

SENATE BILL NO. 364

INTRODUCED

Spitzer

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MONTANA MILK PRICE CONTROL PROVISIONS BY ALLOWING A MILK DISTRIBUTOR TO MEET A COMPETITOR'S PRICE BY OFFERING IN GOOD FAITH A PRICE BELOW THE MINIMUM WHOLESALE PRICE SET BY THE BOARD OF MILK CONTROL; REQUIRING MILK DISTRIBUTORS WHO HAVE MILK PROCESSING FACILITIES IN THIS STATE TO MAKE A FIRST CALL OR REQUEST FOR MILK FROM MONTANA SOURCES AND, WHENEVER POSSIBLE, TO PURCHASE FROM MONTANA SOURCES IF MILK IS AVAILABLE FROM THE MONTANA PRODUCER AT THE PRICE SET BY THE BOARD; EXCEPTING PROVISIONS FROM THE BOARD'S RULES OF FAIR TRADE PRACTICES; AMENDING SECTIONS 81-23-302 AND 81-23-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, it is necessary for the Board of Milk Control to adopt additional procedures and fair trade practices to promote the sale of Montana milk at competitive prices; and

WHEREAS, the Legislature encourages the use of Montana milk by Montana processors and the elimination of practices that encourage the purchase of Montana milk out of state for subsequent resale in Montana at a price lower than that established by the Board.

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

Section 1. 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 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~~ that must be devised so that they bring about ~~such~~ automatic changes in all minimum prices ~~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

1 prices ~~which~~ that are fair and equitable to producers, distributors, jobbers, retailers, and consumers may
2 result.

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

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

10 (a) current and prospective supplies of milk in relation to current and prospective demands for ~~such~~
11 milk for all purposes;

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

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

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

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

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

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

30 (h) the need, if any, for freight or transportation charges to be deducted by distributors from

1 producer prices for bulk milk.

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

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

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

12 (b) wholesale prices for milk in class I ~~shall~~ must be computed;

13 (c) jobber prices for milk in class I ~~shall~~ must be computed;

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

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

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

25 (10) Notwithstanding the establishment of minimum wholesale prices as provided in this section,
26 a distributor may offer a customer a price that is below the minimum wholesale price if the offer is made
27 in good faith to meet an equally low price of a competitor.

28 (11) Distributors who have processing facilities in this state shall, whenever possible, purchase milk
29 from Montana producers for the processing of products to be sold in this state, provided that milk is
30 available from Montana producers at the price set by the board.

1 (12) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana
 2 Administrative Procedure Act to regulate transportation rates ~~which that~~ distributors, contract haulers, and
 3 others charge producers for ~~both farm-to-plant and~~ interplant transportation of milk. ~~No~~ An allowance for
 4 transportation of milk between plants may not be permitted unless it is found by the board to be necessary
 5 to permit the movement of milk in the public interest. The board may promulgate rules regarding good faith
 6 offers to meet competition, as provided in subsection (10), and regarding the requirement for first call on
 7 Montana milk supplies, as provided in subsection (11). Rules must be coordinated with those adopted
 8 pursuant to fair trade practices under 81-23-303.

9 ~~(11)~~(13) All milk purchased by a distributor ~~shall~~ must be purchased on a uniform basis. The basis
 10 to be used ~~shall~~ must be established by the board after the producers and the distributors have been
 11 consulted.

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

16 ~~(13)~~(15) Upon petition of a distributor or a majority of ~~his~~ a distributor's producers, the board shall
 17 hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan
 18 as a method of payment by that distributor of producer prices; ~~and if.~~ If the board finds that the evidence
 19 ~~adduced~~ provided at ~~such~~ the hearing warrants the establishment of a base or quota plan, the board shall
 20 proceed by official order to establish the ~~same~~ base or quota plan.

21 ~~(14)~~(16) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less,
 22 or upon petition by any licensed producer-distributor or distributor, the board shall hold a hearing to receive
 23 and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method
 24 of payment of producer prices, provided that at ~~such~~ the hearing, the board shall among other things
 25 specifically receive and consider evidence concerning production and marketing practices ~~which that~~ have
 26 historically prevailed statewide. If the board finds that the evidence ~~adduced~~ provided at ~~such~~ the hearing
 27 warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order
 28 to establish the ~~same; but such~~ arrangement. ~~An official order shall be of no force or effect~~ is not effective
 29 until it is approved in a referendum conducted by the board by mail and by secret ballot among affected
 30 producers, producer-distributors, and distributors. The board shall keep confidential the vote of each

1 producer, producer-distributor, and distributor voting in the referendum. The official order must be approved
 2 by a majority of the producers, producer-distributors, and distributors voting, representing more than 50%
 3 of the milk produced in Montana that is to be included in the proposed pool, based on each producer's
 4 average monthly production for the 12 months immediately preceding the referendum. If the board finds
 5 it necessary, the board may conduct more than one referendum on any order.

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

9 (i) a statewide base or quota plan contemplated in subsection ~~(13)~~ (15);

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

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

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

18 (d) An order of the board establishing a statewide pooling arrangement that has been approved in
 19 a referendum may be rescinded in the same manner as provided for approval of the order under subsection
 20 ~~(14)(a)~~ (16)(a). ~~Such~~ The order may be amended without a referendum if, prior to amending the order, the
 21 board gives written notice of its intended action and holds a public hearing as required under the Montana
 22 Administrative Procedure Act.

23 ~~(15)(17)~~ The requirements ~~hereinabove~~ set forth in this section concerning notices of hearings for
 24 the establishment of milk pricing formulas ~~shall~~ apply to any hearings regarding base or quota plans or
 25 statewide pooling arrangements or abandonment ~~thereof~~ of base or quota plans or statewide pooling
 26 arrangements.

27 ~~(16)(18)~~ Rules adopted pursuant to this section ~~shall~~ must be enforced and audited for compliance
 28 by the milk control bureau of the department of commerce."

29

30 **Section 2.** Section 81-23-303, MCA, is amended to read:

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0364, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

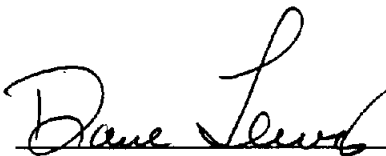
An act revising Montana milk price control provisions by allowing a milk distributor to meet a competitor's price by offering in good faith a price below the minimum wholesale price set by the Board of Milk Control and requiring milk distributors who have milk processing facilities in this state to make a "first call" or request from Montana sources to purchase milk when available at minimum prices.

ASSUMPTIONS:

1. The proposed legislation contains an immediate effective date. However, this fiscal note reflects only those fiscal impacts anticipated in the 1997 biennium.
2. The Department of Commerce (DOC) will require one additional hearing each fiscal year to implement the proposed legislative changes to current law. Estimated increase in per diem (\$500), court reporter (\$800), printing (\$700), and travel (\$800) expenditures in FY96 and FY97 total \$2,800 each year.
3. Other changes as a result of this bill can be absorbed by the DOC.

FISCAL IMPACT:

Department of Commerce:	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating Expenses	<u>2,800</u>	<u>2,800</u>
<u>Funding :</u>		
Milk Control SSR (02)	2,800	2,800

 2-16-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MIKE SPRAGUE, PRIMARY SPONSOR DATE
Fiscal Note for SB0364, as introduced

SB 364

APPROVED BY COM ON AGRICULTURE,
LIVESTOCK & IRRIGATION

1 SENATE BILL NO. 364

2 INTRODUCED BY SPRAGUE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MONTANA MILK PRICE CONTROL PROVISIONS BY
5 ~~ALLOWING A MILK DISTRIBUTOR TO MEET A COMPETITOR'S PRICE BY OFFERING IN GOOD FAITH A~~
6 ~~PRICE BELOW THE MINIMUM WHOLESALE PRICE SET BY THE BOARD OF MILK CONTROL~~ REMOVING
7 THE AUTHORITY OF THE BOARD OF MILK CONTROL TO FIX THE FORMULA ESTABLISHING MINIMUM
8 WHOLESALE, JOBBER, AND RETAIL PRICES OF MILK; REQUIRING MILK DISTRIBUTORS WHO HAVE MILK
9 PROCESSING FACILITIES IN THIS STATE TO MAKE A FIRST CALL OR REQUEST FOR MILK FROM
10 MONTANA SOURCES AND, WHENEVER POSSIBLE, TO PURCHASE FROM MONTANA SOURCES IF MILK
11 IS AVAILABLE FROM THE MONTANA PRODUCER AT THE PRICE SET BY THE BOARD; EXCEPTING
12 PROVISIONS FROM THE BOARD'S RULES OF FAIR TRADE PRACTICES; AMENDING SECTIONS 81-23-101,
13 81-23-102, 81-23-202, 81-23-302, AND 81-23-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
14 DATE."

15
16 WHEREAS, THE LEGISLATURE FINDS IT APPROPRIATE TO DECONTROL MINIMUM WHOLESALE,
17 JOBBER, AND RETAIL MILK PRICES; AND

18 WHEREAS, it is necessary for the Board of Milk Control to adopt additional procedures and fair trade
19 practices to promote the sale of Montana milk at competitive prices; and

20 WHEREAS, the Legislature encourages the use of Montana milk by Montana processors and the
21 elimination of practices that encourage the purchase of Montana milk out of state for subsequent resale
22 in Montana at a price lower than that established by the Board.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25
26 SECTION 1. SECTION 81-23-101, MCA, IS AMENDED TO READ:

27 "**81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following
28 definitions apply:

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

30 (b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk,

1 whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks,
 2 and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized,
 3 sterile, or aseptic.

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

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

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

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

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

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

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

19 ~~(j)~~ (i) "Licensee" means a person who holds a license from the department.

20 ~~(k)~~ (j) "Market" means an area of the state designated by the department as a natural marketing
 21 area.

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

27 ~~(m)~~ (l) "Person" means an individual, firm, corporation, or cooperative association or the dairy
 28 operated by the department of corrections and human services at the Montana state prison.

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

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

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

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

7 ~~(p)~~ "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for
8 consumption on the premises and includes but is not limited to retail stores of all types, restaurants,
9 boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and
10 universities, and both public and private institutions and instrumentalities of all types and description.

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

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

15

16 **SECTION 2. SECTION 81-23-102, MCA, IS AMENDED TO READ:**

17 **"81-23-102. Policy.** (1) It is hereby declared that:

18 (a) milk is a necessary article of food for human consumption;

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

21 (c) the production, transportation, processing, storage, distribution, and sale of milk in the state
22 of Montana is an industry affecting the public health and interest;

23 (d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being
24 carried on in the production, transportation, processing, storage, distribution, and sale of milk and products
25 manufactured ~~therefrom~~ from milk, which trade practices constitute a constant menace to the health and
26 welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of
27 content and purity of milk;

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

30 (f) it is the policy of this state to promote, foster, and encourage the intelligent production and

1 orderly marketing of milk and cream and products manufactured ~~therefrom~~ from milk and cream, to
 2 eliminate speculation and waste, and to make the distribution ~~thereof~~ of milk and cream and products
 3 manufactured from milk and cream between the producer and consumer as direct as can be efficiently and
 4 economically done, and to stabilize the marketing of ~~such~~ those commodities;

5 (g) investigations have revealed and experience has shown that, due to the nature of milk and the
 6 conditions surrounding the production and marketing of milk and due to the vital importance of milk to the
 7 health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state
 8 to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence
 9 and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices
 10 within the industry which have in the past affected the industry and which constantly threaten to be
 11 revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to
 12 the consuming public and to the citizens of this state;

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

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

22 (j) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and
 23 destroy the milk industry, which causes producers to relax their diligence in complying with the provisions
 24 of the health authorities and ~~ofttimes~~ often to produce milk of an inferior and unsanitary quality;

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

30 (l) where no supervision and regulation are provided for the orderly and profitable marketing of milk,

1 past experience has shown that the credit status of both producers and distributors of milk is adversely
2 affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom
3 these producers and distributors carry on business relations;

4 (m) due to the nature of milk and the conditions surrounding its production and distribution, the
5 natural law of supply and demand has been found inadequate to protect the industry in this and other states
6 and in the public interest it is necessary to provide state supervision and regulation of the milk industry in
7 this state.

8 (2) The general purpose of this chapter is to protect and promote public welfare and to eliminate
9 unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police
10 powers of the state."

11

12 **SECTION 3. SECTION 81-23-202, MCA, IS AMENDED TO READ:**

13 **"81-23-202. Licenses -- disposition of income.** (1) A producer, producer-distributor, distributor, or
14 jobber may not engage in the business of producing or selling milk subject to this chapter in this state
15 without first having obtained a license from the department of livestock or, in the case of milk entering this
16 state from another state or foreign nation, without complying with the requirements of the Montana Food,
17 Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee
18 for the license from the department is \$2 and is due before July 1 and must be deposited by the
19 department to the credit of the general fund. The license required by this chapter is in addition to any other
20 license required by state law or any municipality of this state. This chapter applies to every part of the state
21 of Montana.

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

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

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

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

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

4 (4) In addition to the fees established in subsections (1) through (3), the department shall assess
5 a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to
6 be used for the administration of the milk inspection and milk diagnostic laboratory functions of the
7 department of livestock. The board shall include this fee in its formulas for fixing by rule the minimum
8 producer, ~~wholesale, jobber, and retail~~ prices for class I milk in 81-23-302.

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

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

17 (7) Except for the assessment provided for in subsection (4), all assessments required by this
18 chapter must be deposited by the department in the state special revenue fund. All costs of administering
19 this chapter, including the salaries of employees and assistants, per diem and expenses of board members,
20 and all other disbursements necessary to carry out the purpose of this chapter, must be paid out of the
21 board money in that fund.

22 (8) The assessment provided for in subsection (4) must be deposited by the department in an
23 account in the state special revenue fund. Money in the account must be used to carry out the purposes
24 of Title 81, chapter 22.

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

27
28 **Section 4.** Section 81-23-302, MCA, is amended to read:

29 **"81-23-302. Establishment of minimum prices.** (1) The board shall fix minimum producer,
30 ~~wholesale, jobber, and retail~~ prices for class I milk and ~~minimum producer prices only for~~, class II, and class

1 Ill milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

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

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

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

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

16 (a) current and prospective supplies of milk in relation to current and prospective demands for ~~such~~
17 milk for all purposes;

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

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

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

27 ~~(e)(D)~~ the prices of butter, nonfat dry milk, and cheese;

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

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

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

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

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

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

18 ~~(b) wholesale prices for milk in class I shall must be computed;~~

19 ~~(c) jobber prices for milk in class I shall must be computed;~~

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

21 (8) This section ~~shall~~ may not be construed as requiring the board to promulgate any specific
 22 number of formulas, but ~~shall~~ must be construed liberally so that the board may adopt any reasonable
 23 method of expression to accomplish the objective set forth in subsection (7). ~~If the evidence presented to~~
 24 ~~the board at any public hearing for the establishment or revision of milk pricing formulas is found by the~~
 25 ~~board to require the establishment of separate and varying wholesale prices for any particular uses, the~~
 26 ~~board shall designate the reasons therefor for the separate and varying prices and establish such separate~~
 27 ~~formulas.~~

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

1 (10) ~~Notwithstanding the establishment of minimum wholesale prices as provided in this section,~~
 2 ~~a distributor may offer a customer a price that is below the minimum wholesale price if the offer is made~~
 3 ~~in good faith to meet an equally low price of a competitor.~~

4 ~~(11)~~ Distributors who have processing facilities in this state shall, whenever possible, purchase milk
 5 ~~from Montana producers for the processing of products to be sold in this state, provided that milk is~~
 6 ~~available from Montana producers at the price set by the board.~~

7 ~~(12)~~(11) The board shall adopt rules after notice and hearing in the manner prescribed by the
 8 Montana Administrative Procedure Act to regulate transportation rates ~~which~~ that distributors, contract
 9 haulers, and others charge producers for ~~both farm to plant and~~ interplant transportation of milk. ~~No~~ An
 10 allowance for transportation of milk between plants may not be permitted unless it is found by the board
 11 to be necessary to permit the movement of milk in the public interest. The board may promulgate rules
 12 regarding good faith offers to meet competition, as provided in subsection (10), and regarding the
 13 requirement for first call on Montana milk supplies, as provided in subsection ~~(11)~~ (10). Rules must be
 14 coordinated with those adopted pursuant to fair trade practices under 81-23-303.

15 ~~(13)~~(12) All milk purchased by a distributor ~~shall~~ must be purchased on a uniform basis. The
 16 basis to be used ~~shall~~ must be established by the board after the producers and the distributors have been
 17 consulted.

18 ~~(14)~~(14)(13) The board may amend any official rule in the same manner provided ~~herein~~ in this
 19 section for the original establishment of milk pricing formulas. The board may in its discretion, when it
 20 determines that the need exists, give notice of and hold statewide public hearings affecting establishment
 21 or revision of milk pricing formulas.

22 ~~(15)~~(15)(14) Upon petition of a distributor or a majority of ~~his~~ a distributor's producers, the board
 23 shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota
 24 plan as a method of payment by that distributor of producer prices; ~~and if.~~ If the board finds that the
 25 evidence ~~adduced~~ provided at ~~such~~ the hearing warrants the establishment of a base or quota plan, the
 26 board shall proceed by official order to establish the ~~same~~ base or quota plan.

27 ~~(16)~~(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is
 28 less, or upon petition by any licensed producer-distributor or distributor, the board shall hold a hearing to
 29 receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as
 30 a method of payment of producer prices, provided that at ~~such~~ the hearing, the board shall among other

1 things specifically receive and consider evidence concerning production and marketing practices ~~which that~~
 2 have historically prevailed statewide. If the board finds that the evidence ~~adduced~~ provided at ~~such the~~
 3 hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official
 4 order to establish the ~~same; but such~~ arrangement. An official order ~~shall be of no force or effect~~ is not
 5 effective until it is approved in a referendum conducted by the board by mail and by secret ballot among
 6 affected producers, producer-distributors, and distributors. The board shall keep confidential the vote of
 7 each producer, producer-distributor, and distributor voting in the referendum. The official order must be
 8 approved by a majority of the producers, producer-distributors, and distributors voting, representing more
 9 than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each
 10 producer's average monthly production for the 12 months immediately preceding the referendum. If the
 11 board finds it necessary, the board may conduct more than one referendum on any order.

12 (b) The order of the board establishing the statewide pooling arrangement may include other
 13 provisions ~~as that~~ the board considers necessary for the proper and efficient operation of the pool. These
 14 provisions may include but are not limited to:

15 (i) a statewide base or quota plan contemplated in subsection ~~(13) (15) (14)~~;

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

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

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

24 (d) An order of the board establishing a statewide pooling arrangement that has been approved in
 25 a referendum may be rescinded in the same manner as provided for approval of the order under subsection
 26 ~~(14)(a) (16)(a) (15)(A)~~. ~~Such~~ The order may be amended without a referendum if, prior to amending the
 27 order, the board gives written notice of its intended action and holds a public hearing as required under the
 28 Montana Administrative Procedure Act.

29 ~~(15)(17)(16)~~ The requirements ~~hereinabove~~ set forth in this section concerning notices of hearings
 30 for the establishment of milk pricing formulas ~~shall~~ apply to any hearings regarding base or quota plans or

1 statewide pooling arrangements or abandonment ~~thereof~~ of base or quota plans or statewide pooling
 2 arrangements.

3 ~~(16)(18)(17)~~ Rules adopted pursuant to this section ~~shall~~ must be enforced and audited for
 4 compliance by the milk control bureau of the department of commerce."

5
 6 **Section 5.** Section 81-23-303, MCA, is amended to read:

7 **"81-23-303. Rules of fair trade practices.** The department may adopt reasonable rules governing
 8 fair trade practices as they pertain to the transaction of business among licensees under this chapter and
 9 among licensees and the general public. ~~These~~ Except for provisions regarding the right to meet a
 10 competitor's price, as provided in 81-23-302(10), and regarding the requirement for first call on Montana
 11 milk supplies, as provided in 81-23-302(11)(10), and rules adopted pursuant to 81-23-302(10) and (11),
 12 fair trade practice rules shall must contain but are not limited to provisions prohibiting the following
 13 methods of doing business ~~which that~~ are unfair, unlawful, and not in the public interest:

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

16 (2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide
 17 charities, for the purpose of securing or retaining the 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
 19 who purchase milk of like quantity under like terms and conditions;

20 ~~(4) the purchasing, processing, bottling, packaging, transporting, delivering, or otherwise handling~~
 21 ~~of milk which that is to be or is sold or otherwise disposed of at less than the minimum wholesale and~~
 22 ~~minimum retail prices established by the board;~~

23 ~~(5)(4)~~ the payment of a price lower than the applicable producer price, established by the board,
 24 by a distributor to a producer for milk ~~which that~~ is distributed to any person, including agencies of the
 25 federal, state, or local government."

26
 27 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

28 -END-

1 SENATE BILL NO. 364

2 INTRODUCED BY SPRAGUE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MONTANA MILK PRICE CONTROL PROVISIONS BY
5 ~~ALLOWING A MILK DISTRIBUTOR TO MEET A COMPETITOR'S PRICE BY OFFERING IN GOOD FAITH A~~
6 ~~PRICE BELOW THE MINIMUM WHOLESALE PRICE SET BY THE BOARD OF MILK CONTROL~~ REMOVING
7 THE AUTHORITY OF THE BOARD OF MILK CONTROL TO FIX THE FORMULA ESTABLISHING MINIMUM
8 WHOLESALE, JOBBER, AND RETAIL PRICES OF MILK; REQUIRING MILK DISTRIBUTORS WHO HAVE MILK
9 PROCESSING FACILITIES IN THIS STATE TO MAKE A FIRST CALL OR REQUEST FOR MILK FROM
10 MONTANA SOURCES AND, WHENEVER POSSIBLE, TO PURCHASE FROM MONTANA SOURCES IF MILK
11 IS AVAILABLE FROM THE MONTANA PRODUCER AT THE PRICE SET BY THE BOARD; EXCEPTING
12 PROVISIONS FROM THE BOARD'S RULES OF FAIR TRADE PRACTICES; AMENDING SECTIONS 81-23-101,
13 81-23-102, 81-23-202, 81-23-302, AND 81-23-303, MCA; AND PROVIDING ~~AN IMMEDIATE~~ A DELAYED
14 EFFECTIVE DATE."

15
16 WHEREAS, THE LEGISLATURE FINDS IT APPROPRIATE TO DECONTROL MINIMUM WHOLESALE,
17 JOBBER, AND RETAIL MILK PRICES; AND

18 WHEREAS, it is necessary for the Board of Milk Control to adopt additional procedures and fair trade
19 practices to promote the sale of Montana milk at competitive prices; and

20 WHEREAS, the Legislature encourages the use of Montana milk by Montana processors and the
21 elimination of practices that encourage the purchase of Montana milk out of state for subsequent resale
22 in Montana at a price lower than that established by the Board.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25
26 SECTION 1. SECTION 81-23-101, MCA, IS AMENDED TO READ:

27 "**81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following
28 definitions apply:

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

30 (b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk,

1 whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks,
2 and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized,
3 sterile, or aseptic.

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

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

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

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

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

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

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

19 ~~{}~~ "Licensee" means a person who holds a license from the department.

20 ~~{(j)}~~ "Market" means an area of the state designated by the department as a natural marketing
21 area.

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

27 ~~{(l)}~~ "Person" means an individual, firm, corporation, or cooperative association or the dairy
28 operated by the department of corrections and human services at the Montana state prison.

29 ~~{(m)}~~ "Producer" means a person who produces milk for consumption in this state, selling it to
30 a distributor.

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

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

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

7 ~~(r)~~ "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for
8 consumption on the premises and includes but is not limited to retail stores of all types, restaurants,
9 boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and
10 universities, and both public and private institutions and instrumentalities of all types and description.

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

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

15

16 **SECTION 2. SECTION 81-23-102, MCA, IS AMENDED TO READ:**

17 **"81-23-102. Policy.** (1) It is hereby declared that:

18 (a) milk is a necessary article of food for human consumption;

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

21 (c) the production, transportation, processing, storage, distribution, and sale of milk in the state
22 of Montana is an industry affecting the public health and interest;

23 (d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being
24 carried on in the production, transportation, processing, storage, distribution, and sale of milk and products
25 manufactured ~~therefrom~~ from milk, which trade practices constitute a constant menace to the health and
26 welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of
27 content and purity of milk;

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

30 (f) it is the policy of this state to promote, foster, and encourage the intelligent production and

1 orderly marketing of milk and cream and products manufactured ~~therefrom~~ from milk and cream, to
 2 eliminate speculation and waste, and to make the distribution ~~thereof~~ of milk and cream and products
 3 manufactured from milk and cream between the producer and consumer as direct as can be efficiently and
 4 economically done, and to stabilize the marketing of ~~such~~ those commodities;

5 (g) investigations have revealed and experience has shown that, due to the nature of milk and the
 6 conditions surrounding the production and marketing of milk and due to the vital importance of milk to the
 7 health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state
 8 to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence
 9 and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices
 10 within the industry which have in the past affected the industry and which constantly threaten to be
 11 revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to
 12 the consuming public and to the citizens of this state;

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

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

22 (j) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and
 23 destroy the milk industry, which causes producers to relax their diligence in complying with the provisions
 24 of the health authorities and ~~ofttimes~~ often to produce milk of an inferior and unsanitary quality;

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

30 (l) where no supervision and regulation are provided for the orderly and profitable marketing of milk,

1 past experience has shown that the credit status of both producers and distributors of milk is adversely
2 affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom
3 these producers and distributors carry on business relations;

4 (m) due to the nature of milk and the conditions surrounding its production and distribution, the
5 natural law of supply and demand has been found inadequate to protect the industry in this and other states
6 and in the public interest it is necessary to provide state supervision and regulation of the milk industry in
7 this state.

8 (2) The general purpose of this chapter is to protect and promote public welfare and to eliminate
9 unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police
10 powers of the state."
11

12 **SECTION 3. SECTION 81-23-202, MCA, IS AMENDED TO READ:**

13 **"81-23-202. Licenses -- disposition of income.** (1) A producer, producer-distributor, distributor, or
14 jobber may not engage in the business of producing or selling milk subject to this chapter in this state
15 without first having obtained a license from the department of livestock or, in the case of milk entering this
16 state from another state or foreign nation, without complying with the requirements of the Montana Food,
17 Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee
18 for the license from the department is \$2 and is due before July 1 and must be deposited by the
19 department to the credit of the general fund. The license required by this chapter is in addition to any other
20 license required by state law or any municipality of this state. This chapter applies to every part of the state
21 of Montana.

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

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

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

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

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

4 (4) In addition to the fees established in subsections (1) through (3), the department shall assess
 5 a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to
 6 be used for the administration of the milk inspection and milk diagnostic laboratory functions of the
 7 department of livestock. The board shall include this fee in its formulas for fixing by rule the minimum
 8 producer, ~~wholesale, jobber, and retail~~ prices for class I milk in 81-23-302.

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

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

17 (7) Except for the assessment provided for in subsection (4), all assessments required by this
 18 chapter must be deposited by the department in the state special revenue fund. All costs of administering
 19 this chapter, including the salaries of employees and assistants, per diem and expenses of board members,
 20 and all other disbursements necessary to carry out the purpose of this chapter, must be paid out of the
 21 board money in that fund.

22 (8) The assessment provided for in subsection (4) must be deposited by the department in an
 23 account in the state special revenue fund. Money in the account must be used to carry out the purposes
 24 of Title 81, chapter 22.

25 (9) The department may, if it finds the costs of administering and enforcing this chapter can be
 26 derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."
 27

28 **Section 4.** Section 81-23-302, MCA, is amended to read:

29 **"81-23-302. Establishment of minimum prices.** (1) The board shall fix minimum producer,
 30 ~~wholesale, jobber, and retail~~ prices for class I milk and minimum producer prices only for class II, and class

1 Ill milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

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

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

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

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

16 (a) current and prospective supplies of milk in relation to current and prospective demands for ~~such~~
17 milk for all purposes;

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

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

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

27 ~~(e)(D)~~ the prices of butter, nonfat dry milk, and cheese;

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

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

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

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

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

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

18 ~~(b) wholesale prices for milk in class I shall~~ must be computed;

19 ~~(c) jobber prices for milk in class I shall~~ must be computed;

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

21 (8) This section ~~shall~~ may not be construed as requiring the board to promulgate any specific
 22 number of formulas, but ~~shall~~ must be construed liberally so that the board may adopt any reasonable
 23 method of expression to accomplish the objective set forth in subsection (7). ~~If the evidence presented to~~
 24 ~~the board at any public hearing for the establishment or revision of milk pricing formulas is found by the~~
 25 ~~board to require the establishment of separate and varying wholesale prices for any particular uses, the~~
 26 ~~board shall designate the reasons therefor~~ for the separate and varying prices and establish such separate
 27 formulas.

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

1 (10) ~~Notwithstanding the establishment of minimum wholesale prices as provided in this section,~~
 2 ~~a distributor may offer a customer a price that is below the minimum wholesale price if the offer is made~~
 3 ~~in good faith to meet an equally low price of a competitor.~~

4 ~~(11)~~ Distributors who have processing facilities in this state shall, whenever possible, purchase milk
 5 from Montana producers for the processing of products to be sold in this state, provided that milk is
 6 available from Montana producers at the price set by the board.

7 ~~(12)~~(11) The board shall adopt rules after notice and hearing in the manner prescribed by the
 8 Montana Administrative Procedure Act to regulate transportation rates ~~which~~ that distributors, contract
 9 haulers, and others charge producers for ~~both farm to plant and~~ interplant transportation of milk. ~~No~~ An
 10 allowance for transportation of milk between plants may not be permitted unless it is found by the board
 11 to be necessary to permit the movement of milk in the public interest. The board may promulgate rules
 12 regarding good faith offers to meet competition, as provided in subsection (10), and regarding the
 13 requirement for first call on Montana milk supplies, as provided in subsection (11) (10). Rules must be
 14 coordinated with those adopted pursuant to fair trade practices under 81-23-303.

15 ~~(11)~~(13)(12) All milk purchased by a distributor ~~shall~~ must be purchased on a uniform basis. The
 16 basis to be used ~~shall~~ must be established by the board after the producers and the distributors have been
 17 consulted.

18 ~~(12)~~(14)(13) The board may amend any official rule in the same manner provided ~~herein~~ in this
 19 section for the original establishment of milk pricing formulas. The board may in its discretion, when it
 20 determines that the need exists, give notice of and hold statewide public hearings affecting establishment
 21 or revision of milk pricing formulas.

22 ~~(13)~~(15)(14) Upon petition of a distributor or a majority of ~~his~~ a distributor's producers, the board
 23 shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota
 24 plan as a method of payment by that distributor of producer prices; ~~and if.~~ If the board finds that the
 25 evidence ~~adduced~~ provided at ~~such~~ the hearing warrants the establishment of a base or quota plan, the
 26 board shall proceed by official order to establish the ~~same~~ base or quota plan.

27 ~~(14)~~(16)(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is
 28 less, or upon petition by any licensed producer-distributor or distributor, the board shall hold a hearing to
 29 receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as
 30 a method of payment of producer prices, provided that at ~~such~~ the hearing, the board shall among other

1 things specifically receive and consider evidence concerning production and marketing practices ~~which that~~
 2 have historically prevailed statewide. If the board finds that the evidence ~~adduced~~ provided at such the
 3 hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official
 4 order to establish the ~~same, but such~~ arrangement. An official order ~~shall be of no force or effect~~ is not
 5 effective until it is approved in a referendum conducted by the board by mail and by secret ballot among
 6 affected producers, producer-distributors, and distributors. The board shall keep confidential the vote of
 7 each producer, producer-distributor, and distributor voting in the referendum. The official order must be
 8 approved by a majority of the producers, producer-distributors, and distributors voting, representing more
 9 than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each
 10 producer's average monthly production for the 12 months immediately preceding the referendum. If the
 11 board finds it necessary, the board may conduct more than one referendum on any order.

12 (b) The order of the board establishing the statewide pooling arrangement may include other
 13 provisions ~~as that~~ the board considers necessary for the proper and efficient operation of the pool. These
 14 provisions may include but are not limited to:

15 (i) a statewide base or quota plan contemplated in subsection ~~(13) (15)~~ (14);

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

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

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

24 (d) An order of the board establishing a statewide pooling arrangement that has been approved in
 25 a referendum may be rescinded in the same manner as provided for approval of the order under subsection
 26 ~~(14)(a) (16)(a) (15)(A)~~. ~~Such~~ The order may be amended without a referendum if, prior to amending the
 27 order, the board gives written notice of its intended action and holds a public hearing as required under the
 28 Montana Administrative Procedure Act.

29 ~~(15)(17)(16)~~ The requirements ~~hereinafter~~ set forth in this section concerning notices of hearings
 30 for the establishment of milk pricing formulas ~~shall~~ apply to any hearings regarding base or quota plans or

1 statewide pooling arrangements or abandonment ~~thereof~~ of base or quota plans or statewide pooling
 2 arrangements.

3 ~~(16)(18)(17)~~ Rules adopted pursuant to this section ~~shall~~ must be enforced and audited for
 4 compliance by the milk control bureau of the department of commerce."

5
 6 **Section 5.** Section 81-23-303, MCA, is amended to read:

7 **"81-23-303. Rules of fair trade practices.** The department may adopt reasonable rules governing
 8 fair trade practices as they pertain to the transaction of business among licensees under this chapter and
 9 among licensees and the general public. ~~These~~ Except for provisions regarding the right to meet a
 10 competitor's price, as provided in 81-23-302(10), and regarding the requirement for first call on Montana
 11 milk supplies, as provided in 81-23-302(11)(10), and rules adopted pursuant to 81-23-302(10) and (11),
 12 fair trade practice rules ~~shall~~ must contain but are not limited to provisions prohibiting the following
 13 methods of doing business ~~which~~ that are unfair, unlawful, and not in the public interest:

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

16 (2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide
 17 charities, for the purpose of securing or retaining the 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
 19 who purchase milk of like quantity under like terms and conditions;

20 ~~(4) the purchasing, processing, bottling, packaging, transporting, delivering, or otherwise handling~~
 21 ~~of milk which that is to be or is sold or otherwise disposed of at less than the minimum wholesale and~~
 22 ~~minimum retail prices established by the board;~~

23 ~~(5)(4)~~ the payment of a price lower than the applicable producer price, established by the board,
 24 by a distributor to a producer for milk ~~which~~ that is distributed to any person, including agencies of the
 25 federal, state, or local government."

26
 27 **NEW SECTION.** **Section 6. Effective date.** [This act] is effective ~~on passage and approval~~
 28 JANUARY 1, 1996.

29 -END-

1 SENATE BILL NO. 364

2 INTRODUCED BY SPRAGUE

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MONTANA MILK PRICE CONTROL PROVISIONS BY
 5 ~~ALLOWING A MILK DISTRIBUTOR TO MEET A COMPETITOR'S PRICE BY OFFERING IN GOOD FAITH A~~
 6 ~~PRICE BELOW THE MINIMUM WHOLESALE PRICE SET BY THE BOARD OF MILK CONTROL~~ REMOVING
 7 THE AUTHORITY OF THE BOARD OF MILK CONTROL TO FIX THE FORMULA ESTABLISHING MINIMUM
 8 WHOLESALE, JOBBER, AND RETAIL PRICES OF MILK; REQUIRING MILK DISTRIBUTORS WHO HAVE MILK
 9 PROCESSING FACILITIES IN THIS STATE TO MAKE A FIRST CALL OR REQUEST FOR MILK FROM
 10 MONTANA SOURCES AND, WHENEVER POSSIBLE, TO PURCHASE FROM MONTANA SOURCES IF MILK
 11 IS AVAILABLE FROM THE MONTANA PRODUCER AT THE PRICE SET BY THE BOARD; EXCEPTING
 12 PROVISIONS FROM THE BOARD'S RULES OF FAIR TRADE PRACTICES; AMENDING SECTIONS 81-23-101,
 13 81-23-102, 81-23-202, 81-23-302, AND 81-23-303, MCA; AND PROVIDING AN IMMEDIATE A DELAYED
 14 EFFECTIVE DATE."

15
 16 WHEREAS, THE LEGISLATURE FINDS IT APPROPRIATE TO DECONTROL MINIMUM WHOLESALE,
 17 JOBBER, AND RETAIL MILK PRICES; AND

18 WHEREAS, it is necessary for the Board of Milk Control to adopt additional procedures and fair trade
 19 practices to promote the sale of Montana milk at competitive prices; and

20 WHEREAS, the Legislature encourages the use of Montana milk by Montana processors and the
 21 elimination of practices that encourage the purchase of Montana milk out of state for subsequent resale
 22 in Montana at a price lower than that established by the Board.

23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25
 26 SECTION 1. SECTION 81-23-101, MCA, IS AMENDED TO READ:

27 "81-23-101. **Definitions.** (1) Unless the context requires otherwise, in this chapter, the following
 28 definitions apply:

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

30 (b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk,

1 whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks,
 2 and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized,
 3 sterile, or aseptic.

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

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

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

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

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

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

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

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

20 ~~(k)~~(j) "Market" means an area of the state designated by the department as a natural marketing
 21 area.

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

27 ~~(m)~~(l) "Person" means an individual, firm, corporation, or cooperative association or the dairy
 28 operated by the department of corrections and human services at the Montana state prison.

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

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

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

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

7 ~~(p)~~ "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for
8 consumption on the premises and includes but is not limited to retail stores of all types, restaurants,
9 boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and
10 universities, and both public and private institutions and instrumentalities of all types and description.

11 ~~(e)~~ "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or
12 in packages, to a retailer.

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

15

16 **SECTION 2. SECTION 81-23-102, MCA, IS AMENDED TO READ:**

17 **"81-23-102. Policy. (1) It is hereby declared that:**

18 (a) milk is a necessary article of food for human consumption;

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

21 (c) the production, transportation, processing, storage, distribution, and sale of milk in the state
22 of Montana is an industry affecting the public health and interest;

23 (d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being
24 carried on in the production, transportation, processing, storage, distribution, and sale of milk and products
25 manufactured ~~therefrom~~ from milk, which trade practices constitute a constant menace to the health and
26 welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of
27 content and purity of milk;

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

30 (f) it is the policy of this state to promote, foster, and encourage the intelligent production and

1 orderly marketing of milk and cream and products manufactured ~~therefrom~~ from milk and cream, to
 2 eliminate speculation and waste, and to make the distribution ~~thereof~~ of milk and cream and products
 3 manufactured from milk and cream between the producer and consumer as direct as can be efficiently and
 4 economically done, and to stabilize the marketing of ~~such~~ those commodities;

5 (g) investigations have revealed and experience has shown that, due to the nature of milk and the
 6 conditions surrounding the production and marketing of milk and due to the vital importance of milk to the
 7 health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state
 8 to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence
 9 and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices
 10 within the industry which have in the past affected the industry and which constantly threaten to be
 11 revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to
 12 the consuming public and to the citizens of this state;

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

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

22 (j) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and
 23 destroy the milk industry, which causes producers to relax their diligence in complying with the provisions
 24 of the health authorities and ~~oftimes~~ often to produce milk of an inferior and unsanitary quality;

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

30 (l) where no supervision and regulation are provided for the orderly and profitable marketing of milk,

1 past experience has shown that the credit status of both producers and distributors of milk is adversely
2 affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom
3 these producers and distributors carry on business relations;

4 (m) due to the nature of milk and the conditions surrounding its production and distribution, the
5 natural law of supply and demand has been found inadequate to protect the industry in this and other states
6 and in the public interest it is necessary to provide state supervision and regulation of the milk industry in
7 this state.

8 (2) The general purpose of this chapter is to protect and promote public welfare and to eliminate
9 unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police
10 powers of the state."

11
12 **SECTION 3. SECTION 81-23-202, MCA, IS AMENDED TO READ:**

13 **"81-23-202. Licenses -- disposition of income.** (1) A producer, producer-distributor, distributor, or
14 jobber may not engage in the business of producing or selling milk subject to this chapter in this state
15 without first having obtained a license from the department of livestock or, in the case of milk entering this
16 state from another state or foreign nation, without complying with the requirements of the Montana Food,
17 Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee
18 for the license from the department is \$2 and is due before July 1 and must be deposited by the
19 department to the credit of the general fund. The license required by this chapter is in addition to any other
20 license required by state law or any municipality of this state. This chapter applies to every part of the state
21 of Montana.

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

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

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

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

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

4 (4) In addition to the fees established in subsections (1) through (3), the department shall assess
5 a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to
6 be used for the administration of the milk inspection and milk diagnostic laboratory functions of the
7 department of livestock. The board shall include this fee in its formulas for fixing by rule the minimum
8 producer, ~~wholesale, jobber, and retail~~ prices for class I milk in 81-23-302.

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

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

17 (7) Except for the assessment provided for in subsection (4), all assessments required by this
18 chapter must be deposited by the department in the state special revenue fund. All costs of administering
19 this chapter, including the salaries of employees and assistants, per diem and expenses of board members,
20 and all other disbursements necessary to carry out the purpose of this chapter, must be paid out of the
21 board money in that fund.

22 (8) The assessment provided for in subsection (4) must be deposited by the department in an
23 account in the state special revenue fund. Money in the account must be used to carry out the purposes
24 of Title 81, chapter 22.

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

27
28 **Section 4.** Section 81-23-302, MCA, is amended to read:

29 **"81-23-302. Establishment of minimum prices.** (1) The board shall fix minimum producer,
30 ~~wholesale, jobber, and retail~~ prices for class I milk and ~~minimum producer prices only for~~ class II, and class

1 Ill milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

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

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

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

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

16 (a) current and prospective supplies of milk in relation to current and prospective demands for ~~such~~
17 milk for all purposes;

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

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

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

27 ~~(e)(D)~~ the prices of butter, nonfat dry milk, and cheese;

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

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

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

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

15 (7) The board, after consideration of the evidence produced, shall make written findings and
 16 conclusions and shall fix by official rule the formula ~~whereby~~ under which minimums:

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

18 ~~(b)~~ wholesale prices for milk in class I shall must be computed;

19 ~~(c)~~ jobber prices for milk in class I shall must be computed;

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

21 (8) This section ~~shall~~ may not be construed as requiring the board to promulgate any specific
 22 number of formulas, but ~~shall~~ must be construed liberally so that the board may adopt any reasonable
 23 method of expression to accomplish the objective set forth in subsection (7). ~~if the evidence presented to~~
 24 ~~the board at any public hearing for the establishment or revision of milk pricing formulas is found by the~~
 25 ~~board to require the establishment of separate and varying wholesale prices for any particular uses, the~~
 26 ~~board shall designate the reasons therefor for the separate and varying prices and establish such separate~~
 27 ~~formulas.~~

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

1 (10) ~~Notwithstanding the establishment of minimum wholesale prices as provided in this section,~~
 2 ~~a distributor may offer a customer a price that is below the minimum wholesale price if the offer is made~~
 3 ~~in good faith to meet an equally low price of a competitor.~~

4 ~~(11)~~ Distributors who have processing facilities in this state shall, whenever possible, purchase milk
 5 from Montana producers for the processing of products to be sold in this state, provided that milk is
 6 available from Montana producers at the price set by the board.

7 ~~(12)~~(11) The board shall adopt rules after notice and hearing in the manner prescribed by the
 8 Montana Administrative Procedure Act to regulate transportation rates ~~which~~ that distributors, contract
 9 haulers, and others charge producers for ~~both farm to plant and~~ interplant transportation of milk. ~~No~~ An
 10 allowance for transportation of milk between plants may not be permitted unless it is found by the board
 11 to be necessary to permit the movement of milk in the public interest. The board may promulgate rules
 12 ~~regarding good faith offers to meet competition, as provided in subsection (10), and regarding the~~
 13 ~~requirement for first call on Montana milk supplies, as provided in subsection (11)~~ (10). Rules must be
 14 coordinated with those adopted pursuant to fair trade practices under 81-23-303.

15 ~~(11)~~(13)(12) All milk purchased by a distributor ~~shall~~ must be purchased on a uniform basis. The
 16 basis to be used ~~shall~~ must be established by the board after the producers and the distributors have been
 17 consulted.

18 ~~(12)~~(14)(13) The board may amend any official rule in the same manner provided ~~herein~~ in this
 19 section for the original establishment of milk pricing formulas. The board may in its discretion, when it
 20 determines that the need exists, give notice of and hold statewide public hearings affecting establishment
 21 or revision of milk pricing formulas.

22 ~~(13)~~(15)(14) Upon petition of a distributor or a majority of ~~his~~ a distributor's producers, the board
 23 shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota
 24 plan as a method of payment by that distributor of producer prices; ~~and if.~~ If the board finds that the
 25 evidence ~~adduced~~ provided at ~~such~~ the hearing warrants the establishment of a base or quota plan, the
 26 board shall proceed by official order to establish the ~~same~~ base or quota plan.

27 ~~(14)~~(16)(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is
 28 less, or upon petition by any licensed producer-distributor or distributor, the board shall hold a hearing to
 29 receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as
 30 a method of payment of producer prices, provided that at ~~such~~ the hearing, the board shall among other

1 things specifically receive and consider evidence concerning production and marketing practices ~~which that~~
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 4 order to establish the ~~same; but such~~ arrangement. An official order shall be of no force or effect is not
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 6 affected producers, producer-distributors, and distributors. The board shall keep confidential the vote of
 7 each producer, producer-distributor, and distributor voting in the referendum. The official order must be
 8 approved by a majority of the producers, producer-distributors, and distributors voting, representing more
 9 than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each
 10 producer's average monthly production for the 12 months immediately preceding the referendum. If the
 11 board finds it necessary, the board may conduct more than one referendum on any order.

12 (b) The order of the board establishing the statewide pooling arrangement may include other
 13 provisions ~~as~~ that the board considers necessary for the proper and efficient operation of the pool. These
 14 provisions may include but are not limited to:

15 (i) a statewide base or quota plan contemplated in subsection ~~(13) (15) (14)~~;

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

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

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

24 (d) An order of the board establishing a statewide pooling arrangement that has been approved in
 25 a referendum may be rescinded in the same manner as provided for approval of the order under subsection
 26 ~~(14)(a) (16)(a) (15)(A). Such~~ The order may be amended without a referendum if, prior to amending the
 27 order, the board gives written notice of its intended action and holds a public hearing as required under the
 28 Montana Administrative Procedure Act.

29 ~~(15)(17)(16)~~ The requirements hereinabove set forth in this section concerning notices of hearings
 30 for the establishment of milk pricing formulas ~~shall~~ apply to any hearings regarding base or quota plans or

1 statewide pooling arrangements or abandonment ~~thereof~~ of base or quota plans or statewide pooling
 2 arrangements.

3 ~~(16)(18)(17)~~ Rules adopted pursuant to this section ~~shall~~ must be enforced and audited for
 4 compliance by the milk control bureau of the department of commerce."

5

6 **Section 5.** Section 81-23-303, MCA, is amended to read:

7 **"81-23-303. Rules of fair trade practices.** The department may adopt reasonable rules governing
 8 fair trade practices as they pertain to the transaction of business among licensees under this chapter and
 9 among licensees and the general public. ~~These~~ Except for provisions regarding the right to meet a
 10 competitor's price, as provided in 81-23-302(10), and regarding the requirement for first call on Montana
 11 milk supplies, as provided in 81-23-302(11)(10), and rules adopted pursuant to 81-23-302(10) and (11),
 12 fair trade practice rules ~~shall~~ must contain but are not limited to provisions prohibiting the following
 13 methods of doing business ~~which~~ that are unfair, unlawful, and not in the public interest:

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

16 (2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide
 17 charities, for the purpose of securing or retaining the 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
 19 who purchase milk of like quantity under like terms and conditions;

20 ~~(4) the purchasing, processing, bottling, packaging, transporting, delivering, or otherwise handling~~
 21 ~~of milk which that is to be or is sold or otherwise disposed of at less than the minimum wholesale and~~
 22 ~~minimum retail prices established by the board;~~

23 ~~(5)(4)~~ the payment of a price lower than the applicable producer price, established by the board,
 24 by a distributor to a producer for milk ~~which~~ that is distributed to any person, including agencies of the
 25 federal, state, or local government."

26

27 **NEW SECTION.** **Section 6. Effective date.** [This act] is effective ~~on passage and approval~~
 28 JANUARY 1, 1996.

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