# HOUSE BILL NO. 82

# INTRODUCED BY MANUEL, ELLERD

## BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE HOUSE

| January | 5, 1983   | Introduced and referred to<br>Committee on Business and<br>Industry.   |
|---------|-----------|--|
| January | 12, 1983  | Committee recommend bill do pass. Report adopted.  |
|         |           | Bill printed and placed on members' desks.   |
| January | 14, 1983  | Motion pass consideration.   |
| January | 15, 1983  | Second reading, do pass.   |
| January | 17, 1983  | Considered correctly engrossed.  |
| January | 18, 1983  | Third reading, passed.<br>Transmitted to Senate.   |
| •       | IN THE SI | enate  |
| January | 19, 1983  | Introduced and referred to<br>Committee on Agriculture,<br>Livestock and Irrigation.                               |
| January | 24, 1983  | Committee recommend bill be<br>concurred in as amended.<br>Report adopted.   |
| January | 26, 1983  | On motion taken from second<br>reading and rereferred to<br>Committee on Agriculture,<br>Livestock and Irrigation. |
| January | 29, 1983  | Committee recommend bill be<br>concurred in as amended.<br>Report adopted.   |

February 1, 1983Second reading, concurred in.Pebruary 3, 1983Third reading, concurred in.<br/>Ayes, 45; Noes, 5.

IN THE HOUSE

| February 3, 1983 | Returned to House.           |
|------------------|------------------------------|
| Pebruary 4, 1983 | Sent to enrolling.           |
|                  | Reported correctly enrolled. |

House BAL NO. 82. INTRODUCED BY Manuel - aller 1 1 2 2 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE 3 3 4 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE 5 5 BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND 6 6 RULES; REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR 7 7 REVOCATION; CREATING A STATEWIDE MARKET AREA; DELETING RATE 8 8 9 OF RETURN FROM THE PRICING FORMULA; REPEALING BONDING 9 REQUIREMENTS; AMENDING SECTIONS 2-8-103, 81-23-204, AND 10 10 11 81-23-302 THROUGH 81-23-304, MCA; REPEALING SECTIONS 11 81-23-205 AND 81-23-301, HCA; AND PROVIDING AN IMMEDIATE 12 12 13 EFFECTIVE DATE." 11 14 14 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, 15 15 NCA, terminates the Board of Milk Control and requires a 16 16 performance evaluation of the board by the Legislative Audit 17 17 Committee: and 18 18 19 WHEREAS, as a result of the performance evaluation, the 19 Legislative Audit Committee recommends that the Board of 20 20 Nilk Control be reestablished. 21 21 22 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANAT 23 23 24 NEW SECTION. Section 1. Reestablishment. The board of 24 25 milk control, created pursuant to 2-15-1802, is 25

reestablished for 6 years pursuant to 2-18-122, with its
 existing statutory authority and rules.

Section 2. Section 2-8-103, NCA, is amended to read:

4 "2-8-103. Agencies to terminate. (1) The following
5 agencies shall terminate on July 1, 1979:

6 (a) board of abstracters, department of professional
7 and occupational licensing, created by 2-15-1643;

8 (b) board of real estate, department of professional
9 and occupational licensing, created by 2-15-1642;

10 (c) state board of warm air heating, ventilation, and 11 air conditioning, department of professional and 12 occupational licensing, created by 2~15-1656;

13 (d) board of institutions, department of institutions,
14 created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1, 16 1981:

(a) board of athletics, department of professional and
 occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2 2-15-1627;

22 (c) board of osteopathic physicians, department of 23 professional and occupational licensing, created by 24 2-15-1607;

5 (d) board of podiatry

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examiners, department of

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INTRODUCED BILL

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| 1  | professional and occupational licensing, created by          | 1   | (4) The following agencies terminate on July 1, 1985:    |
|----|--|-----|--|
| 2  | 2~15-1608 <del>3_</del>                                      | 2   | (a) the board of public accountants, department of       |
| 3  | (3) The following units of state government shall            | 3   | commerce, created by 2-15-1866;                          |
| 4  | terminate on July 1, 1983:                                   | 4   | (b) the board of architects, department of commerce,     |
| 5  | <pre>{a} board of aeronautics, department of commerce;</pre> | 5   | created by 2-15-1871;                                    |
| 6  | created by 2-15-1812;  | 6   | (c) state banking board, department of commerce,         |
| 7  | (b) state board of hail insurance, department of             | ۲   | created by 2-15-1803;                                    |
| 8  | agriculture, created by 2-15-3003;                           | . 8 | (d) the state electrical board, department of            |
| 9  | (C) board of horseracing, department of commerce,            | 9   | commerce, created by 2-15-1874;                          |
| 10 | created by 2-15-1881;  | 10  | (e) the board of professional engineers and land         |
| 11 | (d) board of livestock, department of livestock,             | 11  | surveyors, department of commerce, created by 2-15-1873; |
| 12 | created by 2-15-3102;  | 12  | (f) office of commissioner of insurance and the          |
| 13 | <del>{c}board-of-wilkcontrolydepartmentofcommercey</del>     | 13  | insurance department, state auditor's office, created by |
| 14 | e <del>reated by 2-15-1882;</del>                            | 14  | 2-15-1902 and 2-15-1903;                                 |
| 15 | (fig. board of oil and gas conservation, department          | 15  | (g) office of the securities commissioner, state         |
| 16 | of natural resources and conservation, created by 2-15-3303; | 16  | auditor's office; created by 2-15-1901;                  |
| 17 | <pre>tgt[f] Montana outfitters* council, department of</pre> | 17  | (h) the board of landscape architects, department of     |
| 18 | fish, wildlife, and parks, created by 2-15-3403;             | 18  | commerce; created by 2-15-1872;                          |
| 19 | (h)(g) public service commission, department of public       | 19  | (i) the board of county printing, department of          |
| 20 | service regulation, created by 69-1-102;                     | 20  | commerce, created by 2-15-1811;                          |
| 21 | <pre>tit(h) board of water and wastewater operators;</pre>   | 21  | (j) the board of plumbers, department of commerce,       |
| 22 | department of health and environmental sciences, created by  | 22  | created by 2-15-1875;                                    |
| 23 | 2-15-2105;   | 23  | (k) board of physical therapy examiners, department of   |
| 24 | tit[1] board of water well contractors, department of        | 24  | commerce, created by 2-15-1858.                          |
| 25 | commerce, created by 2-15-1862.                              | 25  | (5) The following agencies terminate on July 1, 1987:    |
|    |  |     |  |

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| 1  | (a) commission for human rights, department of labor  |
|----|---|
| 2  | and industry, created by 2-15-1706;                   |
| 3  | (b) Nontana state board of medical examiners:         |
| 4  | department of commerce, created by 2-15-1841;         |
| 5  | (c) board of dentistry, department of commerce,       |
| 6  | created by 2-15-1842;                                 |
| 7  | (d) board of pharmacists, department of commerce,     |
| 8  | created by 2-15-1843;                                 |
| 9  | (e) board of nursing, department of commerce, created |
| 10 | by 2-15-1844;   |
| 11 | (f) board of nursing home administrators, department  |
| 12 | of commerce, created by 2~15-1845;                    |
| 13 | (g) board of optometrists, department of commerce,    |
| 14 | created by 2-15-1846;                                 |
| 15 | (h) board of chiropractors, department of commerce,   |
| 16 | created by 2-15-1847;                                 |
| 17 | (i) board of radiologic technologists, department of  |
| 18 | commerce, created by 2-15-1848;                       |
| 19 | (j) board of speech pathologists and audiologists.    |
| 20 | department of commerce, created by 2-15-1849;         |
| 21 | (k) board of hearing aid dispensers, department of    |
| 22 | commerce, created by 2-15-1850;                       |
| 23 | (1) board of psychologists, department of commerce,   |
| 24 | created by 2-15-1851;                                 |
| 25 | (m) board of veterinarians, department of commerce,   |

1 created by 2-15-1852; 2 (n) board of morticians, department of commerce, 3 created by 2-15-1853; 4 (o) board of barbers, department of commerce, created by 2-15-1856; 5 (p) board of cosmetologists, department of commerce, 6 created by 2-15-1857; 7 (q) board of sanitarians, department of commerce, 8 created by 2-15-1861; 9 10 (r) board of veterans' affairs, department of social 11 and rehabilitation services, created by 2-15-2202. 12 16) The following agency terminates July 1. 1989; 13 board of milk control. department of conserces created by 14 2-15-1802.\* Section 3. Section 81-23-204, MCA, is amended to read: 15 \*81-23-204. Declining. suspending, and revoking 16 licenses - penalties in lieu of suspension or revocation. 17 (1) The department may refuse to grant a license or may 18 suspend or revoke a license already granted for due cause 19 upon due notice and after hearing. The violation of any 20 21 provisions of this chapter or of any lawful order or rule of the board or department, the failure or refusal to make 22 required statements or reports, or failure to pay license or 23 assessment fees are causes for which the department may - mat 24 25 its-discretiony suspend or revoke a license.

1 (2) In place of suspension or revocation of a license. 2 the department may assess a civil penalty not to exceed \$500 з per day for each daily failure to comply with or each daily 4 violation of the provisions of this chapter or of any lawful 5 order or rule of the department or board. If the person 6 against whom a civil penalty is assessed fails to pay the 7 civil penalty immediately, the department shall collect the 8 civil penalty by a civil proceeding in the district court of 9 the first judicial district. This penalty shall be construed 10 as civil and not criminal in nature. Any moneys received by 11 the department as a result of collection of civil penalties 12 shall be paid into the earmarked revenue fund as provided by 13 81-23-403.\*

Section 4. Section 81-23-302, MCA; is amended to read: "81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale; jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk in-all-areas-of-the state by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

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

1 (3) The board shall consider the balance between 2 production and consumption of milk, the costs of production 3 and distribution, and prices in adjacent and neighboring 4 areas and states so that minimum prices which are fair and 5 equitable to producers, distributors, jobbers, retailers, 6 and consumers may result.

7 (4) The board shall, when publishing notice of 8 proposed rulemaking under authority of this section, set 9 forth the specific factors which shall be taken into 10 consideration in establishing the formulas and in particular 11 in determining costs of production and distribution and of 12 the actual dollars and cents costs of production and 13 distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or 14 15 should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or 16 rebut such considerations as a matter of record. 17

18 (5) Such specific factors may include but shall not be
19 limited to the following items:
20 (a) current and prospective supplies of milk in

21 relation to current and prospective demands for such milk
22 for all purposes;

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

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#### 1 wholesale price indexes;

2 (c) the cost factors in producing milk, which shall 3 include among other things the prices paid by farmers 4 generally (as used in parity calculations of the United 5 States department of agriculture), prices paid by farmers 6 for dairy feed in particular, and farm wage rates in this 7 state;

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

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

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to 1 market milk, and prevailing wage rates in the state;

2 (h) the need, if any, for freight or transportation
3 charges to be deducted by distributors from producer prices
4 for bulk milkta

5 <del>{i}-----reasonable-return-on-necessary-investment-to-all</del> 6 <del>ordinarily-efficient-and-economical-milk-dealersy</del>

7 (6) If the board at any time proposes to base all or any part of any official order establishing or revising any 8 milk pricing formulas upon facts within its own knowledge, 9 10 as distinguished from evidence which may be presented to it 11 by the consuming public or the milk industry, the board 12 shally when publishing notice of proposed rulemaking under 13 authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts 14 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 prices for milk in classes I: II; and III
22 shall be computed;

23 (b) wholesale prices for milk in class I shall be24 computed;

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

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1 computed;

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z (d) retail prices for milk in class I shall be 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, grades, or uses as the board may deem advisable and shall 16 17 specify the minimum prices therefor.

18 (10)-The--milk--produced--in-one-neturel-morketing-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---arca---where---produced---at----the-bricel-therein 22 specified-of-the-elles-or-use-in-which-it-is-ultimately-used 23 er-seld-

24 (++++110) The board shall adopt rules after notice and 25 hearing in the manner prescribed by the Montana 1 Administrative Procedure Act to regulate transportation rates which distributors, contract haulers, and others 2 charge producers for both farm-to-plant and interplant 3 transportation of milk. No allowance for transportation of 4 wilk between plants may be permitted unless it is found by 5 6 the board to be necessary to permit the movement of milk in 7 the public interest.

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

++3+/12) The board may amend any official rule in the 13 14 same manner provided herein for the original establishment of wilk pricing formulas. The board may in its discretion: 15 16 when it determines the need exists, give notice of and hold statewide public hearings affecting establishment or 17 revision of milk pricing formulas in-sil-morket-areas-of-the 18 19 stote.

20 (14)(13) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive 21 and consider evidence regarding the advisability and need 22 23 for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that 24 the evidence adduced at such hearing warrants 25 the

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

3 (15)(14) Upon petition producer, by any producer-distributor, or distributor in-ony-serketing-areay 4 5 the board shall hold a hearing to receive and consider evidence redarding the advisability and need for an-areavide 6 7 or a statewide pooling arrangement as a method of payment of R producer prices, provided that at such hearing the board 9 shall among other things specifically receive and consider 10 evidence concerning production and marketing practices which 11 have historically prevailed in-the-orea-concerned-or 12 statewidey-as-the-case-may-be. If the board finds that the 13 evidence adduced at such hearing warrants the establishment 14 of such-an-arcawide-or a statewide pooling arrangement. the 15 board shall proceed by official order to establish the same; 16 but such official order shall be of no force or effect until 17 it is approved in a referendum conducted by the board among 18 affected producers, producer-distributors, and distributors. 19 fidi(15) The requirements hereinabove set forth 20 concerning notices of hearings for the establishment of milk 21 pricing formulas shall apply to any hearings regarding base 22 or quota plans or statewide pooling arrangements 23 or abandonment thereof.

24 (17)(16) Rules adopted pursuant to this section shall
 25 be enforced and audited for compliance by the milk control

1 division of the department of commerce."

Section 5. Section 81-23-303; MCA; is amended to read: Z 3 #81-23-303. Rules of fair trade practices. The 4 department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business 5 6 among licensees under this chapter and among licensees and 7 the general public. Those rules shall contain but are not limited to provisions prohibiting the following methods of 8 doing business which are unfair, unlawful, and not in the 9 10 public interest:

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

14 {2} the giving of milk, cream, dairy products,
15 services, or articles of any kind, except to bona fide
16 charities, for the purpose of securing or retaining the
17 fluid milk or fluid cream business of a customer;

18 (3) the extension to certain customers of special 19 prices or services not available to all customers who 20 purchase milk of like quantity under like terms and 21 conditions;

{4} the purchasing, processing, bottling, packaging,
transporting, delivering, or otherwise handling in -- ony
marketing--area of milk which is to be or is sold or
otherwise disposed of at less than the minimum wholesale and

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1 minimum retail prices established by the board;

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

Section 6. Section 81-23-304, MCA, is amended to read: 7 8 #81-23-304, Limitation on extension of credit to 9 retailers. A sale or delivery may not be made by a producer-distributor, distributor, or jobber to a retailer, 10 11 except for cash or payment within 15 days after regular 12 billings, and all producer-distributors, distributors, and 13 jobbers shall bill retailers at least monthly. A producer-distributor, distributor, or jobber may not extend 14 more than 15 days' credit after billing to a retailer. A 15 16 retailer may not receive delivery of milk without agreement 17 to pay for it in cash within 15 days after regular billing. A correctly dated check which is honored upon presentment is 18 19 cash within the meaning of this section. An extension or acceptance of credit in violation of this section shall be 20 construed as rendering or receiving financial assistance. 21 22 The licenses of producer-distributors, distributors, or 23 jobbers involved in violation of this section shall be 24 suspended or revoked as determined by the department in-its discretion after a hearing pursuant to the Administrative 25

1 Procedure Act+"

- 2 NEW SECTION. Section 7. Repeater. Sections 81-23-205
- 3 and 81-23-301, NCA, are repealed.
- 4 <u>NEW SECTION</u> Section 8. Effective date. This act is
- 5 effective on passage and approval.

-End-

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READING

| App | proved by | Com | nittee   |
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| on  | Business  | and | Industry |
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Horial Boll NO. 82. INTRODUCED BY Manuel - Collerd Ł Z

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE 5 BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND 6 RULES; REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR 7 REVOCATION; CREATING A STATEWIDE MARKET AREA; DELETING RATE 8 OF RETURN FROM THE PRICING FORMULA; REPEALING BONDING 9 REQUIREMENTS; AMENDING SECTIONS 2-8-103, 81-23-204, AND 10 11 81-23-302 THROUGH 81-23-304, MCA: REPEALING SECTIONS 12 81-23-205 AND 81-23-301, MCA; AND PROVIDING AN IMMEDIATE 13 **EFFECTIVE DATE.**\*

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15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, 16 MCA: terminates the Board of Milk Control and requires a performance evaluation of the board by the Legislative Audit 17 18 Committee; and

WHEREAS, as a result of the performance evaluation, the 19 Legislative Audit Committee recommends that the Board of 20 21 Milk Control be reestablished.

22

**Z**3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 24 NEW SECTION. Section 1. Reestablishment. The board of 25 milk control, created pursuant to 2-15-1802, i s

| 1  | reestablished for 6 years pursuant to 2-18-122, with its  |
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| z  | existing statutory authority and rules.                   |
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| 10 | (c) state board of warm air heating, ventilation, and     |
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| 20 | professional and occupational licensing, created by       |
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|    |   |

podiatry examiners, department of 25 (d) board of SECOND -z-

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| 5    | (m) board of aeronautics, department of commerce,             | 5  | created by 2-15-1871;                                    |
| 6    | created by 2-15-1812;   | 6  | (c) state banking board, department of commerce,         |
| 7    | (b) state board of hall insurance, department of              | 7  | created by 2-15-1803;                                    |
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| 9    | (c) board of horseracing, department of commerce,             | 9  | commerce, created by 2-15-1874;                          |
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| - 11 | (d) board of livestock, department of livestock,              | 11 | surveyors, department of commerce, created by 2-15-1873; |
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| 13   | <del>(s)-beard-of-milk-controly-department-of-compercev</del> | 13 | insurance departments state auditor's office, created by |
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| 23 | (1) board of psychologists, department of commerce,   | 23  |
| 24 | created by 2-15-1851;                                 | 24  |
| 25 | (=) board of veterinarians, department of commerce,   | 25  |
|    | • •   |     |

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| 1  | created by 2-15-1852;   |
|----|---|
| 2  | (n) board of morticlans, department of commerce,                        |
| 3  | created by 2~15-1853;   |
| 4  | (o) board of barbars, department of commerce, created                   |
| 5  | by 2-15-1856;   |
| 6  | (p) board of cosmetologists, department of commerce,                    |
| 7  | created by 2-15-1857;   |
| 8  | (q) board of sanitarians, department of commerce,                       |
| 9  | created by 2-15-1861;   |
| 10 | (r) board of veterans' affairs, department of social                    |
| 11 | and rehabilitation services, created by 2-15-2202.                      |
| 12 | (6) The following agency terminates July 1, 1989:                       |
| 13 | board of milk control. department of connerce. created by               |
| 14 | <u>2-15-1802.</u> *   |
| 15 | Section 3. Section 81-23-204, MCA, is amended to read:                  |
| 16 | *81-23-204. Declining: suspending: and revoking                         |
| 17 | licenses - penalties in lieu of suspension or revocation.               |
| 18 | (1) The department may refuse to grant a license or may                 |
| 19 | suspend or revoke a license already granted for due cause               |
| 20 | upon due notice and after hearing. The violation of any                 |
| 21 | provisions of this chapter or of any lawful order or rule of            |
| 22 | the board or department, the failure or refusal to make                 |
| 23 | required statements or reports, or failure to pay license or            |
| 24 | assessment fees are causes for which the department may <del>s at</del> |
| 25 | its-discretion, suspend or revoke a license.                            |

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1 (2) In place of suspension or revocation of a license, 2 the department may assess a civil penalty not to exceed \$500 3 per day for each daily failure to comply with or each daily 4 violation of the provisions of this chapter or of any lawful 5 order or rule of the department or board. If the person against whom a civil penalty is assessed fails to pay the 6 7 civil penalty immediately, the department shall collect the civil penalty by a civil proceeding in the district court of 8 9 the first judicial district. This penalty shall be construed 10 as civil and not criminal in nature. Any moneys received by 11 the department as a result of collection of civil penalties 12 shall be paid into the earderked revenue fund as provided by 13 81-23-403.\*

Section 4. Section 81-23-302, HCA, is amended to read: "81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk in-all-areas-of the state by adopting rules in a manner prescribed by the Hontana Administrative Procedure Act.

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

1 (3) The board shall consider the balance between 2 production and consumption of milk, the costs of production 3 and distribution, and prices in adjacent and neighboring 4 areas and states so that minimum prices which are fair and 5 equitable to producers, distributors, jobbers, retailers, 6 and consumers may result.

7 (4) The board shall, when publishing notice of 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 13 distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or 14 15 should be shown at the hearing so that all interested 16 parties will have opportunity to be heard and to question or rebut such considerations as a matter of record. 17

18 (5) Such specific factors may include but shall not be
19 limited to the following items:
20 (a) current and prospective supplies of milk in
21 relation to current and prospective demands for such milk
22 for all purposes:

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

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1 wholesale price indexes;

2 (c) the cost factors in producing milk, which shall 3 include among other things the prices paid by farmers 4 generally (as used in parity calculations of the United 5 States department of agriculture), prices paid by farmers 6 for dairy feed in particular, and farm wage rates in this 7 state;

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

(e) the prices of butter, nonfat dry milk, and cheese;
(f) the cost factors in distributing milk, which shall
include among other things the prices paid by distributors
for equipment of all types required to process 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 cost, processing cost, 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 milks and prevailing wage rates in the state;

2 (h) the need, if any, for freight or transportation
3 charges to be deducted by distributors from producer prices
4 for bulk milks.

5 <del>(i)--a-reasonabis-roturn-en-necessory-investment-to-ali</del> 6 <del>ardinarily-officient-and-economical-milk-deplersy</del>

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 shally when publishing notice of proposed rulemaking under 13 authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts 14 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:

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

23 (b) wholesale prices for milk in class I shall be24 computed;

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

1 computed; 1 Administrative Procedure Act to regulate transportation 2 (d) retail prices for milk in class I shall be Z rates which distributors, contract haulers, and others 3 computed. charge producers for both farm-to-plant and interplant 3 (8) This section shall not be construed as requiring transportation of milk. No allowance for transportation of 4 4 5 the board to promulgate any specific number of formulas, but milk between plants may be permitted unless it is found by 5 6 shall be construed liberally so that the board may adopt any 6 the board to be necessary to permit the movement of milk in 7 reasonable method of expression to accomplish the objective 7 the public interest. 8 set forth in subsection (7). If the evidence presented to 8 (12)/111 All milk purchased within-o-natural--marksting 9 the board at any public hearing for the establishment or area by a distributor shall be purchased on a uniform basis. 9 10 revision of milk pricing formulas is found by the board to 10 The basis to be used shall be established by the board after 11 require the establishment of separate and varying wholesale ··· 11 the producers and the distributors of the area have been 12 prices for any particular uses, the board shall designate 12 consulted. 13 the reasons therefor and establish such separate formulas. 13 (13)(12) The board may agend any official rule in the 14 (9) Each rule establishing or revising any milk 14 same manner provided herein for the original establishment 15 pricing formulas shall classify milk by forms, classes, 15 of milk pricing formulas. The board may in its discretion, 16 grades, or uses as the board may deem advisable and shall when it determines the need exists, give notice of and hold 16 statewide public hearings affecting establishment or 17 specify the minimum prices therefor. 17 revision of milk pricing formulas in-sli-warket-areas-of-the 18 (10)-The---ailk---produced---in-one-netyral-earketing-area 18 19 and-sold-in-enother-netural-marketing-area-shell-be-peid-for 19 state. **Z**0 by-a-di-atributar-ar-deafar-in-weeardence-with--th---the----aricina 20 (14)(13) Upon petition of a distributor or a majority 21 order to fin the or an area where a strategies and the set of the test where the set of 21 of his producers, the board shall hold a hearing to receive 22 specified of the trace of use in which it is altimately used 22 and consider evidence regarding the advisability and need 23 for a base or quota plan as a method of payment by that 23 -----41191101 The board shall adopt rules after notice and 24 distributor of producer prices; and if the board finds that 24

the evidence adduced at such hearing warrants the

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hearing in the

establishment of a base or quota plans the board shall
 proceed by official order to establish the same.

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petition producer, 3 1151 (14) Upon by any producer-distributor, or distributor in any marketing areas 4 the board shall hold a hearing to receive and consider 5 evidence redarding the advisability and need for en-eredwide 6 7 or a statewide pooling arrangement as a method of payment of 8 producer prices, provided that at such hearing the board 9 shall among other things specifically receive and consider 10 evidence concerning production and marketing practices which 11 historically prevailed in-the-orea-concerned-or have 12 13 evidence adduced at such hearing warrants the establishment 14 of such-an-areawide-or a statewide pooling arrangement, the 15 board shall proceed by official order to establish the same: but such official order shall be of no force or effect until 16 17 it is approved in a referendum conducted by the board among 18 affected producers, producer-distributors, and distributors. 19 (16)(15) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk 20 21 pricing formulas shall apply to any hearings regarding base or quota plans <del>or areawide</del> or statewide pooling arrangements Z2 or abandonment thereof. 23

24 (17)(16) Rules adopted pursuant to this section shall
 25 be enforced and audited for compliance by the milk control

1 division of the department of commerce."

2 Section 5. Section 81-23-303, NCA, is amended to read: 3 #81-23-303. Rules of fair trade practices. The department may adopt reasonable rules governing fair trade 4 practices as they pertain to the transaction of business 5 among licensees under this chapter and among licensees and 6 7 the general public. Those rules shall contain but are not 8 limited to provisions prohibiting the following methods of doing business which are unfairs unlawfuls and not in the 9 10 public interest:

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

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

18 (3) the extension to certain customers of special 19 prices or services not available to all customers who 20 purchase milk of like quantity under like terms and 21 conditions;

(4) the purchasing, processing, bottling, packaging,
transporting, delivering, or otherwise handling in--any
marketing--area of milk which is to be or is sold or
otherwise disposed of at less than the minimum wholesale and

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1 minimum retail prices established by the board;

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

7 Section 6. Section 81-23-304, MCA, is amended to read: 6 #81-23-304 Limitation on extension of credit to 9 retailers. A sale or delivery may not be made by a 10 producer-distributor, distributor, or jobber to a retailer, except for cash or payment within 15 days after regular 11 12 billings, and all producer-distributors, distributors, and 13 jobbers shall bill retailers at least monthly. A 14 producer-distributor, distributor, or jobber may not extend more than 15 days' credit after billing to a retailer. A 15 16 retailer may not receive delivery of milk without agreement to pay for it in cash within 15 days after regular billing. 17 18 A correctly dated check which is honored upon presentment is 19 cash within the meaning of this section. An extension or 20 acceptance of credit in violation of this section shall be Z1 construed as rendering or receiving financial assistance. **Z**2 The Ticenses of producer-distributors, distributors, or **Z**3 jobbers involved in violation of this section shall be Z4 suspended or revoked as determined by the department in-Pts 25 distrution after a hearing oursuant to the Administrative 1 Procedure Act-

- 2 NEW SECTION. Section 7. Repeater. Sections 81-23-205
- 3 and 81-23-301, NCA, are repealed.
- 4 <u>NEW SECTION</u> Section 8. Effective date. This act is

5 effective on passage and approval.

-End-

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INTRODUCED BY Manuel - Collert

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND 6 7 RULES; REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR 8 REVOCATION: CREATING A STATEWIDE MARKET AREA; DELETING RATE 9 OF RETURN FROM THE PRICING FORMULA; REPEALING BONDING 10 REQUIREMENTS; AMENDING SECTIONS 2-8-103, 81-23-204, AND 11 81-23-302 THROUGH 81-23-304, MCA; REPEALING SECTIONS 81-23-205 AND 81-23-301, NCA; AND PROVIDING AN IMMEDIATE 12 EFFECTIVE DATE." 13

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15 WHEREASy the sunset law, sections 2-8-103 and 2-8-112, 16 MCA, terminates the Board of Nilk Control and requires a 17 performance evaluation of the board by the Legislative Audit 18 Committee; and

19 HHEREAS, as a result of the performance evaluation, the
20 Legislative Audit Committee recommends that the Board of
21 Milk Control be reestablished.

22

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 24 <u>NEW SECTION</u> Section 1. Reestablishment. The board of 25 milk control, created pursuant to 2-15-1802, is reestablished for 6 years pursuant to 2-18-122, with its
 existing statutory authority and rules.

3 Section 2. Section 2-8-103, NCAy is amended to read:
4 "2-8-103. Agencies to terminate. (1) The following
5 agencies shall terminate on July 1. 1979:

6 (a) board of abstracters, department of professional
7 and occupational licensing, created by 2-15-1643;

8 (b) board of real estate, department of professional
9 and occupational licensing, created by 2-15-1642;

10 (c) state board of warm air heating, ventilation, and 11 air conditioning, department of professional and 12 occupational licensing, created by 2-15-1656;

13 (d) board of institutions, department of institutions,
14 created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1, 16 1981:

17 (a) board of athletics, department of professional and
18 occupational licensing, created by 2-15-1661;

19 (b) board of massage therapists, department of 20 professional and occupational licensing, created by 21 2-15-1627;

22 (c) board of osteopathic physicians, department of 23 professional and occupational licensing, created by 24 2-15-1607;

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25 (d) board of podiatry

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examiners, department of THIRD READING

| 1  | professional and occupational licensing, created by          | 1  | (4) The following agencies terminate on July 1, 1985:           |
|----|--|----|---|
| 2  | 2-15-1608ta  | 2  | {a} the board of public accountants, department of              |
| 3  | (3) The following units of state government shall            | 3  | commerce, created by 2-15-1866;                                 |
| 4  | terminate on July 1, 1983:                                   | 4  | <pre>{b} the board of architects, department of commerce,</pre> |
| -  |  | -  |   |
| 5  | (a) board of aeronautics, department of comperce,            | 5  | created by 2-15-1871;   |
| 6  | created by 2-15-1812;  | 6  | (c) state banking board, department of commerce,                |
| 7  | (b) state board of hail insurance, department of             | 7  | created by 2-15-1803;   |
| 8  | agriculture, created by 2-15-3003;                           | 8  | (d) the state electrical board, department of                   |
| 9  | (C) board of horseracing, department of commerce,            | 9  | commerce, created by 2-15-1874;                                 |
| 10 | created by 2-15-1881;  | 10 | (e) the board of professional engineers and land                |
| 11 | (d) board of livestock, department of livestock,             | 11 | surveyors, department of commerce, created by 2-15-1873;        |
| 12 | created by 2-15-3102;  | 12 | (f) office of commissioner of insurance and the                 |
| 13 | <del>(c)baard-sf-wilkcontrolydepartmentofcommercey</del>     | 13 | insurance department, state auditor's office, created by        |
| 14 | <del>created-by-2-15-1002+</del>                             | 14 | 2-15-1902 and 2-15-1903;  |
| 15 | tfile) board of oil and gas conservation, department         | 15 | (g) office of the securities commissioner, state                |
| 16 | of natural resources and conservation, created by 2-15-3303; | 16 | auditor's office, created by 2-15-1901;                         |
| 17 | <pre>fg)(f) Montana outfitters* council, department of</pre> | 17 | (h) the board of landscape architects, department of            |
| 18 | fish, wildlife, and parks, created by 2-15-3403;             | 18 | commerce, created by 2-15-1872;                                 |
| 19 | (h)[d] public service commission, department of public       | 19 | <li>the board of county printing, department of</li>            |
| 20 | service regulation, created by 69-1-102;                     | 20 | commerce, created by 2-15-1811;                                 |
| 21 | ti)(h) board of water and wastewater operators,              | 21 | (j) the board of plumbers, department of commerce,              |
| 22 | department of health and environmental sciences, created by  | 22 | created by 2-15-1875;   |
| 23 | 2-15-2105;   | 23 | (k) board of physical therapy examiners, department of          |
| 24 | (j)(i) board of water well contractors, department of        | 24 | commerce, created by 2-15-1858.                                 |
| 25 | commerce, created by 2-15-1862.                              | 25 | (5) The following agencies terminate on July 1, 1987:           |
|    | <b>~3~</b>   |    |   |
|    |  | •  |   |

| 1  | (a) commission for human rights, department of labor           |   |
|----|--|---|
| 2  | and industry, created by 2-15-1706;                            |   |
| 3  | (b) Nontana state board of medical examiners,                  |   |
| 4  | department of commerce, created by 2-15-1841;                  |   |
| 5  | (c) board of dentistry, department of commerce,                |   |
| 6  | created by 2+15-1842;  |   |
| 7  | (d) board of pharmacists, department of commerce,              |   |
| 8  | created by 2-15-1843;  |   |
| 9  | (e) board of nursing, department of commerce, created          |   |
| 10 | by 2-15-1844;  | : |
| 11 | (f) board of nursing home administrators, department           |   |
| 12 | of commerce, created by 2-15-1845;                             |   |
| 13 | <pre>{g} board of optometrists, department of commerce,</pre>  |   |
| 14 | created by 2-15-1846;  |   |
| 15 | (h) board of chiropractors, department of commerce,            |   |
| 16 | created by 2-15-1847;  |   |
| 17 | (i) board of radiologic technologists, department of           |   |
| 18 | commerce, created by 2-15-1848;                                |   |
| 19 | (j) board of speech pathologists and audiologists.             |   |
| 20 | department of commerce, created by 2-15-1849;                  | : |
| 21 | (k) board of hearing aid dispensers, department of             | : |
| 22 | commerce, created by 2-15-1850;                                |   |
| 23 | <pre>{1} board of psychologists, department of commerce;</pre> |   |
| 24 | created by 2-15-1851;  | : |
| 25 | (m) board of veterinarians, department of commerce,            | : |

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1 created by 2-15-1852;

2 (n) board of morticians, department of commerce: 3 created by 2-15-1853;

4 (o) board of barbers, department of commerce, created
5 by 2-15-1856;

6 (p) board of cosmetologists, department of commerce,
7 created by 2-15-1857;

8 (q) board of sanitarians, department of commerce, 9 created by 2-15-1861;

10 (r) board of veterans' affairs, department of social
11 and rehabilitation services, created by 2-15-2202.

12 <u>(6) The following agency terminates July le 1989:</u> 13 <u>board of milk control. department of commerces created by</u>

14 2-15-1802-

15 Section 3. Section 81-23-204, MCA, is amended to read: #81-23-204. Declining, suspending, and revoking 16 17 licenses --- penalties in lieu of suspension or revocation. 18 (1) The department may refuse to grant a license or may 19 suspend or revoke a license already granted for due cause 20 upon due notice and after hearing. The violation of any 21 provisions of this chapter or of any lawful order or rule of the board or department, the failure or refusal to make 22 required statements or reports, or failure to pay license or 23 24 assessment fees are causes for which the department may-at 25 its-discretiony suspend or revoke a license.

1 (2) In place of suspension or revocation of a license, 2 the department may assess a civil penalty not to exceed \$500 3 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful 4 order or rule of the department or board. If the person 5 against whom a civil penalty is assessed fails to pay the 6 7 civil penalty immediately, the department shall collect the 8 civil penalty by a civil proceeding in the district court of 9 the first judicial district. This penalty shall be construed 10 as civil and not criminal in nature. Any moneys received by 11 the department as a result of collection of civil penalties 12 shall be paid into the earmarked revenue fund as provided by 13 81-23-403.\*

14 Section 4. Section 81-23-302, MCA, is amended to read: 15 "81-23-302. Establishment of minimum prices. (1) The 16 board shall fix minimum producer, wholesaler jobber, and 17 retail prices for class I milk and minimum producer prices 18 only for class II and class III milk in all moments of the 19 state by adopting rules in a manner prescribed by the 20 Montana Administrative Procedure Act.

21 (2) The board shall establish such prices by means of 22 flexible formulas which shall be devised so that they bring 23 about such automatic changes in all minimum prices as are 24 justified on the basis of changes in production, supply, 25 processing, distribution, and retailing costs. 1 (3) The board shall consider the balance between 2 production and consumption of milk, the costs of production 3 and distribution, and prices in adjacent and neighboring 4 areas and states so that minimum prices which are fair and 5 equitable to producers, distributors, jobbers, retailers, 6 and consumers may result.

(4) The board shall, when publishing notice . 7 of proposed rulemaking under authority of this section, set 8 9 forth the specific factors which shall be taken into consideration in establishing the formulas and in particular 10 11 in determining costs of production and distribution and of the actual dollars and cents costs of production and 12 13 distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or 14 15 should be shown at the hearing so that all interested 16 parties will have opportunity to be heard and to question or rebut such considerations as a matter of record. 17

19 limited to the following items: 20 (a) current and prospective supplies of milk in 21 relation to current and prospective demands for such milk 22 for all purposes;

(5) Such specific factors may include but shall not be

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(b) the ability and willingness of consumers to
 purchase, which shall include among other things per capita
 disposable: income statistics, consumer price indexes, and

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1 wholesale price indexes;

2 (c) the cost factors in producing milk, which shall 3 include among other things the prices paid by farmers 4 generally (as used in parity calculations of the United 5 States department of agriculture), prices paid by farmers 6 for dairy feed in particular, and farm wage rates in this 7 state;

B (d) the alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among 9 10 other thinds prices received by farmers for all products other than milk, prices received by farmers for beef cattle, 11 and the percentage of unemployment in the state and nation 12 as determined by appropriate state and federal agencies; 13 (e) the prices of butter, nonfat dry wilk, and cheese; 14 (f) the cost factors in distributing milk, which shall 15 include among other things the prices paid by distributors 16 for equipment of all types required to process and market 17 milk and prevailing wage rates in this state; 18

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to 1 market milk, and prevailing wage rates in the state;

2 (h) the need, if any, for freight or transportation
3 charges to be deducted by distributors from producer prices
4 for bulk milkta

7 (6) If the board at any time proposes to base all or Ĥ 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 within its own knowledge which it will consider, so that all 15 16 interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record. - 17

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:

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

23 (b) wholesale prices for milk in class I shall be24 computed;

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

computed; 1

3

(d) retail prices for milk in class I shall be 2 computed.

(8) This section shall not be construed as requiring 4 5 the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any 6 reasonable method of expression to accomplish the objective 7 set forth in subsection (7). If the evidence presented to 8 the board at any public hearing for the establishment or 9 revision of milk pricing formulas is found by the board to 10 require the establishment of separate and varying wholesale 11 prices for any particular uses, the board shall designate 12 13 the reasons therefor and establish such separate formulas. (9) Each rule establishing or revising any wilk 14 pricing formulas shall classify milk by forms, classes, 15 grades, or uses as the board may deem advisable and shall 16 17 specify the minimum prices therefor.

(10)-The--milk--produced--in-one-natural-marketing-area 18 and-sold-in-in-insther-natural-merketing-area-shell-be-paid-for 19 20 by-g-distributor-or-dealer. in accordence-with-the-pricing erder of the eres where produced at the price children : 21 specified of the class or use in which it is ultimately used 22 er-selde 23

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

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

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

t13;(12) The board may amend any official rule: in the 13 same manner provided herein for the original establishment 14 15 of milk pricing formulas. The board may in its discretion: when it determines the need exists, give notice of and hold 16 17 statewide public hearings affecting establishment or revision of milk pricing formulas in-oll-market-ereas-of-the 18 19 stote.

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

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

producer, 3 (15)(14) Upon petition bγ any producer-distributor, or distributor in ony-merketing-preas 4 the board shall hold a hearing to receive and consider 5 6 evidence regarding the advisability and need for en-arequide 7 or a statewide pooling arrangement as a method of payment of 8 producer prices, provided that at such hearing the board 9 shall among other things specifically receive and consider evidence concerning production and marketing practices which 10 historically prevailed in-the-erea-concerned-or 11 have - 12 statewide-as-the-case-may be. If the board finds that the evidence adduced at such hearing warrants the establishment 13 14 of such-an-propyide-or a statewide pooling arrangement, the 15 board shall proceed by official order to establish the same; but such official order shall be of no force or effect until 16 it is approved in a referendum conducted by the board among 17 affected producers, producer-distributors, and distributors. 18 tiot(15) The requirements hereinabove set forth 19 20 concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base 21 22 or quota plans or areawide or statewide pooling arrangements 23 or abandonment thereof.

24 (17)(16) Rules adopted pursuant to this section shall
 25 be enforced and audited for compliance by the milk control

1 division of the department of commerce."

2 Section 5. Section 81-23-303, MCA, is amended to read: 3 \*81-23-303. Rules of fair trade practices. The 4 department may adopt reasonable rules governing fair trade 5 practices as they pertain to the transaction of business 6 among licensees under this chapter and among licensees and 7 the general public. Those rules shall contain but are not 8 limited to provisions prohibiting the following methods of 9 doing business which are unfair, unlawful, and not in the 10 public interest:

11 (1) the payment, allowance, or acceptance of secret 12 rebates, secret refunds, or unearned discounts by a person, 13 whether in the form of money or otherwise;

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

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

(4) the purchasing, processing, bottling, packaging,
transporting, delivering, or otherwise handling in--any
marketing-area of milk which is to be or is sold or
otherwise disposed of at less than the minimum wholesale and

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× 44

1 minimum retail prices established by the board;

2 (5) the payment of a price lower than the applicable
3 producer price, established by the board, by a distributor
4 to a producer for milk which is distributed to any person,
5 including agencies of the federal, state, or local
6 government.\*

7 Section 6. Section 81-23-304, MCA, is amended to read: #81-23-304. Limitation on extension of credit to 8 9 retailers. A sale or delivery may not be made by a 10 producer-distributor, distributor, or jobber to a retailer, 11 except for cash or payment within 15 days after regular 12 billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. A 13 14 producer-distributor, distributor, or jobber may not extend more than 15 days" credit after billing to a retailer. A 15 retailer may not receive delivery of milk without agreement 16 to pay for it in cash within 15 days after regular billing. 17 18 A correctly dated check which is honored upon presentment is 19 cash within the meaning of this section. An extension or 20 acceptance of credit in violation of this section shall be 21 construed as rendering or receiving financial assistance. 22 The licenses of producer-distributors, distributors, or 23 jobbers involved in violation of this section shall be 24 suspended or revoked as determined by the department in-its 25 discretion aftersa hearing excavat to the Administrative

1 Procedure Act."

2 NEW SECTION. Section 7. Repeater. Sections 81-23-205

3 and 81-23-301, MCA, are repealed.

4 <u>NEW SECTION</u> Section 8. Effective date. This act is

5 effective on passage and approval.

-End-

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SENATE STANDING COMMITTEE REPORT (Agriculture, Livestock & Irrigation)

That House Bill No. 82 be amended as follows:

\_....

1. Page 2, line 1.
Strike: "2-8-122"
Insert: "2-18-122"

HB 0082/02

1 HOUSE BILL NO. 82 2 INTRODUCED BY MANUEL, ELLERD BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE 5 BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND 6 RULES: REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR 7 A REVOCATION; CREATING A STATEWIDE MARKET AREA; DELETING RATE 9 OF RETURN FROM THE PRICING FORMULA: REPEALING BONDING 10 REQUIREMENTS; AMENDING SECTIONS 2-8-103, 01-23-204, AND 11 81-23-302 THROUGH 81-23-304+ MCA; REPEALING SECTIONS 12 81-23-205 AND 81-23-301, NCA; AND PROVIDING AN IMMEDIATE 13 EFFECTIVE DATE."

14

15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, 16 MCA, terminates the Board of Wilk Control and requires a 17 performance evaluation of the board by the Legislative Audit 18 Committee; and

19 WHEREAS, as a result of the performance evaluation, the 20 Legislative Audit Committee recommends that the Board of 21 Milk Control be reestablished.

22

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 24 <u>MEW\_SECTION\_</u> Section 1. Reestablishment. The board of
 25 milk control, created pursuant to 2-15-1802, is

1 reestablished for 6 years pursuant to 2-18-122 2-8-122, with Ż its existing statutory authority and rules. 3 Section 2. Section 2-8-103, NCA, is amended to read: 4 #2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979: 5 (a) board of abstractors, department of professional 6 7 and occupational licensing, created by 2-15-1643; 8 (b) board of real estate, department of professional 9 and occupational licensing, created by 2-15-1642; 10 (c) state board of warm air heating, ventilation, and 11 air conditioning, department of professional and 12 occupational licensing, created by 2-15-1656; 13 (d) board of institutions, department of institutions, 14 created by 2-15-2303. 15 (2) The following agencies shall terminate on July 1, 1981: 16 17 (a) board of athletics, department of professional and 18 occupational licensing, created by 2-15-1661; 19 (b) board of massage therapists, department of 20 professional and occupational licensing, created by 21 2-15-1627; 22 (c) board of osteopathic physicians, department of

23 professional and occupational licensing, created by 24 2-15-1607;

25 (d) board of podiatry examiners, department of

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HB 82 REFERENCE BILL

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|    | ·   |    |  |
|----|---|----|--|
| 1  | professional and occupational licensing, created by             | ı  | (4) The following agencies terminate on July 1, 1985:    |
| 2  | 2-15-1608* <u>*</u>   | 2  | (a) the board of public accountants, department of       |
| 3  | (3) The following units of state government shall               | 3  | commerce, created by 2-15-1866;                          |
| 4  | terminate on July 1, 1963:                                      | 4  | (b) the board of architects, department of commerce,     |
| 5  | (a) board of aeronautics, department of commerce,               | 5  | created by 2-15-1871;                                    |
| 6  | created by 2-15-1612;   | 6  | (c) state banking board, department of commerce,         |
| 7  | (b) state board of hail insurance, department of                | 7  | created by 2-15-1803;                                    |
| 8  | agriculture, created by 2-15-3003;                              | 8  | (d) the state electrical board, department of            |
| 9  | {c} board of horseracing, department of commerce,               | 9  | commerce, created by 2-15-1874;                          |
| 10 | created by 2-15-1881;   | 10 | (e) the board of professional engineers and land         |
| 11 | {d} board of livestock, department of livestock,                | 11 | surveyors, department of commerce, created by 2-15-1873; |
| 12 | created by 2-15-3102;   | 12 | (f) office of commissioner of insurance and the          |
| 13 | to}boardofmitkcontrolydepartment-of-commercar                   | 13 | insurance department, state auditor's office, created by |
| 14 | created-by-2-15-1002;   | 14 | 2-15-1902 and 2-15-1903;                                 |
| 15 | (file) board of oil and gas conservation, department            | 15 | (g) office of the securities commissioner, state         |
| 16 | of natural resources and conservation, created by 2-15-3303;    | 16 | auditor's office, created by 2-15-1901;                  |
| 17 | <pre>tgtffl Montana outfitters* council, department of</pre>    | 17 | (h) the board of landscape architects, department of     |
| 18 | fish, wildlife, and parks, created by 2-15-3403;                | 18 | commerce, created by 2-15-1872;                          |
| 19 | <pre>this public service commission; department of public</pre> | 19 | (i) the board of county printing, department of          |
| 20 | service regulation, created by 69-1-102;                        | 20 | commerce, created by 2-15-1811;                          |
| 21 | titlb1 board of water and wastewater operators.                 | 21 | (j) the board of plumbers, department of commerce,       |
| 22 | department of health and environmental sciences, created by     | 22 | created by 2-15-1875;                                    |
| 23 | 2-15-2105;  | 23 | (k) board of physical therapy examiners, department of   |
| 24 | tjt[1] board of water well contractors, department of           | 24 | commerce, created by 2-15-1858.                          |
| 25 | commerce, created by 2~15-1862.                                 | 25 | (5) The following agencies terminate on July 1, 1987:    |
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|    | -3- HB 82   |    | -4- HB 82  |
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| 1  | (a) commission for human rights, department of labor  |
|----|---|
| z  | and industry, created by 2-15-1706;                   |
| 3  | (b) Montana state board of medical examiners,         |
| 4  | department of commerce, created by 2-15-1841;         |
| 5  | (c) board of dentistry, department of commerce,       |
| 6  | created by 2-15-1842;                                 |
| 7  | (d) board of pharmacists, department of commerce,     |
| 8  | created by 2-15-1843;                                 |
| 9  | (e) board of nursing, department of commerce, created |
| 10 | by 2-15-1844;   |
| 11 | {f} board of nursing home administrators, department  |
| 12 | of commerce, created by 2-15-1845;                    |
| 13 | (g) board of optometrists, department of commerce,    |
| 14 | created by 2-15-1846;                                 |
| 15 | (h) board of chiropractors, department of commerce,   |
| 16 | created by 2-15-1847;                                 |
| 17 | (i) board of radiologic technologists, department of  |
| 10 | commerce, created by 2-15-1848;                       |
| 19 | (j) board of speech pathologists and audiologists,    |
| 20 | department of commerce, created by 2-15-1849;         |
| 21 | (k) board of hearing aid dispensers, department of    |
| 22 | commerce, created by 2-15-1850;                       |
| 23 | ()) board of psychologists, department of commerce,   |
| 24 | created by 2-15-1851;                                 |
| 25 | (m) board of veterinarians, department of commerce,   |
|    |   |

| 1          | created by 2-15-1852;   |
|------------|---|
| 2          | (n) board of morticians, department of commerce,                |
| 3          | created by Z-15-1853;   |
| 4          | (o) board of barbers, department of commerce, created           |
| 5          | by 2-15-1856;   |
| 6          | (p) board of cosmetologists, department of commerce,            |
| 7          | created by 2-15-1857;   |
| <b>8</b> ' | (q) board of sanitarians, department of commerce,               |
| 9          | created by 2-15-1861;   |
| 10         | <pre>(r) board of veterans* affairs, department of social</pre> |
| 11         | and rehabilitation services, created by 2-15-2202.              |
| 12         | <u> 161Ibe_followingagency_terminatesJuly_l+_1989:</u>          |
| 13         | board_of_milk_control.department_of_commerces_created_by        |
| 14         | <u>2-15-1802.</u> *   |
| 15         | Section 3. Section 81-23-204, MCA, is amended to read:          |
| 16         | #81-23-204. Declining, suspending, and revoking                 |
| 17         | licenses penaltles in lieu of suspension or revocation.         |
| 18         | (1) The department may refuse to grant a license or may         |
| 19         | suspend or revoke a license already granted for due cause       |
| 20         | upon due notice and after hearing. The violation of any         |
| 21         | provisions of this chapter or of any lawful order or rule of    |
| 22         | the board or department, the failure or refusal to make         |
| 23         | required statements or reports, or failure to pay license or    |
| 24         | assessment fees are causes for which the department mayat       |

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. 25 its-discretiony suspend or revoke a license.

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r (2) In place of suspension or revocation of a license. the department may assess a civil penalty not to exceed \$500 2 3 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful 4 5 order or rule of the department or board. If the person 6 against whom a civil penalty is assessed fails to pay the 7 civil penalty immediately, the department shall collect the 8 civil penalty by a civil proceeding in the district court of 9 the first judicial district. This penalty shall be construed 10 as civil and not criminal in nature. Any moneys received by 11 the department as a result of collection of civil penalties 12 shall be paid into the earmarked revenue fund as provided by 13 81-23-403.\*

Section 4. Section 81-23-302, MCA, is amended to read: #81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk in-mil-merces-of-the state by adopting rules in a manner prescribed by the Hontana Administrative Procedure Act.

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

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1 (3) The board shall consider the balance between 2 production and consumption of milk, the costs of production 3 and distribution, and prices in adjacent and neighboring 4 areas and states so that minimum prices which are fair and 5 equitable to producers, distributors, jobbers, retailers, 6 and consumers may result.

7 (4) The board shall, when publishing notice of 8 proposed rulemaking under authority of this section, set forth the specific factors which shall be taken into 9 10 consideration in establishing the formulas and in particular 11 in determining costs of production and distribution and of 12 the actual dollars and cents costs of production and 13 distribution which preliminary studies and investigations of 14 auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested 15 16 parties will have opportunity to be heard and to question or 17 rebut such considerations as a matter of record.

18 (5) Such specific factors may include but shall not be 19 limited to the following items:

20 (a) current and prospective supplies of milk in 21 relation to current and prospective demands for such milk 22 for all purposes;

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

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1 wholesale price indexes;

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

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

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

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;
 (h) the need, if any, for freight or transportation
 charges to be deducted by distributors from producer prices
 for bulk milkta

5 (+)--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 any part of any official order establishing or revising any 8 wilk pricing formulas upon facts within its own knowledge. 9 10 as distinguished from evidence which may be presented to it 11 by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under 12 13 authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts 14 within its own knowledge which it will consider, so that all 15 16 interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record. 17 (7) The board, after consideration of the evidence 18 19 produced, shall make written findings and conclusions and 20 shall fix by official rule the formula whereby minimum: 21 (a) producer prices for milk in classes I, II, and III 22 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

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1 computed;

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(d) retail prices for milk in class I shall be computed.

4 (8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but 5 shall be construed liberally so that the board may adopt any 6 7 reasonable mathod of expression to accomplish the objective 8 set forth in subsection (7). If the evidence presented to the board at any public hearing for the establishment or 9 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--netural--marketing-area and-sold-in-another-natural-warketing-area-shall-be-patd-for by--a--distributor--or-dester-in-accordance-with-the-pricing arder-of-the--area--where--produced--at--the--price--therein specified-of-the-class-or-use-in-which-it-is-wittimately-used or-soldw

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

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

8 (122)(11) All milk purchased within-m-nature)-marketing 9 area by a distributor shall be purchased on a uniform basis. 10 The basis to be used shall be established by the board after 11 the producers and the distributors of--the--area have been 12 consulted.

13 (13)(12) The board may amend any official rule in the 14 same manner provided herein for the original establishment 15 of 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-prese-of-the 19 state.

20 <u>(14)(13)</u> Upon petition of a distributor or a majority 21 of his producers, the board shall hold a hearing to receive 22 and consider evidence regarding the advisability and need 23 for a base or quota plan as a method of payment by that 24 distributor of producer prices; and if the board finds that 25 the evidence adduced at such hearing warrants the

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

3 1151(14) Upon petition bγ any producer, producer-distributor, or distributor in-any-marketing--areas 4 5 the board shall hold a hearing to receive and consider 6 evidence regarding the advisability and need for an-areawide 7 or a statewide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board 8 9 shall among other things specifically receive and consider 10 evidence concerning production and marketing practices which 11 have historically prevailed in-the-area-concerned---or 12 statewidey--os--the-case-mey-be. If the board finds that the 13 evidence adduced at such hearing warrants the establishment 14 of such-an-areawide-or a statewide pooling arrangement, the 15 board shall proceed by official order to establish the same; 16 but such official order shall be of no force or effect until 17 it is approved in a referendum conducted by the board among 18 affected producers, producer-distributors, and distributors. +16+(15) The requirements hereinabove set forth 19 20 concerning notices of hearings for the establishment of milk 21 pricing formulas shall apply to any hearings regarding base 22 or quota plans or~areawide or statewide pooling arrangements 23 or abandonment thereof.

24 <u>(127)(16)</u> Rules adopted pursuant to this section shall
25 be enforced and audited for compliance by the milk control

1 division of the department of commerce."

| 2              | Section 5. Section 81-23-303, MCA, is amended to read:  |
|----------------|---|
| 3              | "81-23-303. Rules of fair trade practices. The  |
| 4              | department may adopt reasonable rules governing fair trade  |
| 5              | practices as they pertain to the transaction of business  |
| 6              | among licensees under this chapter and among licensees and  |
| 7              | the general public. Those rules shall contain but are not   |
| 8              | limited to provisions prohibiting the following methods of  |
| 9              |   |
| 7              | doing business which are unfair, unlawful, and not in the   |
| 10             | public interest:  |
| 11             | (1) the payment, allowance, or acceptance of secret   |
| 12             | rebates, secret refunds, or unearned discounts by a person,   |
| 13             | whether in the form of money or otherwise;  |
| 14             | (2) the giving of milk, cream, dairy products,  |
| 15             | services, or articles of any kind, except to bona fide  |
| 16             | charities, for the purpose of securing or retaining the   |
| 17             | fluid milk or fluid cream business of a customer;   |
| 18             | (3) the extension to certain customers of special   |
|                | · · · · · · · · · · · · · · · · · · ·   |
| 19             | prices or services not available to all customers who   |
| 19<br>20       |   |
|                | prices or services not available to all customers who   |
| 20             | prices or services not available to all customers who<br>purchase milk of like quantity under like terms and  |
| 20<br>21       | prices or services not available to all customers who<br>purchase milk of like quantity under like terms and<br>conditions;   |
| 20<br>21<br>22 | prices or services not available to all customers who<br>purchase milk of like quantity under like terms and<br>conditions;<br>(4) the purchasing, processing, bottling, packaging, |

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1 minimum retail prices established by the board;

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

7 Section 6. Section 81-23-304, MCA, is amended to read: #81-23-304. Limitation on extension of credit to 8 retailers. A sale or delivery may not be made by a 9 producer-distributor, distributor, or jobber to a retailer, 10 except for cash or payment within 15 days after regular 11 billings, and all producer-distributors, distributors, and 12 13 jobbers shall bill retailers at least monthly. . 14 producer-distributor, distributor, or jobber may not extend 25 more than 15 days' credit after billing to a retailer. A 16 retailer may not receive delivery of milk without agreement 17 to pay for it in cash within 15 days after regular billing. 18 A correctly dated check which is honored upon presentment is 19 cash within the meaning of this section. An extension or 20 acceptance of credit in violation of this section shall be 21 construed as rendering or receiving financial assistance. 22 The licenses of producer+distributors, distributors, or 23 jobbers involved in violation of this section shall be 24 suspended or revoked as determined by the department in--its 25 discretion after a hearing pursuant to the Administrative

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1 Procedure Act.\*

- 2 NEW\_SECTION. Section 7. Repeater. Sections 81-23-205
- 3 and 81-23-301, MCA, are repeated.
- 4 NEW\_SECTION. Section 8. Effective date. This act is
- 5 effective on passage and approval.

-End-

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### HOUSE OF REPRESENTATIVES

## February 8 1983

## Highways and Transportation Committee Amendments to Senate Bill 82

1. Page 1, line 23.
Following: "plates"
Insert: "specially"
Following: "with the"
Strike: "words" on line 23 through "appropriate" on line 25.
Insert: "letters and character DV-"

2. Page 2, lines 15 and 16. Following: line 14. Strike: line 15 through "appropriate, " on line 16. Insert: "bearing a representation of a wheelchair as the symbol of a handicapped person"

AND AS AMENDED BE CONCURRED IN