate remedy at law does not otherwise exist. The
13 department may not be required to post bond in an action to
14 which it is a party whether upon appeal or otherwise. All
15 legal actions may be brought by or against the ~~board-or~~
16 department in the name of the department of business
17 regulation, and it is not necessary in an action to which
18 the department is a party that the action be brought by or
19 against this state on relation of the department. The
20 department may sue by its own attorney, and it may also call
21 upon a county attorney to represent it in the district court
22 of his county or the attorney general to represent it on
23 appeal to the supreme court, or it may associate its own
24 attorney with either in any court."

25 Section 9. Repealer. Sections 2-15-1802, 81-23-301,

1 and 81-23-302, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 79-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 13, 19 81, there is hereby submitted a Fiscal Note for House Bill 151 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

Description of Proposed Legislation

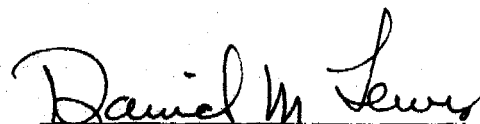
An act to repeal the laws relating to Milk Price Control.

Assumptions

1. By repealing the Milk Price Control Laws, the department would no longer levy an assessment pursuant to 81-23-202(2)
2. Under the proposed measure, no administrative costs would be incurred.

Fiscal Impact

There would be no net fiscal impact upon the state because the levy would not be collected and the expenses would not be incurred.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-15-81
