

HOUSE BILL NO. 311
INTRODUCED BY STOKER

A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING EGGNOG IN THE DEFINITION OF "CLASS I MILK" INSTEAD OF IN THE DEFINITION OF "CLASS II MILK" TO CORRELATE WITH FEDERAL STANDARDS; REQUIRING THE DEPARTMENT OF LIVESTOCK TO ASSESS A FEE FOR ALL CLASSES OF MILK SOLD BY A PERSON LICENSED BY THE DEPARTMENT TO BE USED FOR THE ADMINISTRATION OF THE MILK INSPECTION AND MILK DIAGNOSTIC LABORATORY FUNCTIONS OF THE DEPARTMENT; PROVIDING THAT THE FEE MUST BE ESTABLISHED COMMENSURATE WITH COSTS OF THE PROGRAM; REQUIRING LICENSEES TO REPORT TO THE DEPARTMENT ON A MONTHLY BASIS THE VOLUME OF MILK PRODUCED; AMENDING SECTIONS 81-23-101 AND 81-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

(a) "Board" means the board of milk control provided for in 2-15-3105.

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

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

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

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

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

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

(h) "Licensee" means a person who holds a license from the department.

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

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

(k) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

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

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

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

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

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

Section 2. Section 81-23-202, MCA, is amended to read:

"81-23-202. Licenses -- disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department, as provided in 81-22-202, or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license

from the department is \$2 and is due before July 1 and must be deposited by the department ~~to the credit of~~ in the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

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

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

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

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

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

(4) (a) In addition to the fees established in subsections (1) through (3), the department shall assess a fee of ~~14.97 cents~~ per hundredweight on the volume of ~~class I~~ all classes of milk produced and sold by a ~~producer person licensed by the department~~ to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. The fee must be established pursuant to 81-1-102(2). ~~The board shall include this fee in its formulas for fixing by rule the minimum producer prices for class I milk in 81-23-302.~~

(b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

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

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

(7) All assessments required by this chapter must be deposited by the department in the state special

revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

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

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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