

CONNECTICUT

AN ACT CONCERNING THE FAIR PRICING OF MILK

November 17, 2003

NOTE: The parameters (numbers) in this draft can be changed to change the impact of this policy on farmers, processors, retailers, and consumers. The state milk regulation board or the legislature will set them with periodic review as conditions change.

Section 1. (NEW) (*Effective July 1, 2004*) As used in sections 2 and 3 of this act:

- (1) "Consumer" means a consumer, as defined in section 22-205 of the general statutes;
- (2) "Commissioner" means the Commissioner of Agriculture;
- (3) "Fluid milk" means homogenized milk, low-fat milk, fortified low-fat milk and skimmed milk, as defined in section 22-127 of the general statutes that is sold in quart, half-gallon or gallon containers and shall not include flavored milk, chocolate milk, ultra-high-temperature processed and aseptically packaged milk and milk product or ultrapasteurized as defined in section 22-127;
- (4) "Processor" means any person engaged in the sale of milk other than a producer or retailer, as defined in this section, who is subject to registration pursuant to section 22-173 of the general statutes and includes a subdealer;
- (5) "Producer" means any person who is engaged in the production of milk and who is subject to registration pursuant to section 22-172 of the general statutes and includes cooperative marketing associations, as defined in section 22-205 of the general statutes;
- (6) "Retailer" means any person engaged in the sale of milk at retail to consumers and who is subject to registration pursuant to section 22-173 of the general statutes but shall not include any retailer operating less than five retail stores and whose annual sales of all consumer goods at retail is less than twenty million dollars; and
- (7) "Subdealer" means a subdealer, as defined in section 22-205 of the general statutes.

Sec. 2. (NEW) (*Effective July 1, 2004*) (a) No processor or retailer shall sell or offer for sale fluid milk for a price that is unconscionably excessive.

(b) A price for fluid milk in a gallon container is unconscionably excessive if (1) the price charged by a processor to a retailer exceeds one hundred forty per cent of the price actually paid to the producer by the processor for the same fluid milk less the amount received from the sale of cream derived from such milk; (2) the price charged by a retailer to a consumer exceeds (A) one hundred thirty per cent of the price actually paid to the processor by the retailer for the same fluid milk. For purposes of this subsection, the price actually paid to the producer by the processor shall be deemed to be the price set for milk within the state pursuant to the Northeast milk marketing order plus any documented premium paid by the processor to the producer in connection with such milk.

(c) The price charged by a processor or retailer for a half gallon container of fluid milk is unconscionably excessive if (1) such price is more than one hundred forty five percent of the price actually paid to the producer by the processor for the same fluid milk less the amount received from the sale of cream derived from such milk; (2) the price charged by a retailer to a consumer exceeds (A) one hundred thirty per cent of the price actually paid to the processor by the retailer for the same fluid milk. For purposes of this subsection, the price actually paid to the producer by the processor shall be deemed to be the price set for milk within the state pursuant to the Northeast milk marketing order plus any documented premium paid by the processor to the producer in connection with such milk.

(d) The price charged for a quart container of fluid milk is unconscionably excessive if (1) the price charged by a processor to a retailer exceeds one hundred fifty-five per cent of the price actually paid to the producer by the processor for the same fluid milk less the amount received from the sale of cream derived from such milk; (2) the price charged by a retailer to a consumer exceeds (A) one hundred thirty per cent of the price actually paid to the processor by the retailer for the same fluid milk. For purposes of this subsection, the price actually paid to the producer by the processor shall be deemed to be the price set for milk within the state pursuant to the Northeast milk marketing order plus any documented premium paid by the processor to the producer in connection with such milk .

(e) Notwithstanding the provisions of subsection (b) of this section, the Commissioner of Agriculture may permit a processor to sell fluid milk at a price no more than one hundred fifty percent of the price actually paid to the producer by the processor for the same fluid milk less the amount received from the sale of cream derived from such milk if the Commissioner determines, after a hearing,

that the increase in the price that the processor must pay the producer in order to cover the processor's reasonable direct and indirect costs of processing and distributing the fluid milk in compliance with the one hundred forty percent price restriction in subsection (b) would result in the processor charging an uncompetitive price for such milk sold to a retailer. As used in this subsection, a price is uncompetitive if the commissioner determines that the processor's sales will be reduced significantly if milk is sold at such price.

(f) Notwithstanding the provisions of subsection (c) of this section, the Commissioner of Agriculture may permit a processor to sell fluid milk at a price no more than one hundred fifty five percent of the price actually paid to the producer by the processor for the same fluid milk less the amount received from the sale of cream derived from such milk if the Commissioner determines, after a hearing, that the increase in the price that the processor must pay the producer in order to cover the processor's reasonable direct and indirect costs of processing and distributing the fluid milk in compliance with the one hundred forty five percent price restriction in subsection (c) would result in the processor charging an uncompetitive price for such milk sold to a retailer. As used in this subsection, a price is uncompetitive if the commissioner determines that the processor's sales will be reduced significantly if milk is sold at such price.

(g) Notwithstanding the provisions of subsection (d) of this section, the Commissioner of Agriculture may permit a processor to sell fluid milk at a price no more than one hundred sixty five percent of the price actually paid to the producer by the processor for the same fluid milk less the amount received from the sale of cream derived from such milk if the Commissioner determines, after a hearing, that the increase in the price that the processor must pay the producer in order to cover the processor's reasonable direct and indirect costs of processing and distributing the fluid milk in compliance with the one hundred fifty five percent price restriction in subsection (d) would result in the processor charging an uncompetitive price for such milk sold to a retailer. As used in this subsection, a price is uncompetitive if the commissioner determines that the processor's sales will be reduced significantly if milk is sold at such price.

(h) Notwithstanding the provisions of subsection (b thru g) of this section, the Commissioner of Agriculture may establish a price surcharge that a processor may charge a retailer for a delivery of not more than two hundred gallons in excess of the price authorized under subsection (b). Such price surcharge may not exceed the reasonable, incremental costs associated with the delivery of not more than two hundred gallons of milk.

(i) Notwithstanding the provisions of subsection (b thru g) of this section, the Commissioner of Agriculture may establish a price surcharge that a processor

may charge a retailer for a delivery of milk more than 100 miles from a plant in excess of the price authorized under subsection (b). Such price surcharge may not exceed the reasonable, incremental costs associated with the delivery of milk.

j) No processor or retailer shall structure a transaction for the sale of milk for the purpose of avoiding the requirements of the statute. Failure to comply with this subsection shall be deemed to be an unfair or deceptive trade practice under subsection (a) of section 42-110b.

(k) As used in this section, the price charged by the producer or processor shall include the invoice price and all other adjustments to such invoice price, including but not limited to bill backs, discounts, allowances for promotion or advertising and slotting fees.

(l) The provisions of this section shall not apply to producer-dealers, as defined in section 22-205 of the general statutes.

Sec. 3. (NEW) (*Effective July 1, 2004*). The Commissioner of Agriculture may periodically review the price limitations contained in section 2 of this act to determine if such limitations are encouraging the delivery of milk at a fair price without causing significant loss of jobs or share of the milk market by producers, processors and retailers and make recommendations to the legislative committee having cognizance over the issue of pricing of milk.

Sec. 4. (NEW) (*Effective July 1, 2004*) (a) The commissioner may investigate any violations of section 2 of this act and may refer any violations to the Attorney General who may bring an action in superior court for the judicial district of Hartford to enforce the provisions of section 2 of this act.

(b) If a court finds that a person has violated any provision of section 2 of this act, the court may award injunctive relief, restitution, a civil penalty not to exceed one thousand dollars per violation and such other relief as the court deems equitable. Each day of violation of section 2 of this act shall be considered a distinct and separate violation.