

House Bill 340

In The House

January 19, 1981	Introduced and referred to Committee on Business and Industry.
January 21, 1981	Fiscal note requested.
January 26, 1981	Fiscal note returned.
February 12, 1981	Committee recommend bill do not pass.

1 (k) board of nursing, department of professional and
2 occupational licensing, created by 2-15-1610;

3 (l) board of nursing home administrators, department
4 of professional and occupational licensing, created by
5 2-15-1611;

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

8 (n) board of osteopathic physicians, department of
9 professional and occupational licensing, created by
10 2-15-1607;

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

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

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

18 (r) board of radiologic technologists, department of
19 professional and occupational licensing, created by
20 2-15-1614;

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

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

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

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

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

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

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

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

13 (d) board of livestock, department of livestock,
14 created by 2-15-3102;

15 ~~(e) board of milk control, department of business~~
16 ~~regulation, created by 2-15-1882;~~

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

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

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

23 ~~(i)(h)~~ board of water and wastewater operators,
24 department of health and environmental sciences, created by
25 2-15-2105;

1 ~~the~~ board of water well contractors, department of
2 professional and occupational licensing, created by
3 2-15-1632.

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

5 (a) the board of public accountants, created by
6 2-15-1641;

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

8 (c) state banking board, department of business
9 regulation, created by 2-15-1303;

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

11 (e) the board of professional engineers and land
12 surveyors, created by 2-15-1653;

13 (f) office of commissioner of insurance and the
14 insurance department, state auditor's office, created by
15 2-15-1902 and 2-15-1903;

16 (g) office of the securities commissioner, state
17 auditor's office, created by 2-15-1901;

18 (h) the board of landscape architects, created by
19 2-15-1652;

20 (i) the board of county printing, created by
21 2-15-1102;

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

23 (k) board of physical therapy examiners, created by
24 2-15-1628."

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

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

4 ~~(a) "Board" means the board of milk control provided
5 for in 2-15-1002.~~

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

12 ~~(c)(b)~~ "Class II milk" includes milk used in the
13 manufacture of ice cream and ice cream mix, ice milk,
14 sherbet, eggnog, cultured sour cream, cottage cheese,
15 condensed milk, and powdered skim for human consumption.

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

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

22 ~~(f)(e)~~ "Dealer" means a producer, distributor,
23 producer-distributor, jobber, or independent contractor.

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

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

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

12 ~~(j)(h)~~ "Licensee" means a person who holds a license
 13 from the department.

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

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

25 ~~(m)(k)~~ "Person" means a person, firm, corporation, or

1 cooperative association.

2 ~~(n)(l)~~ "Producer" means a person who produces milk
 3 for consumption in this state, selling it to a distributor.

4 ~~(o)(m)~~ "Producer-distributor" means a person both
 5 producing and distributing milk for consumption in this
 6 state.

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

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

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

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

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

1 to be proper."

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

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

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

25 "81-23-202. Licenses -- disposition of income. (1) A

1 producer, producer-distributor, distributor, or jobber may
2 not engage in the business of producing or selling milk
3 subject to this chapter in this state without first having
4 obtained a license from the department of livestock or, in
5 the case of milk entering this state from another state or
6 foreign nation, without complying with the requirements of
7 the Montana Food, Drug, and Cosmetic Act and without being
8 licensed under this chapter by the department. The annual
9 fee for the license from the department is \$2 and is due
10 before July 1 and shall be deposited by the department to
11 the credit of the general fund. The license required by this
12 chapter is in addition to any other license required by
13 state law or any municipality of this state. This chapter
14 shall apply to every part of the state of Montana.

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

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

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

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

1 milk subject to this chapter sold by a distributor,
2 excepting that which is sold to another distributor.

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

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

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

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

1 carry out the purpose of this chapter, shall be paid out of
2 ~~control-board~~ moneys in that fund.

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

7 Section 5. Section 81-23-204, MCA, is amended to read:

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

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

1 the first judicial district. This penalty shall be construed
2 as civil and not criminal in nature. Any moneys received by
3 the department as a result of collection of civil penalties
4 shall be paid into the earmarked revenue fund as provided by
5 81-23-403."

6 Section 6. Section 81-23-303, MCA, is amended to read:

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

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

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

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

1 ~~(4) the purchasing, processing, bottling, packaging,~~
2 ~~transporting, delivering, or otherwise handling in any~~
3 ~~marketing area of milk which is to be or is sold or~~
4 ~~otherwise disposed of at less than the minimum wholesale and~~
5 ~~minimum retail prices established by the board;~~

6 ~~(5) the payment of a price lower than the applicable~~
7 ~~producer price established by the board, by a distributor~~
8 ~~to a producer for milk which is distributed to any person~~
9 ~~including agencies of the federal, state, or local~~
10 ~~government."~~

11 Section 7. Section 81-23-405, MCA, is amended to 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 Section 8. Section 81-23-406, MCA, is amended to read:

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

1 attorney with either in any court."

2 Section 9. Repealer. Sections 2-15-1802, 81-23-301,
3 and 31-23-302, MCA, are repealed.

4 Section 10. Effective date. Sections 1 through 9 of
5 this act are effective on January 1, 1982.

6 Section 11. Submission to electorate. The question of
7 whether this act will become effective shall be submitted to
8 the electors of the state of Montana at the general election
9 to be held November 3, 1981, by printing on the ballot the
10 full title of this act and the following:

11 FOR abolishing the board of milk control and
12 eliminating its functions.

13 AGAINST abolishing the board of milk control and
14 eliminating its functions.

15 Section 12. Coordination instruction. This act is to
16 be submitted to the electorate if, and only if, neither HB
17 51 nor HB 51 (LC 714) is enacted into law.

-End-

STATE OF MONTANA

REQUEST NO. 173-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 81, there is hereby submitted a Fiscal Note for House Bill 340 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to abolish the Board of Milk Control and eliminate its functions.

ASSUMPTIONS:

1. The Board and all of its functions will terminate January 1, 1982.
2. Expenditures through January 1, 1982, will not exceed available revenues.

FISCAL IMPACT:

There would be no net fiscal impact to the state upon elimination of the Board because the assessment will not be collected and expenses will not be incurred.

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-81