

SENATE BILL 254

Introduced by Gage

1/26	Introduced
1/26	Referred to Agriculture, Livestock & Irrigation
1/26	First Reading
1/26	Fiscal Note Requested
1/29	Hearing
1/30	Fiscal Note Received
2/01	Fiscal Note Printed
2/03	Committee Report--Bill Not Passed
2/03	Adverse Committee Report Adopted
2/03	Motion Filed to Reconsider Adoption of Adverse Committee Report

1 ~~Senate~~ BILL NO. 254
 2 INTRODUCED BY Ray
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE
 5 WHOLESALE AND RETAIL PRICE REGULATION OF MILK; AND AMENDING
 6 SECTIONS 81-23-101, 81-23-102, 81-23-103, 81-23-202,
 7 81-23-302, AND 81-23-303, MCA."
 8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 **"81-23-101. Definitions.** (1) Unless the context
 12 requires otherwise, in this chapter, the following
 13 definitions apply:

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

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

22 (c) "Class II milk" includes milk used in the
 23 manufacture of ice cream and ice cream mix, ice milk,
 24 sherbet, eggnog, cultured sour cream, cottage cheese,
 25 condensed milk, and powdered skim for human consumption.

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

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

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

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

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

18 ~~{i}--"Jobber--prices"--means--those--prices--at--which--milk~~
 19 ~~owned--by--a--distributor--is--sold--in--bulk--or--in--packages--to--a~~
 20 ~~jobber--or--independent--contractor--~~

21 ~~{j}{i}~~ "Licensee" means a person who holds a license
 22 from the department.

23 ~~{k}--"Market"--means--an--area--of--the--state--designated--by~~
 24 ~~the--department--as--a--natural--marketing--area--~~

25 ~~{l}{j}~~ "Milk" means the lacteal secretion of a dairy

animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether or not they are regulated by any health authority of this or any other state or nation.

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

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

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

~~(p)~~(n) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

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

~~(r)~~--"Retailer"--means--a--person--selling--milk--in--bulk--or in packages over the counter at retail or for consumption on the premises and includes--but--is--not--limited--to--retail stores--of--all--types--restaurants--boardinghouses--fraternities--sororities--confectionaries--public--and

private--schools--including--colleges--and--universities--and both public and private institutions--and--instrumentalities of all types and description--

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

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

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

"81-23-102. Policy. (1) It is hereby--declared the policy of this state that--

~~(a)~~ milk is a necessary article of food for human consumption--

~~(b)~~ and that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare--

~~(c)~~--the--production--transportation--processing--storage--distribution--and--sale--of--milk--in--the--state--of Montana--is--an--industry--affecting--the--public--health--and interest--

~~(d)~~--unfair--unjust--destructive--and--demoralizing--trade practices--have--been--and--are--now--being--carried--on--in--the

production,----transportation,----processing,----storage,
distribution, and sale of milk and products manufactured
therefrom, which trade practices constitute a constant
menace to the health and welfare of the inhabitants of this
state and tend to undermine the sanitary regulations and
standards of content and purity of milk;

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

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

(g) investigations have revealed and experience has
shown that, due to the nature of milk and the conditions
surrounding the production and marketing of milk and due to
the vital importance of milk to the health and well-being of
the citizens of this state, it is necessary to invoke the
police powers of the state to provide a constant supervision
and regulation of the milk industry of the state to prevent
the occurrence and recurrence of those unfair, unjust,

destructive, demoralizing, and chaotic conditions and trade
practices within the industry which have in the past
affected the industry and which constantly threaten to be
revived within the industry and to disrupt or destroy an
adequate supply of pure and wholesome milk to the consuming
public and to the citizens of this state;

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

(i) the demand for this perishable commodity fluctuates
from day to day and from time to time making it necessary
that the producers and distributors shall produce and carry
on hand a surplus of milk in order to guarantee and insure
to the consuming public an adequate supply at all times,
which surplus must of necessity be converted into byproducts
of milk at great expense and oftentimes at a loss to the
producer and distributor;

(j) this surplus of milk, though necessary and
unavoidable, unless regulated, tends to undermine and
destroy the milk industry, which causes producers to relax
their diligence in complying with the provisions of the

health authorities and oftentimes to produce milk of an inferior and unsanitary quality;

{k}--investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers, distributors, and others engaged in the marketing of milk are guaranteed and insured a reasonable profit on milk, both the supply and quality of milk are affected to the detriment of and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected;

{i}--where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom these producers and distributors carry on business relations;

{m}--due to the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand has been found inadequate to protect the industry in this and other states and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state;

(2) The general purpose of this chapter is to protect

and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state."

Section 3. Section 81-23-103, MCA, is amended to read:

"81-23-103. General powers of the department. (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this This chapter abrogates does not abrogate or affects affect the status, force, or operation of any provision of public health laws or the law under which the department of livestock is constituted together with the department of livestock rules, county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of health and environmental sciences, the board of livestock, any county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, and distribution, and sale of milk in this state and conduct hearings upon any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person

from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness."

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

"81-23-202. Licenses -- disposition of income. (1) A producer, or producer-distributor, ~~distributor, or jobber~~ may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department of livestock or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license from the department is \$2 and is due before July 1 and ~~shall~~ must be deposited by the department to the credit of the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter shall apply to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this

chapter, levy an assessment upon producers, and producer-distributors, ~~and distributors~~ as follows:

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

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

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

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

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

(5) Failure of a producer, or producer-distributor, ~~or distributor~~ to pay an assessment when due is a violation of this chapter, and his the license under this chapter automatically terminates and is void. A terminated license

~~so--terminated--shall~~ must be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment which was due.

(6) All assessments required by this chapter ~~shall~~ must be deposited by the department in the state special revenue fund. All costs of administering this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this chapter, ~~shall~~ must be paid out of control board ~~moneys~~ money in that fund.

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

Section 5. 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 milk, and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish ~~such the~~ such prices by means of flexible formulas ~~which--shall--be that are~~ that are devised so that they bring about ~~such~~ automatic changes in all minimum prices ~~as that~~ as that are justified on the basis of changes in

~~production--supply--processing--distribution--and--retailing~~ costs.

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

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

(5) ~~Such The~~ Such specific factors may include but ~~shall~~ are not be limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for ~~such~~ such milk 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~~
~~wholesale-price-indexes;~~

~~{c}~~ the cost factors in producing milk, which shall
 must 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;

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

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

~~{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}~~(e) the need, if any, for freight or transportation
 charges to be deducted by distributors from producer prices
 for bulk milk.

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

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

1 (a) producer prices for milk in classes I, II, and III
 2 ~~shall be~~ are computed;
 3 (b) ~~wholesale prices for milk in class I shall be~~
 4 ~~computed;~~
 5 (c) ~~jobber prices for milk in class I shall be~~
 6 ~~computed;~~
 7 (d) ~~retail prices for milk in class I shall be~~
 8 ~~computed.~~

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

20 (9) Each rule establishing or revising any milk pricing
 21 formulas ~~shall~~ must classify milk by forms, classes, grades,
 22 or uses as the board ~~may deem~~ considers advisable and ~~shall~~
 23 must specify the minimum prices therefor.

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

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

8 (11) All milk purchased by a distributor ~~shall~~ must be
 9 purchased on a uniform basis. The basis to be used shall be
 10 established by the board after the producers and the
 11 distributors have been consulted.

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

18 (13) Upon petition of a distributor or a majority of ~~his~~
 19 a distributor's producers, the board shall hold a hearing to
 20 receive and consider evidence regarding the advisability and
 21 need for a base or quota plan as a method of payment by that
 22 distributor of producer prices; and if the board finds that
 23 the evidence ~~adduced~~ adduced at ~~such~~ the hearing warrants the
 24 establishment of a base or quota plan, the board shall
 25 proceed by official order to establish the same plan.

1 (14) (a) Upon petition by 10% or 20 of the licensed
 2 producers in Montana, whichever is less, or upon petition by
 3 any licensed producer-distributor ~~or-distributor~~, the board
 4 shall hold a hearing to receive and consider evidence
 5 regarding the advisability and need for a statewide pooling
 6 arrangement as a method of payment of producer prices,
 7 provided that at such the hearing the board shall among
 8 other things specifically receive and consider evidence
 9 concerning production and marketing practices which have
 10 historically prevailed statewide. If the board finds that
 11 the evidence adduced at such the hearing warrants the
 12 establishment of a statewide pooling arrangement, the board
 13 shall proceed by official order to establish the same
 14 arrangement; but such the official order ~~shall be~~ is of no
 15 force or effect until it is approved in a referendum
 16 conducted by the board by mail and by secret ballot among
 17 affected producers, and producer-distributors, ~~---and~~
 18 ~~distributors~~. The board shall keep confidential the vote of
 19 each producer, and producer-distributor, ~~---and-distributor~~
 20 voting in the referendum. The official order must be
 21 approved by a majority of the producers, and
 22 producer-distributors, ~~and-distributors~~ voting, representing
 23 more than 50% of the milk produced in Montana that is to be
 24 included in the proposed pool, based on each producer's
 25 average monthly production for the 12 months immediately

1 preceding the referendum. If the board finds it necessary,
 2 the board may conduct more than one referendum on any order.

3 (b) The order of the board establishing the statewide
 4 pooling arrangement may include other provisions as the
 5 board considers necessary for the proper and efficient
 6 operation of the pool. These provisions may include but are
 7 not limited to:

8 (i) a statewide base or quota plan contemplated in
 9 subsection (13);

10 (ii) the establishment of a pool settlement fund to be
 11 administered by the department for the purpose of receiving
 12 payments from pool distributors or making payments to them
 13 as necessary in order to operate and administer the
 14 statewide pool; and

15 (iii) the establishment of a pool expense fund for the
 16 purpose of offsetting the costs to the department of
 17 administering the pool, funded by a special levy assessed
 18 against each pool producer.

19 (c) During the initial startup of a statewide pool, the
 20 department may draw from existing cash reserves to fund a
 21 pool settlement fund and a pool expense fund, but any
 22 withdrawals from the cash reserve must be reimbursed.

23 (d) An order of the board establishing a statewide
 24 pooling arrangement that has been approved in a referendum
 25 may be rescinded in the same manner as provided for approval

of the order under subsection (14)(a). Such The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.

(15) The requirements hereinabove set forth in this section concerning notices of hearings for the establishment of milk pricing formulas ~~shall~~ apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment thereof of plans or arrangements.

(16) Rules adopted pursuant to this section shall be enforced and audited for compliance by the milk control bureau of the department of commerce."

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

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

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

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

(4) ~~the purchasing, processing, bottling, packaging, transporting, delivering, or otherwise handling of milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and 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."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0254, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: The bill eliminates the wholesale and retail price regulation of milk.


ASSUMPTIONS:

1. There will be a no need for the investigator position due to workload reduction from the elimination of the requirements calling for investigations.
2. The bureau chief position duties will be reduced in the areas of pricing, preparation for board meetings, reviewing staff work, and fair trade violations allowing the position to assume some audit duties.
3. Half of an auditor position can be eliminated because the bureau chief position will assume some audit duties. This is due to a reduction in the need to do cost surveys and routine investigations.
4. Due to a 30% reduction in the number of licensees there can also be a 30% reduction in the statistician position.
5. The workload of the Milk Control Board will be reduced by 30% and thus their costs will be reduced by a like percentage. Board expenses for FY92 were \$7,655.
6. The budget is the current and modified levels recommended in the Executive budget for FY94 and FY95.
7. Fee charges would be reduced in relationship to the reduction of expenditures.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	6.0	4.2	(1.8)	6.0	4.2	(1.8)
Personal Services	185,767	140,972	(44,795)	186,370	141,575	(44,795)
Operating Expenses	<u>85,068</u>	<u>70,529</u>	<u>(14,539)</u>	<u>85,412</u>	<u>67,373</u>	<u>(18,039)</u>
Total	270,835	211,501	(59,334)	271,782	208,948	(62,834)
<u>Revenues:</u>						
Fees	327,923	257,923	(70,000)	327,923	257,923	(70,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Passage of the bill would delete minimum price protection at the wholesale, jobber, and retail levels while maintaining the minimum price protection at the producer level.


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


DELWYN GAGE, PRIMARY SPONSOR DATE

Fiscal Note for SB0254, as introduced

SB 254