

## ACT 260

S. B. 761.

A Bill for an Act Relating to Milk Control.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. GENERAL PROVISIONS**

**SECTION 1. Short title.** This Act shall be known and may be cited as the "Milk Control Act."

**SECTION 2. Findings and declaration of necessity.** It is hereby declared that the dairy industry is a paramount agricultural industry of this State and the production and marketing of milk is an enterprise that is of significant importance to the economy of the State and to the health of the consuming public, which ought to be safeguarded and protected in the public interest. Milk cannot be stored for a substantial period of time without additional processing. Moreover, during periods of excess or shortage of milk, production cannot be automatically increased or decreased to respond to demand. In order to increase production, dairy farmers must be given sufficient time to increase the size of their herds. During times of surplus milk, production cannot be automatically cut; cows must go through a drying process. Cows must be milked or else they will be damaged. Also, cows' production of milk varies with the season. Additionally, the industry supplies the military, and the fluctuations in troop strength affect demand. The insularity and distance of Hawaii from other states also contributes to inflexibility of response to demand. Thus, the perishability of milk, the inflexibility of response to changes in demand, and the fluctuations in demand tend to make the industry highly unstable. This tends to lead to unfair, destructive and demoralizing trade practices in the production, sale, processing and distribution of milk, which jeopardize the health of the dairy industry and the availability of an adequate supply of wholesome milk for the people. Moreover, a substantial number of milk producers have in the past found and now find themselves in financial distress so as to jeopardize a continuous adequate supply of wholesome milk to the inhabitants of the State. Accordingly, the State of Hawaii deems it to be in the interest of public health and

welfare to take such steps as are necessary and advisable to stabilize the dairy industry and insure an adequate supply of milk for the inhabitants of this State.

**SECTION 3. Definitions.**

“Board” means the board of agriculture, department of agriculture.

“Commissioner” means the commissioner of the division of milk control.

“Consumer” means any person who purchases milk for consumption.

“Distributor” means any person not producing milk who buys, processes and containerizes milk for sale to consumers, stores, or others.

“Division” means the division of milk control created by this Act.

“Licensee” means a licensed producer, licensed producer-distributor, or licensed distributor.

“Milk” is any product, containing milk solids, normally produced and marketed through the channels of fluid milk trade and includes raw milk, pasteurized milk, cream, buttermilk, flavored milk, recombined milk, and reconstituted milk. “Milk” shall not include butter, cheese, ice cream or condensed or evaporated milk contained in hermetically sealed cans. When quantity of milk is referred to, the intention is to designate a standard whole milk equivalent.

“Milk shed” means any county in the State having a population of 100,000 or more.

“Producer” means any person producing milk or any agricultural cooperative that markets milk for sale to distributors or producer-distributors.

“Producer-distributor” means any person who produces milk, or who produces and buys milk, and processes and containerizes such milk for sale to consumers, stores, or others.

**PART II. ADMINISTRATION, POWERS AND DUTIES**

**SECTION 4. Division of milk control.** There shall be in the department of agriculture a division to be known as the division of milk control, which shall administer the provisions of this Act subject to the supervision of the board. The head of the division shall be a commissioner appointed by the board to serve at its pleasure. The board may delegate any of its powers hereunder to, or direct any of its duties to be performed by, the commissioner. The commissioner shall be compensated in a sum to be set by the board with the approval of the governor.

**SECTION 5. Assistants and employees; appointment, duties, and compensation.** The commissioner may, with the approval of the board, employ, by special contract or otherwise, and remove such assistants and employees as may be necessary to carry out the provisions of this Act, prescribe their powers and duties, and fix their compensation. They shall not be subject to the provisions of chapters 3 and 4, Revised Laws of Hawaii 1955, as amended.

**SECTION 6. General powers.** The department of agriculture through its board is hereby vested with the following powers:

(a) To regulate and supervise in a milk shed the production, transportation, processing, storage, distribution, and delivery of milk, the establishment of quotas and the setting of minimum prices to be paid to producers by producer-distributors and distributors; provided that nothing contained in this Act shall be construed to abrogate or affect the status, force or operation of any provision of the laws on public utilities, public health, expenditure of public funds or any local health ordinance or health regulation.

(b) To investigate all matters in a milk shed pertaining to the production, transportation, processing, storage, distribution, and delivery of milk, and the establishment of quotas and the setting of minimum prices to be paid to producers by producer-distributors and distributors; to subpoena producers, producer-distributors and distributors, their records, books and accounts, and any other person from whom information may be desired to carry out the purpose and intent of this Act; and to issue commissions to take depositions of witnesses absent from the State. Any authorized employee may sign and issue subpoenas and may administer oaths to witnesses and conduct hearings and investigations. In case of failure of any person to comply with any subpoena issued under authority of this Act, or the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the magistrate of the district court of the district in which such person resides or of the district in which such person may be personally served, on application of the board or its authorized representative, shall compel obedience, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(c) To make and enforce all rules and regulations and all orders necessary to carry out this Act.

The operation and effect of any provision of this Act conferring a general power shall not be impaired or qualified by the granting of a specific power or powers.

**SECTION 7. Inspection and investigation.** For the purpose of enforcing this Act, including but not limited to the provisions on licensing, setting of minimum prices and quotas, the board or any of its authorized employees may enter at all reasonable hours all places within the State where milk is being produced, sold, stored, processed or containerized, or where the books, papers, records or documents relating to such transactions are kept, and shall have power to inspect and copy the same. It may administer oaths and take testimony for the purpose of ascertaining facts which in its judgment are necessary to administer this Act.

**SECTION 8. Audit of books and accounts.** The board may examine and audit the books and accounts of licensed producers, producer-distributors and distributors for the purpose of determining how payments to producers and producer-distributors are computed, whether the amounts of such payments are fair, or whether any provisions of this Act affecting such payments, directly or indirectly, have been or are being violated. The board may also examine and audit the costs of the production, handling, processing, dis-

tribution and marketing of milk as they may affect such payments, directly or indirectly.

**SECTION 9. Divulging of information.** No person obtaining any information pursuant to sections 7 and 8 shall divulge such information, except as may be necessary or proper to administer and enforce this Act or as the public interest may require.

**SECTION 10. Accounting of licensees.** Every producer-distributor, distributor and agricultural cooperative subject to license or regulation under this Act, in making payments to producers for milk sold or delivered to such producer-distributor, distributor or cooperative, shall clearly set forth the unit price for such milk, whether determined pursuant to federal or state authority or pursuant to agreement, together with the amount of all premiums, subsidies, differentials, deductions, service fees, hauling charges, supply expenses, costs or adjustments of any nature whatsoever, in such a manner as to fully disclose to the producer the rate, basis and manner of computing such payments.

**SECTION 11. Report to governor.** At the end of each license year, the board shall submit to the governor a report relating to the activities of the milk control division.

### PART III. LICENSING

**SECTION 12. Licensing.** It shall be unlawful for any producer, producer-distributor, or distributor to produce, sell, process, or distribute milk in a milk shed unless such person is duly licensed as provided by this Act. It shall be unlawful for any such person to sell, buy, process, or distribute milk which he knows or has reason to believe has been produced or handled in violation of this Act.

**SECTION 13. Application for license.** An applicant for an original or renewal license to operate as a producer, producer-distributor, or distributor shall file an application upon a form prepared by the board, containing such information which the board deems necessary for the administration of this Act.

The license year shall be from July 1 to the following June 30. All applications for renewal of licenses must be duly made at least thirty days before the commencement of the license year.

**SECTION 14. License fees.** In order to meet the expenditures necessary to administer this Act, the board shall establish license fees to be paid by producers, producer-distributors and distributors. In determining these fees, the board shall, at least 30 days before the new license year begins:

(a) Project the reasonable expenditures necessary to administer the Act for the license year;

(b) Estimate the total volume of milk to be produced and processed for the license year;

(c) Using (a) and (b) above, establish a reasonable rate per hundred weight or other unit as determined by the board; and

(d) Collect such fees monthly, or at such other intervals as may be determined by the board, during the license year based on actual milk produced and processed.

To facilitate the collection of license fees, the board may require a producer-distributor or distributor to withhold from any payment owing to any producer a part or all of the license fee due under this Act by such producer. For any such withholding required by the board, the producer-distributor or distributor shall be paid a reasonable fee by the board. The amount of the fee shall be set by the board. An agricultural cooperative all of whose producer-members have complied with the licensing provisions of this Act shall be exempt from the payment of the license fee.

**SECTION 15. Granting, suspending and revoking licenses.** (a) No license shall be denied unless the board finds, after due notice and opportunity of hearing to the applicant or licensee, one or more of the following:

- (1) That the applicant is not qualified or does not possess equipment to conduct the business properly.
- (2) That the issuance of the license will tend to promote destructive or demoralizing competition in a market already adequately served.
- (3) That the issuance of the license is otherwise not in the public interest.

(b) The board may refuse to renew a license or may suspend or revoke a license, upon due notice and opportunity of hearing to the licensee, when it finds any of the following:

- (1) That any licensee has, without reasonable cause, refused to accept milk delivered or failed to deliver milk as agreed, except where a contract has been terminated.
- (2) That any licensee has failed to account or make payment, without reasonable cause, for any milk purchased.
- (3) That any licensee has been adjudged a bankrupt.
- (4) That any licensee has continued in a course of dealing of such a nature as to indicate his inability or unwillingness to properly conduct the business of producing, processing, delivering, receiving or selling milk or of his intent to deceive or defraud producers, producer-distributors, distributors or consumers.
- (5) That any licensee has violated the state antitrust law, chapter 205A, Revised Laws of Hawaii 1955, as amended.
- (6) That any licensee has failed to keep records or to furnish the statements or information required by the board.
- (7) That any licensee has intentionally made a false or misleading statement upon which the license was issued.
- (8) That the licensee has violated or failed to comply with any of the provisions of this Act.
- (9) That the licensee has ceased to operate the milk business for which the license was issued.

(c) The board may conditionally renew a license or may conditionally

decline to suspend or revoke a license, but such condition shall have appropriate relation to the administration of this Act.

**SECTION 16. Proceedings to review.** The action of the board in refusing to grant or renew a license, or in revoking or suspending a license, or in conditioning or limiting the granting or renewal of a license, may be reviewed in the manner provided by the Hawaii Administrative Procedure Act, chapter 6C, Revised Laws of Hawaii 1955, as amended.

**SECTION 17. Records of licensees.** The board may require licensees to keep such records and information as it deems necessary for the proper enforcement of this Act.

**SECTION 18. Reports of licensees.** Each licensee shall as required by rule or order of the board, file a verified report on forms prescribed by the board of matters on account of which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of this Act.

**SECTION 19. Disposition of license fees.** All moneys received by the board as fees for licenses or otherwise shall be deposited in the general fund.

#### **PART IV. SETTING MINIMUM PRICES AND QUOTAS**

**SECTION 20. Petition to establish, revise or terminate minimum prices and quotas.** Upon petition by the producers and producer-distributors who produce 55 percent of the milk in a milk shed, or by 55 percent of all producers and producer-distributors in a milk shed, or by 55 percent of all producers in a milk shed, or upon the board's own motion, the board shall hold a public hearing to establish, revise or terminate the minimum prices for milk to be paid to producers and producer-distributors or the quotas for the production of milk in the milk shed or both. For the purposes of this section, each producer-member of an agricultural cooperative shall be counted as a producer, and an agricultural cooperative shall not be counted as a producer or as a producer-distributor.

**SECTION 21. Standards to determine minimum prices.** (a) As a guide to determining the minimum prices of milk to be paid to producers and producer-distributors, the board shall take into consideration the following based on the operations of a reasonably efficient producer:

(1) The price to producers necessary to assure the production of an adequate supply of wholesome milk for the market.

(2) The price necessary to return to the producer his cost of production, plus a fair return of his invested capital, for his family labor and for his management skills.

(3) The costs incurred in obtaining, feeding, managing and maintaining dairy animals at optimum production capacity.

(4) The prevailing wages and perquisites of employees.

(5) The ordinary fixed charges and operating expenses incident to the ownership, operation and management of the dairy.

(b) In establishing minimum prices for milk under this Act, the board shall further consider the effect thereof on the consumer.

**SECTION 22. Order fixing minimum price.** The board shall establish by order the minimum prices for milk to be paid to producers by producer-distributors and distributors. The minimum prices may vary according to the classes of milk depending on use; provided that each order shall define the various classifications and that the prices for each classification shall be uniform. The order may prescribe how producers shall be paid for milk sold by them to distributors and producer-distributors.

**SECTION 23. Determination of quotas.** (a) To promote a proper balance between supply and demand for milk, the board shall provide that the price to be paid to producers shall be based upon quota assigned each producer by the board, which quota shall be determined as follows: upon petition or chairman's motion as set out in section 20, there shall be established an initial quota for each producer and producer-distributor, which shall be the average of the amount of milk that he produced and delivered during the three-year period prior to January 1, 1967; provided that if a producer or producer-distributor had not been in business for such period, the board may set his initial quota by taking into account his contract and his investment thereunder for the delivery of milk with a producer-distributor or distributor. The board shall set the initial quota of a newly licensed producer or producer-distributor entering the market by taking into account all relevant market conditions and the capabilities of the licensee. The board may adjust the initial quotas on a pro rata basis to meet changes in market requirements. All milk received by a distributor or producer-distributor, during any period in which quota control is in effect, from any source except from producers licensed hereunder to sell in the milk shed shall constitute surplus milk, unless the supply of milk produced by licensed producers and producer-distributors within the milk shed is inadequate to meet the demand. If such an event occurs, milk from any source, except from licensed producers, may be used as milk to be resold for human consumption as fluid milk and be paid for according to its use. All milk received from a producer or producer-distributor which is in excess of his assigned quota shall constitute surplus milk.

(b) For each milk shed in which quota control or price control or both is to be effected, producers or producer-distributors whose dairies are located outside the milk shed shall participate in such quota control or price control or both for milk regularly supplied within the affected milk shed. However, in setting the minimum price for such milk the board shall consider only those costs incurred by producers located within the affected milk shed. Such producers or producer-distributors whose dairies are located outside the milk shed shall be licensed and subject to all the provisions applicable to licensees for that part of their milk supplied and sold within the affected milk shed.

(c) When the amount of milk resold for human consumption as fluid

milk does not exceed the sum of the quotas to be regularly supplied a distributor or producer-distributor, such fluid consumption milk shall be deemed taken ratably from the quotas actually supplied, and payment shall be made accordingly. The board shall determine which producers, not under written contract with a distributor or producer-distributor, are regular suppliers of milk. The remaining milk not used for human fluid consumption shall be paid for according to its use. However, when the producer-distributor or distributor resells milk, other than recombined or reconstituted milk, for fluid consumption in an amount in excess of all quotas assigned producers or producer-distributors regularly supplying him milk, then the fluid consumption prices shall apply pro rata to surplus milk, in the ratio that a producer's quota bears to the sum of the quotas. However, whenever there is quota milk available for purchase within the milk shed, surplus milk may not be used as milk to be resold for human consumption as fluid milk.

(d) From time to time the board may alter, revise or amend any quotas when required to meet changes in conditions, such as change in demand or inability of certain producers or producer-distributors to meet their assigned quotas.

(e) The board may promulgate rules and regulations governing the transfer of quotas.

(f) Anything to the contrary notwithstanding, no producer or producer-distributor shall have a quota exceeding 20 percent of the entire quota in the milk shed.

**SECTION 24. Compensatory payment.** Whenever any distributor or producer-distributor sells recombined or reconstituted milk for fluid human consumption in a milk shed, such distributor or producer-distributor shall pay the board a compensatory payment to be distributed to all producers who supply milk to such distributor or producer-distributor.

In determining the compensatory payment, the board shall hold a public hearing whenever it deems it necessary to establish the loss of quota suffered by the producers from the sale of recombined or reconstituted milk, the reasonable rate of return the producers would have received if recombined or reconstituted milk were not sold to the public, and the pro-rata share each producer should receive from the compensatory fund. The board may, at the request of a distributor or producer-distributor or on its own, suspend the operation of this section during periods when the production of milk by producers is inadequate to meet consumer requirements.

#### **PART V. REMEDIES, VIOLATIONS, COMPACTS, CONSTRUCTION**

**SECTION 25. Remedies; penalties.** The board may institute such action as may be necessary to enforce compliance with any provision of this Act.

Any person convicted of violating the provisions of this Act shall be fined not less than \$25 nor more than \$500 or imprisoned not more than six months, or both.

Lawful compliance with this Act shall not be deemed a violation of the



Hawaii Antitrust Act, Chapter 205A, Revised Laws of Hawaii 1955, as amended.

**SECTION 26. Interstate and federal compacts.** The board is hereby authorized to confer with authorities of other states and of the United States with respect to uniform milk control with states or as between states, and with the federal government in its control of prices of milk handled in interstate commerce, and may exercise its powers hereunder to effect uniform milk control. It may join with such other authorities, federal and state, in conducting joint investigations, holding joint hearings and issue joint or concurrent orders, or orders supplementary to those of the federal government, and shall have the power to employ or designate a joint agent or joint agencies to carry out and enforce such joint, concurrent or supplementary orders.

**SECTION 27. Construction.** The license required by this Act shall be in addition to any other license required by law. This Act shall not be construed to affect in any manner the relations between any cooperative marketing association and its members organized pursuant to the laws of Hawaii or the United States.

If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 28. Transition.** Any provision in this Act to the contrary notwithstanding, the provisions of this Act requiring licenses shall be applicable ninety days after the effective date of this Act. The initial license year shall commence as of said date and terminate June 30, 1968.

**SECTION 29. Effective date.** This Act shall take effect upon its approval.

(Approved June 7, 1967.)