

**ACT 184**

**H. B. NO. 634**

**A Bill for an Act Relating to the Milk Control Act.**

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

SECTION 1. Section 157-1, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 157-1 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. It shall also include a producer-distributor functioning in his capacity as a distributor.

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

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

“Milk” means any product containing milk solids, normally produced or marketed through the channels of the fluid milk trade and includes raw milk, pasteurized milk, cream, buttermilk, flavored milk, recombined or reconstituted milk, filled milk, and sterilized milk. “Milk” shall not include butter, cheese, ice cream, or condensed or evaporated milk contained in hermetically sealed cans.

“Filled Milk” is any milk, cream or skim milk, whether fresh or recombined, to which has been added or which has been blended or compounded with any fat or oil other than butterfat so that the resulting product is in imitation or semblance of any form of fresh whole milk or cream.

“Sterilized Milk” means an absolutely sterile, preheated product, of natural appearance and flavor, without additives or adulterants, retaining the vitamins and constituents of normal milk and aseptically containerized.

“Milk shed” means any county in the State wherein milk control is established.

“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 milk for sale to consumers, stores, or others.”

SECTION 2. Section 157-12, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 157-12 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 this chapter and amendments thereto, prescribe their powers and duties, and fix their compensation. They shall not be subject to chapters 76 and 77.”

SECTION 3. Section 157-13, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 157-13 GENERAL POWERS.** The department of agriculture through its board is hereby vested with the following powers:

- (1) 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 chapter 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.
- (2) 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 chapter; and to issue commissions to take deposition 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 chapter, 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 the person resides or of the district in which the person may be personally served, on application of the board or its authorized representatives, shall compel obedience, as in the case or disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.
- (3) To control the intrastate shipment of milk including shipment of milk between counties.
- (4) To make and enforce all rules and regulations and all orders necessary to carry out this chapter.

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

SECTION 4. Chapter 157, PART IV, Hawaii Revised Statutes, is amended to read as follows:

**“PART IV. ESTABLISHMENT OF A MILK SHED AND THE SETTING OF MINIMUM PRICES AND QUOTAS**

**Sec. 157-** **Petition to establish or terminate a milk shed.** Upon petition by fifty-five percent of all producers and producer-distributors, or by fifty-five percent of all producers in a prospective milk shed, or upon the board’s own motion, the board shall hold a public hearing to establish or terminate a milk shed in a county comprising one island or on one or more islands or a portion of an island comprising a county.

**Sec. 157-31** **Petition to establish, revise, or terminate minimum prices and quotas.** Upon petition by the producers and producer-distributors who

produce fifty-five percent of the milk in a milk shed, or by fifty-five per cent 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 a 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.

**Sec. 157-33 Order Fixing Minimum Price.** The board shall establish by order the minimum prices and salvage values for milk to be paid to producers by producer-distributors and distributors. The minimum prices and salvage values within each milk shed may vary according to the classes or classifications established by the board; provided that the minimum prices and salvage values for each such class or classification within a milk shed shall be uniform. The minimum prices and salvage values may vary according to counties. The order may prescribe how producers shall be paid for milk sold by them to distributors and producer-distributors.

**Sec. 157-34 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 157-31, 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 also take into account his prior production, contract and his investment; and provided further that in any milk shed established subsequent to January 1, 1971 the board shall establish 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 twelve-month period immediately prior to the date of petition of chairman's motion, and may also take into account prior production, contract and investment factors where any of the producers or producer-distributors shall not have been in business for such twelve-month period. 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.

(b) For each milk shed in which quota control or price control or both is to be established, producers or producer-distributors whose dairies are located outside such milk shed shall participate in said quota control or price control, or both, for milk regularly supplied within the affected milk shed. However, in setting the minimum price for the milk the board shall consider only those costs incurred by producers located within the affected milk shed. Any milk delivered and utilized in a milk shed shall be subject to all the provisions and regulations applicable to that 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 adjust the quotas in any milk shed 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) No producer or producer-distributor shall have a quota exceeding twenty percent of the total quotas established in the State. When quotas are established for a milk shed in the State, no producer or producer-distributor shall have a quota exceeding twenty percent of the total quota established in such milk shed; provided that any producer or producer-distributor whose quota shall exceed twenty percent in any such milk shed upon the effective date of this Act may continue to maintain such quota in such milk shed, but may not thereafter increase its quota percentage in such milk shed or in any other milk shed. The board may, however, waive the requirements of this subsection within any milk shed when it finds that such action is necessary to insure the availability of an adequate supply of milk to the consuming public within such milk shed to promote stability of the dairy industry in said milk shed and will further be in the public interest.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 6. In printing this Act, the revisor of statutes may delete the words "of agriculture" where such words appear in conjunction with the words "the board of agriculture" so as to conform Chapter 157 to the definition of "board" as contained in Section 1 of this Act.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 7, 1971.)

\* Edited accordingly.