

HOUSE BILL NO. 431
INTRODUCED BY BLASDEL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT THE DEPARTMENT OF LIVESTOCK DEFINE "CLASS" AS IT PERTAINS TO CLASSES OF UTILIZATION OF MILK BY RULE AND USE THE CURRENT DEFINITIONS OF CLASSES OF UTILIZATION OF MILK THAT ARE FOUND IN THE CODE OF FEDERAL REGULATIONS; ALLOWING THE DEPARTMENT TO COMBINE ANY OF THE CLASSES OF MILK PROVIDED FOR IN THE FEDERAL DEFINITIONS INTO A SINGLE CLASS; AND AMENDING SECTIONS 81-23-101 AND 81-23-302, MCA."

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, eggnog, 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, 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.~~

(b) (i) "Class" refers to the classes of utilization of milk that the department shall define by rule.

(ii) In adopting rules under this subsection (1)(b), the department shall use the current definitions of classes of utilization of milk that are found in Title 7 CFR, part 1000.40, except that the department may combine any of the classes of milk provided for in the federal definitions into a single class.

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

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

~~(g)~~(e) "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)~~(f) "Licensee" means a person who holds a license from the department.

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

~~(j)~~(h) "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 are designated as grade A by a constituted health authority and 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)~~(i) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

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

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

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

~~(o)~~(m) "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 that in its discretion it determines to be the department considers proper."

Section 2. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall, by adopting rules, fix minimum producer prices for ~~class I, class II, and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act~~ classes of utilization of milk as defined by the department.

(2) The board shall establish prices by means of flexible formulas that must be devised so that ~~they~~ the

formulas bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

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

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

(5) Specific factors may include but are not limited to the following items:

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

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

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

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

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

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

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions

and shall fix by official rule the formula under which minimum producer prices for milk in ~~classes I, II, and III~~ must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

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

(11) The board shall adopt rules ~~after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act~~ to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies, as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

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

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

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by ~~official~~ order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of

producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by ~~official~~ order to establish the arrangement. An ~~official~~ order is not effective until it is approved in a referendum conducted by the board by mail among affected producers, producer-distributors, and distributors. The ~~official~~ order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

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

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

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

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

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

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

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be enforced and audited for compliance by the department."

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