

EXHIBIT 3  
DATE 2-11-15  
HB 399



## Sell-by date blamed for Montana's higher milk prices; bill would repeal 12-day rule



3 HOURS AGO • TERENCE CORRIGAN INDEPENDENT RECORD

On Feb. 3, a gallon of whole milk at the Helena Safeway cost \$4.19. At the Lincoln Heights Safeway in Spokane, Washington, the same gallon of milk cost a dollar less: \$3.19.

At Albertsons on North Montana Avenue in Helena, a gallon of whole milk cost \$4.59 that day, and at Albertsons in Idaho Falls, Idaho it cost \$2.19. In Coeur d'Alene, Idaho, a gallon of milk cost \$2.89; in Cheyenne, Wyoming, it

was \$3.49.

The nationwide price in December 2014 (the most current data available), according to the federal Bureau of Labor Statistics, was \$3.80, the highest since 2011.

Why does a gallon of milk cost more than twice as much in Helena as it does in Idaho Falls? Many people say it's because a cabal of Montana farmers are using their seats on the state Livestock Board to cling to an outdated rule that serves no purpose beyond stifling competition in the milk business in Montana.

Leading the six-year effort in the courts to eliminate the rule is Mark Huelskamp with milk distributor Core-Mark of Spokane.

The battle is over Montana Livestock Board's 12-day rule, adopted in 1980. The 12-day rule requires milk to be dated to be removed from store coolers 12 days after it is pasteurized. That date, however, does nothing to inform consumers when the milk is likely to go bad, which most experts agree is at least 21 days. Most states have adapted and the vast majority permit producers to set the date. Wyoming and Idaho have no specific date labeling requirements. California requires date labels with the date established by the processor. New Mexico allows processors to determine the "pull" date, and Washington state allows processors to set the date.

House Bill 399, introduced by Rep. Greg Hertz, R-Polson, would force the repeal of the Livestock Board's 12-day rule. HB 399, is "aimed at getting rid of that rule and putting us on the same process that Idaho and Washington, and many other states, use," Hertz said, "allowing the processor to set the date."

"There have been a number of individuals working on this for the last six or seven years

and they've been frustrated by the Department of Livestock," Hertz said in a phone interview Monday. "The department has not been willing to work with them. The last resort is to use legislation to force them to change."

Spokane milk distributor Core-Mark has challenged the Montana Livestock Board's rule in federal and state courts, all the way to the Montana Supreme Court, and in 2011 the case was considered by a hearing officer. The hearing officer determined that the Livestock Board's 12-day rule was an "invalid use of the board's authority." The hearing officer wrote that "... in today's world, the 12 day rule is an impediment to and inconsistent with the Department's authority to regulate milk freshness." The hearing officer also determined the 12-day rule actually "prevents consumers from being able to compare the freshness of different brands of milk," and that the 12-day rule "misleads consumers into the believing that the sell-by date is the equivalent of an expiration date for milk freshness."

The hearing officer concluded that the 12-day rule "should be repealed and in its place a rule should be adopted allowing milk processors to set appropriate code dates based on the testing they perform to determine the freshness, palatability, taste, odor, and safety of the milk they produce."

Core-Mark's Huelskamp said it was the Livestock Board's suggestion to take the issue out of federal court and resolve it with the hearing officer. "The Department of Livestock came to us and asked if we could keep it out of federal court," Huelskamp said, "go through the administrative process with a neutral party who would listen to both sides and go with the hearing examiner's recommendations. We spent a lot of time and a lot of money to go with their recommendation. We got duped."

The Livestock Board, however, didn't like the hearing officer's decision and has refused to change the rule. The board has also rescinded an agreement with Core-Mark that had allowed the company to distribute milk in Montana under a "dual-dating" exemption. The "dual-dating" exemption had allowed Core-Mark to stamp two dates on its milk containers, one to comply with the Montana 12-day rule and the other to comply with other states' rules.

Huelskamp describes the livestock board as a "rogue" board of dairy farmers "making rules for themselves." The rule, Huelskamp said, is merely a means to stifle competition.

Huelskamp says the board's insistence on keeping the rule, with no known basis in science, is merely the group's intention to keep out-of-state milk out of Montana grocery coolers. "They're trying to not let anyone else bring milk into Montana so they can keep the price high. The (Montana) processors like it because there's no competition."

Jeff Lewis, a dairy farmer who sits on the Livestock Board, in one sentence denied that the rule is an attempt to restrain trade and keep milk prices high and in the next he talked about the importance of protecting Montana farmers. "You can look at it this way. If you want all your milk brought in from Idaho where there are thousands and thousands of dairy cows, that's an option. Or, we can try and make sure our dairy farmers stay in business."

When asked why Montana milk prices are so high, Lewis said it depends on when you check prices. When asked if a dollar per gallon difference is normal, Lewis said: "I don't

know, I'd have to check it out. I don't follow it all the time."

Lewis also said the cost to produce milk in Montana is a driving force in the cost of a gallon of milk. "Look where the feed comes from," he said. "Most all the feed for dairy in Montana is corn from the Midwest. The hay is coming from Idaho or other places," he said. "All these things go into the price, what it costs a dairy farmer to produce milk."

"I'm not saying we need to protect the dairy farmers of Montana," he said, "but there is a higher cost of doing business in the state of Montana."

Huelskamp, with Core-Mark, said Montana's 12-day rule results in much milk being dumped well before it should be. Stores "end up throwing away a perfectly good product. To me, it's a crime," Huelskamp said. "Families are struggling, and you know how much milk families go through."

"The consumer needs to understand that we need to stop destroying milk like that," Huelskamp said.

Lewis disputed Huelskamp's allegations that a substantial amount of milk is dumped. "You need to ask grocery stores how much gets dumped because they are not selling it by the 12-day date," Lewis said. Lewis said the big grocery stores know how much milk they sell. Retailers that end up with out-of-date milk, Lewis said, have a "supply management problem."

Rep. Hertz, the sponsor of the bill that would force the end of the 12-day rule, takes issue with Lewis on the problems caused by the 12-day rule. Hertz is the CEO of Moodys Markets that operates Super1 Foods in Polson and Harvest Foods in Ronan, Lolo and Thompson Falls. Hertz has been in the grocery business for 30 years.

"Retailers are forced to throw away perfectly good milk," Hertz said. "For every gallon of milk a retailer disposes of he may have to sell five to 10 gallons of milk to cover the cost of that one gallon. The math is there to understand how that increases the cost of milk."

Livestock Board member Lewis insisted that the 12-day rule is a fair way to protect consumers "in the long run."

"Having a local product at a reasonable price, it's got to be from a local dairy farmer," Lewis said. "It's not about protecting anybody, but there might be a day when all the milk comes from Washington or Idaho."