

CF 7r2789

By: Delegates Stup, Nathan-Pulliam, Elliott, Stull, Brinkley, Snodgrass, Hecht, McKee, Edwards, Harkins, D. Hughes, Donoghue, Poole, Workman, Watson, O'Donnell, Hubbard, Kirk, C. Davis, Boston, C. Mitchell, Love, Harrison, Fulton, Fry, Willis, Hutchins, Klausmeier, Stocksdale, Frush, and ~~Getty~~ Getty, Montague, and Arnick

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Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 18, 1997

CHAPTER _____

1 AN ACT concerning

2 **Fairness in Milk Marketing Act of 1997**

3 FOR the purpose of implementing certain recommendations of the Task Force on
 4 Maryland's Dairy Industry; establishing an Advisory Committee on Milk Pricing;
 5 specifying the membership and the terms of members; requiring the Department of
 6 Agriculture to provide staff support to the Committee; requiring the Secretary of
 7 Agriculture to consult with the Committee on certain matters; authorizing the
 8 Secretary to establish by regulation certain fluid milk marketing areas, certain
 9 presumed costs to certain distributors ~~and retail sellers~~, and certain producer prices
 10 for certain milk; requiring the Secretary to adopt regulations establishing a formula
 11 for determining the presumed cost; requiring the Secretary to establish by
 12 regulation a certain accounting system for certain distributors for certain purposes;
 13 requiring certain distributors to adopt a certain accounting system for certain
 14 purposes; requiring distributors of fluid milk to be licensed by the Secretary;
 15 authorizing the Secretary to renew, revoke, or suspend a license under certain
 16 circumstances; requiring the Secretary of Agriculture and the Secretary of the
 17 Department of Health and Mental Hygiene to coordinate certain matters related to
 18 the license and a certain permit under certain circumstances; requiring the
 19 Secretary of Agriculture to audit certain records of milk distributors; prohibiting
 20 certain persons from buying or selling certain milk for prices below certain
 21 presumed costs except under certain circumstances; prohibiting certain persons
 22 from buying or selling certain milk below a certain producer price; authorizing the
 23 Secretary to seek an injunction for certain purposes; authorizing the Secretary to
 24 impose certain civil penalties; providing for judicial review of certain decisions made
 25 by the Secretary under certain circumstances; authorizing the Secretary to authorize

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1 certain agencies from other states to examine certain books and records in the
 2 possession of the Secretary under certain circumstances; establishing a Maryland
 3 Milk Fund; providing for the collection and disposition of certain funds; ~~authorizing~~
 4 ~~a certain milk processor to establish a certain sell-by period for certain milk under~~
 5 ~~certain circumstances; providing for the termination of a certain portion of this Act;~~
 6 providing for the termination of the Advisory Committee on Milk Pricing and all
 7 regulations adopted under this Act subject to certain evaluation and
 8 reestablishment provisions; providing that existing obligations or contract rights may
 9 not be impaired by this Act; requiring the Secretary of Agriculture to report to the
 10 General Assembly on or before a certain date; defining certain terms; and generally
 11 relating to the implementation of recommendations of the Task Force on
 12 Maryland's Dairy Industry.

13 BY adding to

14 Article - Agriculture
 15 Section 2-801 through ~~2-810~~ 2-811 to be under the new subtitle "Subtitle 8. State
 16 Milk Pricing Policy"
 17 Annotated Code of Maryland
 18 (1985 Replacement Volume and 1996 Supplement)

19 BY adding to

20 Article - Health - General
 21 Section 21-415(c) and 21-418(e)
 22 Annotated Code of Maryland
 23 (1996 Replacement Volume and 1996 Supplement)

24 ~~BY repealing and reenacting, with amendments,~~

25 ~~Article - Health - General~~
 26 ~~Section 21-426~~
 27 ~~Annotated Code of Maryland~~
 28 ~~(1996 Replacement Volume and 1996 Supplement)~~

29 BY adding to

30 Article - State Government
 31 Section 8-403(p)
 32 Annotated Code of Maryland
 33 (1995 Replacement Volume and 1996 Supplement)

34 Preamble

35 WHEREAS, Milk is and has been a major product and source of economic strength
 36 and pride for the State of Maryland; and

37 WHEREAS, Milk is a nutritious dietary staple and component of thousands of food
 38 products Marylanders enjoy; and

3

1 WHEREAS, Milk is essential to the health and development of Maryland's
2 children; and

3 WHEREAS, Milk is the primary input for a \$1 billion-plus State dairy industry; and

4 WHEREAS, Milk manufacturing plants employ over 1,900 people throughout the
5 State; and

6 WHEREAS, The maintenance of successful dairy farms is consistent with the
7 State's emphasis on controlled growth and agricultural land preservation; and

8 WHEREAS, The neighboring states of Virginia and Pennsylvania have highly
9 regulated milk industries, with minimum guaranteed prices paid to producers and
10 distributors that provide a competitive advantage for producers in those states both
11 within the region as a whole and in the State of Maryland; and

12 WHEREAS, Strong evidence suggests that this competitive advantage has had a
13 direct negative effect on Maryland-based milk producers and distributors and their
14 employees; now, therefore,

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Agriculture**

18 **SUBTITLE 8. STATE MILK PRICING POLICY.**

19 2-801.

20 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (B) "BOOK AND RECORD" INCLUDES ACCOUNTS, CONTRACTS, MEMORANDA,
23 DOCUMENTS, PAPERS, CORRESPONDENCE, OR ANY OTHER DATA RELATING TO THE
24 FLUID MILK BUSINESS ACTIVITIES OF A PERSON SUBJECT TO THIS SUBTITLE.

25 (C) "CONSUMER" MEANS AN INDIVIDUAL WHO PURCHASES FLUID MILK FOR
26 HOUSEHOLD, PERSONAL, OR FAMILY PURPOSES.

27 (D) (1) "DISTRIBUTOR" MEANS ANY OF THE FOLLOWING PERSONS AS
28 DETERMINED BY THE SECRETARY:

29 (I) A PERSON WHO PASTEURIZES OR PACKAGES MILK OR
30 PROCESSES MILK INTO FLUID MILK;

31 (II) A PERSON WHO SELLS OR MARKETS PROCESSED FLUID MILK
32 AT WHOLESALE; OR

33 (III) A PERSON WHO PURCHASES, MARKETS, OR HANDLES
34 PROCESSED MILK FOR WHOLESALE RESALE AS FLUID MILK IN THE STATE.

35 (2) "DISTRIBUTOR" DOES NOT INCLUDE A RETAIL SELLER.

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1 (E) (1) "FLUID MILK" MEANS A MILK PRODUCT IN FLUID OR FROZEN FORM
2 CONTAINING LESS THAN 9% BUTTERFAT.

3 (2) "FLUID MILK" INCLUDES:

4 (I) MILK, SKIM MILK, LOWFAT MILK, MILK DRINKS, BUTTERMILK,
5 AND FILLED MILK; AND

6 (II) ANY PRODUCTS THAT ARE FLAVORED, CULTURED, MODIFIED
7 WITH NONFAT MILK SOLIDS, STERILIZED, CONCENTRATED TO NOT MORE THAN 50%
8 TOTAL MILK SOLIDS, OR RECONSTITUTED.

9 (3) "FLUID MILK" DOES NOT INCLUDE:

10 (I) ICE CREAM, ICE MILK, OR OTHER FROZEN DAIRY DESSERTS;

11 (II) COTTAGE CHEESE, YOGURT, SOUR CREAM, OR BUTTERMILK
12 MIX; OR

13 (III) MILK CONTAINED IN HERMETICALLY SEALED CANS OR
14 ASEPTICALLY PROCESSED AND PACKAGED.

15 (F) "LICENSEE" MEANS A FLUID MILK DISTRIBUTOR LICENSED BY THE
16 SECRETARY.

17 (G) "MARKET" MEANS AN AREA DESIGNATED BY THE SECRETARY AS A
18 MARKETING AREA.

19 (H) "PERSON" MEANS AN INDIVIDUAL, FIRM, CORPORATION, ASSOCIATION,
20 COOPERATIVE, OR OTHER LEGAL ENTITY.

21 (I) "PRESUMED COST" MEANS THE COST TO A DISTRIBUTOR ~~OR RETAIL~~
22 ~~SELLER~~, AS DETERMINED BY THE SECRETARY, IN THE PRODUCTION, PROCESSING,
23 DISTRIBUTION, AND HANDLING OF FLUID MILK.

24 (J) "PRODUCER" MEANS A PERSON WHO PRODUCES OR SELLS GRADE A RAW
25 MILK APPROVED BY A DULY CONSTITUTED REGULATORY AGENCY FOR FLUID
26 CONSUMPTION AS GRADE A MILK.

27 (K) "RETAIL SELLER" MEANS A GROCERY STORE, DAIRY PRODUCTS STORE,
28 OR A SIMILAR MERCANTILE ESTABLISHMENT WHICH SELLS FLUID MILK TO
29 CONSUMERS FOR CONSUMPTION OFF-PREMISES.

30 (L) "SANITARY REGULATIONS" INCLUDES ALL SANITARY LAWS,
31 ORDINANCES, AND REGULATIONS RELATING TO THE PRODUCTION, HANDLING,
32 TRANSPORTATION, DISTRIBUTION, AND SALE OF FLUID MILK.

33 2-802.

34 (A) (1) THE GOVERNOR SHALL APPOINT AN ADVISORY COMMITTEE ON
35 MILK PRICING.

36 (2) THE ADVISORY COMMITTEE SHALL CONSIST OF SEVEN MEMBERS
37 INCLUDING:

5

1 (I) FOUR CONSUMERS WHO DO NOT HAVE A FINANCIAL INTEREST
2 IN THE DISTRIBUTION, PRODUCTION, OR RETAIL SALE OF FLUID MILK OR MILK
3 PRODUCTS;

4 (II) ONE PRODUCER;

5 (III) ONE DISTRIBUTOR WHO IS NOT ALSO A PRODUCER; AND

6 (IV) ONE RETAIL SELLER.

7 (B) (1) THE TERM OF A MEMBER IS 4 YEARS.

8 (2) A MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE
9 TERMS.

10 (3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A
11 SUCCESSOR IS APPOINTED AND QUALIFIES.

12 (C) (1) THE MEMBERS SHALL ANNUALLY ELECT A CHAIRPERSON FROM
13 AMONG THE MEMBERS OF THE COMMITTEE.

14 (2) THE COMMITTEE SHALL MEET AT THE TIME AND PLACE THAT THE
15 CHAIRPERSON DETERMINES.

16 (D) A MEMBER OF THE COMMITTEE:

17 (1) MAY NOT RECEIVE COMPENSATION; BUT

18 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
19 STANDARD STATE TRAVEL REGULATIONS AS PROVIDED IN THE STATE BUDGET.

20 (E) THE DEPARTMENT SHALL PROVIDE STAFF SUPPORT FOR THE
21 COMMITTEE.

22 2-803.

23 (A) IN CONSULTATION WITH THE ADVISORY COMMITTEE ON MILK PRICING
24 AND AS PROVIDED IN THIS SECTION, THE SECRETARY SHALL DEFINE OR ADJUST
25 MARKETS, DETERMINE THE PRESUMED COST OF FLUID MILK, AND DETERMINE THE
26 PRICE TO BE RECEIVED BY PRODUCERS FOR MILK PURCHASED FOR THE
27 MANUFACTURE OF FLUID MILK.

28 (B) (1) THE SECRETARY SHALL DEFINE OR ADJUST BY REGULATION ONE
29 OR MORE FLUID MILK MARKETS.

30 (2) IN DEFINING OR ADJUSTING A FLUID MILK MARKET, THE
31 SECRETARY SHALL CONSIDER:

32 (I) PREVAILING GRADE A AND FLUID MILK PRICES IN THE
33 SURROUNDING AREA AS DETERMINED BY THE FEDERAL MILK MARKETING
34 ORDERS; AND

35 (II) OTHER FACTORS THE SECRETARY CONSIDERS RELEVANT.

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1 (C) (1) THE SECRETARY SHALL DETERMINE THE PRESUMED COST OF
2 FLUID MILK IN A MARKET BELOW WHICH;

3 ~~(H) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A~~
4 ~~DISTRIBUTOR MAY NOT SELL FLUID MILK; AND~~

5 ~~(H) A RETAIL SELLER MAY NOT SELL FLUID MILK.~~

6 (2) (I) IN DETERMINING THE PRESUMED COST IN A MARKET FOR ANY
7 QUANTITY OF FLUID MILK, THE SECRETARY SHALL BE GUIDED BY ALL PERTINENT
8 ECONOMIC FACTORS RELEVANT TO PRODUCTION, PROCESSING, AND DISTRIBUTION
9 OF FLUID MILK AS AFFECTING THE PUBLIC INTEREST IN MAINTAINING AN
10 ADEQUATE SUPPLY OF FLUID MILK IN THE STATE, INCLUDING:

11 1. COMPLIANCE WITH ALL SANITARY REGULATIONS IN
12 FORCE IN THE MARKET;

13 2. NECESSARY OPERATION, PROCESSING, STORAGE, AND
14 DELIVERY CHARGES; AND

15 3. PREVAILING MILK PRICES IN THE REGION; ~~AND~~

16 ~~4. FOR DETERMINING THE PRESUMED COSTS TO RETAIL~~
17 ~~SELLERS ONLY, IN STORE HANDLING COSTS.~~

18 (II) IN ADDITION TO THE FACTORS LISTED IN SUBPARAGRAPH (I)
19 OF THIS PARAGRAPH, THE SECRETARY MAY CONSIDER OTHER FACTORS IN
20 DETERMINING THE PRESUMED COST, INCLUDING THE WELFARE OF THE GENERAL
21 PUBLIC.

22 (3) THE SECRETARY SHALL:

23 (I) ADOPT OR AMEND BY REGULATION A FORMULA
24 INCORPORATING THE ECONOMIC FACTORS DESCRIBED IN PARAGRAPH (2) OF THIS
25 SUBSECTION WHICH WILL ADJUST AUTOMATICALLY THE PRESUMED COSTS IN A
26 MARKET; AND

27 (II) PROVIDE AT REGULAR INTERVALS FOR THE AUTOMATIC
28 ADJUSTMENT OF THE PRESUMED COSTS ACCORDING TO THE RESULT OBTAINED
29 UNDER THE FORMULA ADOPTED UNDER THIS PARAGRAPH.

30 (4) THE SECRETARY IS NOT REQUIRED TO PROVIDE BY REGULATION
31 FOR AN AUTOMATIC ADJUSTMENT OF PRESUMED COSTS UNDER PARAGRAPH (3)(II)
32 OF THIS SUBSECTION.

33 (D) (1) THE SECRETARY SHALL ESTABLISH BY REGULATION PRODUCER
34 PRICES IN A MARKET TO BE PAID BY A PERSON PURCHASING MILK FROM A
35 PRODUCER FOR THE MANUFACTURE OF FLUID MILK.

36 (2) IN SETTING A PRODUCER PRICE IN A MARKET, THE SECRETARY
37 SHALL CONSIDER:

7

1 (I) PREVAILING GRADE A AND FLUID MILK PRICES IN THE
2 SURROUNDING AREA AS DETERMINED BY THE FEDERAL MILK MARKETING
3 ORDERS;

4 (II) THE PRICES OF GRADE A AND FLUID MILK IN NEIGHBORING
5 STATES THAT AFFECT MARKETS IN THE STATE; AND

6 (III) OTHER FACTORS THE SECRETARY CONSIDERS RELEVANT.

7 (E) (1) (I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
8 A DISTRIBUTOR MAY SELL FLUID MILK AT A PRICE BELOW THE PRESUMED COST
9 ONLY IF THE DISTRIBUTOR DEMONSTRATES TO THE SECRETARY THAT ITS COSTS
10 ARE LOWER THAN THE PRESUMED COST DETERMINED UNDER THIS SECTION.

11 (II) THE DISTRIBUTOR SHALL NOTIFY THE SECRETARY OF THE
12 MARKET IN WHICH IT INTENDS TO SELL FLUID MILK AT A PRICE THAT IS LESS THAN
13 THE PRESUMED COST.

14 (2) (I) IF A DISTRIBUTOR IS AUTHORIZED BY THE SECRETARY TO
15 SELL FLUID MILK AT A PRICE THAT IS LESS THAN THE PRESUMED COST IN A
16 MARKET DESIGNATED BY THE DISTRIBUTOR UNDER PARAGRAPH (1)(II) OF THIS
17 SUBSECTION, OTHER DISTRIBUTORS MAY ALSO SELL FLUID MILK AT THE SAME
18 PRICE AND IN THE SAME MARKETS WITHOUT FULFILLING THE REQUIREMENT OF
19 PARAGRAPH (1)(I) OF THIS SUBSECTION.

20 (II) A DISTRIBUTOR MAY SELL FLUID MILK AT A PRICE BELOW THE
21 PRESUMED COST TO A PUBLIC OR PRIVATE SCHOOL, A CORRECTIONAL FACILITY,
22 OR A PUBLIC INSTITUTION OR AGENCY WITHOUT FULFILLING THE REQUIREMENTS
23 OF PARAGRAPH (1)(I) OF THIS SUBSECTION.

24 (3) FOR THE PURPOSE OF ENSURING COMPLIANCE WITH THIS
25 SUBSECTION, THE SECRETARY SHALL ADOPT BY REGULATION:

26 (I) THE PROCEDURES BY WHICH A DISTRIBUTOR MAY:

27 1. DEMONSTRATE TO THE SECRETARY THAT ITS COSTS ARE
28 LOWER THAN THE PRESUMED COST DETERMINED UNDER THIS SECTION;

29 2. INFORM THE SECRETARY OF THE MARKETS IN WHICH IT
30 INTENDS TO SELL FLUID MILK BELOW THE PRESUMED COST; AND

31 3. INFORM THE SECRETARY OF ITS INTENT TO SELL FLUID
32 MILK BELOW THE PRESUMED COST AS PROVIDED IN PARAGRAPH (2) OF THIS
33 SUBSECTION; AND

34 (II) FACTORS THE SECRETARY SHALL CONSIDER IN DECIDING
35 WHETHER TO AUTHORIZE A DISTRIBUTOR TO SELL MILK BELOW THE PRESUMED
36 COST.

37 2-804.

38 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
39 PERSON MAY NOT DISTRIBUTE, MARKET, OR PROCESS MILK IN ANY MARKET AREA

8

1 DEFINED BY THE SECRETARY UNLESS THE PERSON IS LICENSED BY THE
2 SECRETARY.

3 (2) SCHOOLS, RETAIL SELLERS, INSTITUTIONS, AND MILK PRODUCERS
4 ARE NOT REQUIRED TO BE LICENSED BY THE SECRETARY.

5 (B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN APPLICANT FOR A
6 LICENSE REQUIRED UNDER THIS SECTION SHALL:

7 (1) SUBMIT AN APPLICATION TO THE SECRETARY ON THE FORM THAT
8 THE SECRETARY REQUIRES; AND

9 (2) PAY TO THE SECRETARY A \$100 LICENSING FEE.

10 (C) (1) TO THE EXTENT POSSIBLE, FOR ANY PERSON REQUIRED TO OBTAIN
11 A LICENSE UNDER THIS SUBTITLE AND A PERMIT UNDER TITLE 21, SUBTITLE 4 OF
12 THE HEALTH - GENERAL ARTICLE, THE SECRETARY AND THE SECRETARY OF
13 HEALTH AND MENTAL HYGIENE SHALL COORDINATE ALL MATTERS RELATED TO
14 THE ISSUANCE AND RENEWAL OF THE LICENSE AND PERMIT IN ORDER TO
15 MINIMIZE THE EXPENSE AND PAPERWORK FOR THE PERSON.

16 (2) THE SECRETARY MAY NOT DENY, SUSPEND, OR REVOKE A LICENSE
17 ISSUED UNDER THIS SUBTITLE BECAUSE OF A VIOLATION OF TITLE 21, SUBTITLE 4
18 OF THE HEALTH - GENERAL ARTICLE.

19 (D) FOR ANY PERSON TO WHOM SUBSECTION (C)(1) OF THIS SECTION DOES
20 NOT APPLY, A LICENSE EXPIRES ON JUNE 30 OF EACH YEAR, UNLESS THE LICENSE IS
21 RENEWED FOR AN ADDITIONAL TERM AS PROVIDED IN SUBSECTION (E) OF THIS
22 SECTION.

23 (E) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, BEFORE THE
24 LICENSE EXPIRES, THE LICENSEE MAY PERIODICALLY RENEW THE LICENSE FOR AN
25 ADDITIONAL TERM, IF THE LICENSEE:

26 (1) IS OTHERWISE ENTITLED TO BE LICENSED;

27 (2) PAYS TO THE SECRETARY THE \$100 RENEWAL FEE; AND

28 (3) SUBMITS TO THE SECRETARY A RENEWAL APPLICATION ON THE
29 FORM THAT THE SECRETARY REQUIRES.

30 (F) EACH LICENSEE SHALL PROVIDE THE SECRETARY WITH REPORTS
31 CONTAINING ANY INFORMATION THE SECRETARY REQUIRES FOR PURPOSES OF
32 ENSURING COMPLIANCE WITH THIS SUBTITLE.

33 (G) (1) THE SECRETARY MAY DENY, SUSPEND, OR REVOKE ANY LICENSE
34 AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD FOR:

35 (I) A VIOLATION OF A PROVISION OF THIS SUBTITLE; OR

36 (II) A VIOLATION OF A REGULATION OF THE SECRETARY.

9

1 (2) DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE MAY BE
2 IMPOSED IN ADDITION TO OR IN LIEU OF A CIVIL PENALTY IMPOSED UNDER §
3 2-808(B) OF THIS SUBTITLE.

4 2-805.

5 (A) THE SECRETARY SHALL ADOPT BY REGULATION A SYSTEM OF
6 ACCOUNTING USING GENERALLY ACCEPTED ACCOUNTING PRACTICES FOR THE
7 PURPOSE OF ENSURING COMPLIANCE WITH THIS SUBTITLE.

8 (B) FOR ANY ACTIVITY REGULATED UNDER THIS SUBTITLE, EACH
9 DISTRIBUTOR OF FLUID MILK SHALL ADOPT AND USE THE ACCOUNTING SYSTEM
10 ADOPTED BY THE SECRETARY.

11 (C) THE BOOKS AND RECORDS OF EACH DISTRIBUTOR, AFTER REASONABLE
12 NOTICE, SHALL BE OPEN TO INSPECTION BY THE SECRETARY OR THE SECRETARY'S
13 AGENT DURING REGULAR BUSINESS HOURS.

14 (D) THE SECRETARY SHALL AUDIT THE BOOKS AND THE RECORDS OF EACH
15 DISTRIBUTOR AT REASONABLE INTERVALS AS DETERMINED BY THE SECRETARY.

16 2-806.

17 (A) EXCEPT AS PROVIDED IN § 2-803(E) OF THIS SUBTITLE, ~~A PERSON:~~

18 (1) A DISTRIBUTOR MAY NOT BUY OR SELL FLUID MILK AT A PRICE
19 THAT IS BELOW THE PRESUMED COST; AND

20 (2) A PERSON MAY NOT BUY FLUID MILK FROM A DISTRIBUTOR AT A
21 PRICE BELOW THE DISTRIBUTOR'S PRESUMED COST.

22 (B) A PERSON MAY NOT BUY OR SELL MILK PRODUCED BY A PRODUCER FOR
23 MANUFACTURE INTO FLUID MILK AT A PRICE THAT IS BELOW THE PRODUCER COST
24 ESTABLISHED UNDER § 2-803(D) OF THIS SUBTITLE.

25 (C) A VIOLATION OF THE PROVISIONS OF SUBSECTION (A) OR (B) OF THIS
26 SECTION, INCLUDES THE FOLLOWING:

27 (1) THE OFFER OR ACCEPTANCE OF A DISCOUNT, DEDUCTION,
28 PREMIUM, REBATE, FREE SERVICE, TRADING STAMPS, ADVERTISING ALLOWANCE,
29 EXTENSION OF CREDIT, OTHER INCENTIVES, OR COMBINATION OF THE SALE OF
30 MILK WITH ANOTHER COMMODITY OR SERVICE, IN ANY COMBINATION WHICH
31 EFFECTIVELY LOWERS THE PRICE OF THE MILK SOLD BELOW THE APPLICABLE
32 PRESUMED COST OR PRODUCER PRICE; AND

33 (2) THE OFFER OR ACCEPTANCE OF MILK USING FALSE OR ERRONEOUS
34 WEIGHT, BUTTERFAT, OR APPROPRIATE MILK COMPONENT TESTS FOR THE
35 PURPOSE OF LOWERING THE PRICE OF THE MILK SOLD BELOW THE APPLICABLE
36 PRESUMED COST OR PRODUCER PRICE.

37 2-807.

38 (A) (1) THERE IS A MARYLAND MILK FUND.

10

1 (2) THE FUND IS A SPECIAL CONTINUING, NONLAPSING FUND THAT IS
2 NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

3 (3) THE TREASURER SHALL SEPARATELY HOLD, AND THE
4 COMPTROLLER SHALL ACCOUNT FOR, THE FUND.

5 (4) THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME
6 MANNER AS OTHER STATE FUNDS.

7 (5) ANY INVESTMENT EARNINGS SHALL BE RETAINED TO THE CREDIT
8 OF THE FUND.

9 (6) THE FUND SHALL BE USED ONLY TO PROVIDE FUNDING FOR
10 PURPOSES AUTHORIZED UNDER THIS SUBTITLE.

11 (B) THE SECRETARY SHALL DEVELOP A PROCEDURE FOR COLLECTING
12 MONTHLY ASSESSMENTS FROM PRODUCERS AND DISTRIBUTORS.

13 (C) (1) THE MONTHLY ASSESSMENT SHALL BE PAID AT THE TIME THE
14 DISTRIBUTOR PAYS THE PRODUCER FOR THE FLUID MILK.

15 (2) THE ASSESSMENT FROM THE PRODUCERS AND DISTRIBUTORS:

16 (I) MAY NOT EXCEED 4 CENTS PER 100 POUNDS OF FLUID MILK
17 FROM EACH; AND

18 (II) SHALL BE COLLECTED FROM EACH IN EQUAL AMOUNTS.

19 (D) THE ASSESSMENTS COLLECTED UNDER THIS SECTION SHALL BE PAID
20 INTO THE FUND AND SHALL BE USED ONLY FOR THE PURPOSES AUTHORIZED
21 UNDER THIS SUBTITLE.

22 2-808.

23 (A) (1) THE SECRETARY MAY BRING AN ACTION FOR AN INJUNCTION
24 AGAINST A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE.

25 (2) IN AN ACTION FOR AN INJUNCTION UNDER THIS SECTION, ANY
26 FINDING OF THE SECRETARY AFTER A HEARING IS EVIDENCE OF EACH FACT THE
27 SECRETARY DETERMINES.

28 (3) ON A SHOWING THAT A PERSON IS VIOLATING ANY PROVISION OF
29 THIS SUBTITLE, A COURT SHALL GRANT AN INJUNCTION WITHOUT REQUIRING A
30 SHOWING OF A LACK OF AN ADEQUATE REMEDY AT LAW.

31 (4) AN INJUNCTION GRANTED UNDER THIS SECTION SHALL BE LIMITED
32 TO ORDERS NECESSARY TO ENSURE COMPLIANCE WITH THIS SUBTITLE.

33 (B) (1) THE SECRETARY MAY IMPOSE A CIVIL PENALTY OF NOT MORE
34 THAN \$5,000 FOR A VIOLATION OF THIS SUBTITLE.

35 (2) PENALTIES COLLECTED BY THE SECRETARY UNDER THIS SECTION
36 SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.

11

1 2-809.

2 (A) A PERSON AGGRIEVED BY A FINAL DECISION OF THE SECRETARY UNDER
3 THIS SUBTITLE MAY SEEK JUDICIAL REVIEW OF AN ORDER OF THE SECRETARY BY
4 WHICH THE SECRETARY:

5 (1) REFUSES TO ISSUE OR REISSUE A LICENSE;

6 (2) SUSPENDS OR REVOKES A LICENSE;

7 (3) IMPOSES A CIVIL PENALTY UNDER § 2-808(B) OF THIS SUBTITLE; OR

8 (4) AUTHORIZES OR REFUSES TO AUTHORIZE A DISTRIBUTOR TO SELL
9 MILK BELOW THE PRESUMED COST AS PROVIDED IN § 2-803(E) OF THIS SUBTITLE.

10 (B) THE APPEAL SHALL BE MADE AS PROVIDED FOR JUDICIAL REVIEW OF A
11 FINAL DECISION IN TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

12 2-810.

13 (A) THE SECRETARY MAY:

14 (1) ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS
15 SUBTITLE;

16 (2) COOPERATE WITH OTHER STATES TO PREVENT DISRUPTIVE MILK
17 MARKETING PRACTICES;

18 (3) INVESTIGATE ALL MATTERS PERTAINING TO ENFORCEMENT OF
19 THIS SUBTITLE; AND

20 (4) REQUIRE PRODUCTION OF BOOKS, PAPERS, RECORDS, AND OTHER
21 DOCUMENTARY EVIDENCE, AND EXAMINE THE DOCUMENTS IN RELATION TO ANY
22 MATTER WHICH THE SECRETARY MAY INVESTIGATE OR HEAR.

23 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE
24 BOOKS AND RECORDS OF ANY PERSON EXAMINED BY THE SECRETARY MAY NOT BE
25 RELEASED TO ANY PERSON, EXCEPT THE PERSON WHO SUBMITTED THE BOOK AND
26 RECORD TO THE SECRETARY.

27 (2) THE SECRETARY MAY RELEASE THE BOOKS AND RECORDS OF ANY
28 PERSON EXAMINED BY THE SECRETARY TO AN AGENCY OF ANOTHER STATE, IF:

29 (I) THE STATE AGENCY HAS THE STATUTORY AUTHORITY TO
30 AUDIT OR EXAMINE THE BOOKS AND RECORDS OF A MILK DISTRIBUTOR;

31 (II) THE STATE AGENCY HAS THE AUTHORITY TO PROTECT THE
32 CONFIDENTIALITY OF THE BOOKS AND RECORDS RELEASED BY THE SECRETARY;

33 (III) THE STATE'S LAW HAS A RECIPROCAL PROVISION FOR
34 ALLOWING THE SECRETARY TO EXAMINE BOOKS AND RECORDS OF MILK
35 PRODUCERS IN THAT STATE; AND

36 (IV) THE RELEASE OF THE BOOKS AND RECORDS IS IN THE BEST
37 INTEREST OF THE STATE.

12

1 2-811.

2 SUBJECT TO THE EVALUATION AND REESTABLISHMENT PROVISIONS OF THE
3 PROGRAM EVALUATION ACT, THIS SUBTITLE AND ALL REGULATIONS ADOPTED
4 UNDER THIS SUBTITLE SHALL TERMINATE AND BE OF NO EFFECT AFTER OCTOBER
5 1, 2000.

6 **Article - Health - General**

7 21-415.

8 (C) TO THE EXTENT POSSIBLE, FOR ANY PERSON REQUIRED TO OBTAIN A
9 PERMIT UNDER THIS SUBTITLE AND A LICENSE UNDER TITLE 2, SUBTITLE 8 OF THE
10 AGRICULTURE ARTICLE, THE SECRETARY AND THE SECRETARY OF AGRICULTURE
11 SHALL COORDINATE ALL MATTERS RELATED TO THE ISSUANCE AND RENEWAL OF
12 THE PERMIT AND LICENSE IN ORDER TO MINIMIZE THE EXPENSE AND PAPERWORK
13 FOR THE PERSON.

14 21-418.

15 (E) THE SECRETARY MAY NOT DENY, SUSPEND, OR REVOKE A PERMIT
16 ISSUED UNDER THIS SUBTITLE BECAUSE OF A VIOLATION OF TITLE 2, SUBTITLE 8 OF
17 THE AGRICULTURE ARTICLE.

18 **Article - State Government**

19 8-403.

20 (P) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS SECTION,
21 ON OR BEFORE JULY 1, 1999, AN EVALUATION SHALL BE MADE OF THE ADVISORY
22 COMMITTEE ON MILK PRICING AND THE REGULATIONS THAT RELATE TO THE
23 ADVISORY COMMITTEE ON MILK PRICING.

24 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland~~
25 ~~read as follows:~~

26 ~~**Article - Health - General**~~

27 ~~21-426.~~

28 ~~(a) In this section, "sell by period" means the length of time a Grade A milk~~
29 ~~product may be kept for sale.~~

30 ~~(b) (1) After a public hearing, the Secretary shall adopt rules and regulations~~
31 ~~that establish a method for conspicuously marking, on the Grade A milk product~~
32 ~~container, the last date on which the product may be sold.~~

33 ~~(2) Each Grade A milk product container shall be marked as required by~~
34 ~~rules and regulations adopted under this subtitle.~~

35 ~~(c) [A] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A Grade~~
36 ~~A milk product that is cooled to, packaged, and stored at 45 degrees Fahrenheit or less~~
37 ~~before it is purchased by or delivered to the ultimate consumer has a sell by period of 14~~
38 ~~days.~~

13

1 ~~(D)(1) A GRADE A MILK PROCESSOR MAY ESTABLISH A SELL BY PERIOD~~
2 ~~THAT IS LONGER THAN 14 DAYS.~~

3 ~~(2) IF A GRADE A MILK PROCESSOR ESTABLISHES A SELL BY PERIOD~~
4 ~~THAT IS LONGER THAN 14 DAYS, THE PROCESSOR SHALL SUBMIT TO THE~~
5 ~~SECRETARY AN INDICATOR SHELF LIFE STUDY THAT IS ACCEPTABLE TO THE~~
6 ~~SECRETARY WHICH DEMONSTRATES THAT THE GRADE A MILK PRODUCT HAS A~~
7 ~~SHELF LIFE EQUAL TO THE SELL BY PERIOD PLUS AN ADDITIONAL 7 DAYS.~~

8 SECTION 3. 2. AND BE IT FURTHER ENACTED, That the terms of the initial
9 members of the Advisory Committee on Milk Pricing shall expire as follows:

10 (1) two members in 1999;

11 (2) two members in 2000; and

12 (3) three members in 2001.

13 SECTION 4. 3. AND BE IT FURTHER ENACTED, That a presently existing
14 obligation or contract right may not be impaired in any way by this Act.

15 SECTION 5. 4. AND BE IT FURTHER ENACTED, That Sections 1 and ~~3~~ 2 of
16 this Act shall remain effective until the 90th day after the Secretary of Agriculture
17 certifies in a letter to the Director of the Department of Legislative Reference that, to the
18 satisfaction of the Secretary, either the Commonwealth of Pennsylvania or the
19 Commonwealth of Virginia has repealed the portion of its law that provides for the
20 establishment of milk prices by a state commission or board or any other entity authorized
21 by law to establish milk prices within the Commonwealth. After receiving the letter from
22 the Secretary, the Director of Legislative Reference shall take the appropriate steps to
23 inform the members of the General Assembly of the abrogation of this Act and shall
24 direct the publisher of the Annotated Code of Maryland to make any changes in the
25 Annotated Code of Maryland necessary to effectuate the termination provision of this
26 section.

27 SECTION 5. AND BE IT FURTHER ENACTED, That the Secretary of
28 Agriculture shall report to the General Assembly on or before October 1, 1998 in
29 accordance with § 2-1312 of the State Government Article, on school milk pricing,
30 including a comparison of the school milk prices of states with regulated school milk
31 prices, states with unregulated school milk prices, and Maryland.

32 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 1997.

