

ACT 40

H. B. NO. 1956-72

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:

“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 country or portion thereof 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. PART IV, Chapter 157, Hawaii Revised Statutes, is amended to read:

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

“Sec. 157-30 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 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 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. 157-32 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 items 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 on his invested capital, his family labor and his management skills.

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

“(4) The prevailing wages and prerequisites 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 chapter, the board shall further consider the effect thereof on the consumer.

“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 or 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 appear 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 on June 7, 1971 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. For the purpose of this section, an agricultural cooperative shall not be counted as a producer.”

“Sec. 157-35 Compensatory payment. Whenever any distributor or producer-distributor sells recombined or reconstituted milk for fluid human consumption in a milk shed, the distributor or producer-distributor shall pay the board a compensatory payment to be distributed to all producers who supply milk to the 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 motion, suspend the operation of this section during periods when the production of milk by producers is inadequate to meet consumer requirements.”

SECTION 3. 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 4. This Act shall take effect upon its approval.

(Approved May 15, 1972.)

*Edited accordingly.