

**CHAPTER 603-A****DESTRUCTIVE COMPETITION****§2981. Definitions**

Unless the context otherwise indicates, the definitions contained in section 2951 shall apply to this chapter. [PL 1983, c. 484, §2 (NEW).]

**SECTION HISTORY**

PL 1983, c. 484, §2 (NEW).

**§2982. Applicability; authority**

Dealers shall observe this chapter only when no applicable minimum dealer price for milk established under chapter 603 is in effect. Retail stores shall observe this chapter only when no applicable minimum retail price or minimum retail margin for milk established under chapter 603 is in effect. This chapter shall be administered by the Maine Milk Commission. [PL 1983, c. 484, §2 (NEW).]

**SECTION HISTORY**

PL 1983, c. 484, §2 (NEW).

**§2983. Selling below cost**

It is unlawful for any dealer or retail store to sell milk for fluid consumption at less than the cost thereof to the dealer or retail store with the purpose or intent to injure competitors or destroy competition. In all proceedings brought to enforce this section, proof of consistent and repeated advertisements, offers to sell or sales of milk for fluid consumption by any dealer or retail store at less than cost to them, as defined in sections 2984 and 2985, the advertisements, offers to sell and sales thereby forming a pattern of sales below cost, shall be prima facie evidence of intent to injure competitors and destroy competition. This section shall not apply where the price of milk for fluid consumption is set in good faith to meet legal competition. [PL 1983, c. 484, §2 (NEW).]

**SECTION HISTORY**

PL 1983, c. 484, §2 (NEW).

**§2984. Cost of milk to a dealer**

"Cost of milk to a dealer" means the dealer's raw product cost, plus any shrinkage allowance permitted by the commission, to which shall be added the dealer's expenses directly and indirectly incurred in receiving, processing, packaging and delivering milk. Without limitation, these expenses shall include labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, utilities, delivery costs, interest, licenses, taxes, insurance, advertising, professional services and all other fixed and variable expenses. The commission may determine the dealer's expenses directly and indirectly incurred in receiving, processing, packaging and delivering fluid milk by either of the following methods: [PL 1983, c. 484, §2 (NEW).]

**1. Cost accounting data.** Through reliance upon cost accounting data, relating to the dealer, gathered or received by the commission pursuant to section 2952-A or 2986 for any 3-month period within one year preceding and one year following the date of an alleged violation, unless the dealer proves that changed circumstances render any cost accounting data relied upon by the commission incapable of proving that the violation occurred; or [PL 2005, c. 382, Pt. F, §22 (AMD).]

**2. Expenses; percentage of dealer price.** By imputing an amount to cover these expenses which, unless the dealer proves lower actual costs, shall be deemed to be the percentage of the total dealer price of the milk as the commission shall by rule establish in conjunction with any milk pricing orders which change base dealer margins.

[PL 1983, c. 484, §2 (NEW).]

#### SECTION HISTORY

PL 1983, c. 484, §2 (NEW). PL 2005, c. 382, §F22 (AMD).

#### §2985. Cost of milk to a retail store

"Cost of milk to a retail store" means the price paid by a retail store to a dealer for fluid milk, to which shall be added the retail store's expenses directly and indirectly incurred in shipping, handling and selling fluid milk. Without limitation, these expenses shall include labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, utilities, shipping costs, interest, licenses, taxes, insurance, advertising, professional services and all other fixed and variable expenses. The commission may determine the retail store's expenses directly and indirectly incurred in shipping, handling and selling milk by any of the following methods: [PL 1983, c. 484, §2 (NEW).]

**1. Cost accounting data.** Through reliance upon cost accounting data, relating to the retailer, gathered or received by the commission pursuant to section 2952-A or 2986 for any 3-month period within one year preceding and one year following the date of an alleged violation, unless the retail store proves that changed circumstances render the cost accounting data relied upon by the commission incapable of proving that the violation occurred;

[PL 2005, c. 382, Pt. F, §23 (AMD).]

**2. Expenses; percentage of total retail price.** By imputing an amount to cover these expenses which, unless the retail store proves lower actual costs, shall be deemed to be the percentage of the total retail price of the milk as the commission shall by rule establish in conjunction with any milk pricing orders which change retail margins; or

[PL 1983, c. 484, §2 (NEW).]

**3. Other expenses.** By imputing an amount to cover these expenses which, unless the retail store proves lower actual costs, shall be determined by dividing total store expenses by total store sales and multiplying the percentage obtained by the total retail price of the milk.

[PL 1983, c. 484, §2 (NEW).]

#### SECTION HISTORY

PL 1983, c. 484, §2 (NEW). PL 2005, c. 382, §F23 (AMD).

#### §2986. Investigations; hearings; inspections

**1. Investigatory powers.** To aid the commission in determining if a dealer or retail store is selling fluid milk below cost, the commission may:

A. Conduct investigations and hearings; [PL 2005, c. 382, Pt. F, §24 (NEW).]

B. Subpoena and examine under oath persons possessing relevant information, including, but not limited to, dealers and retail stores and their officers, agents and representatives; [PL 2005, c. 382, Pt. F, §24 (NEW).]

C. Subpoena and examine the business records, books and accounts of dealers, retail stores or other persons who possess relevant business records, books or accounts; and [PL 2005, c. 382, Pt. F, §24 (NEW).]

D. Inspect at reasonable times the business records, books and accounts of a dealer or retail store at the dealer's or store's office or place of business. [PL 2005, c. 382, Pt. F, §24 (NEW).]

[PL 2005, c. 382, Pt. F, §24 (NEW).]

**2. Oaths and subpoenas.** Any member of the commission or any employee designated by the commission may sign subpoenas and administer oaths to witnesses.

[PL 2005, c. 382, Pt. F, §24 (NEW).]

#### SECTION HISTORY

PL 1983, c. 484, §2 (NEW). PL 2005, c. 382, §F24 (RPR).

#### §2987. Rules

The commission may adopt all rules establishing or relating to hearing procedures, cost accounting and the collection of information as may be necessary to carry out this chapter. [PL 1983, c. 484, §2 (NEW).]

#### SECTION HISTORY

PL 1983, c. 484, §2 (NEW).

#### §2988. Civil action by injured person

**1. Injunctive relief; damages and costs.** Any person damaged or who is threatened with loss or injury by reason of a violation of section 2983 may bring a civil action in the Superior Court in the county where the person resides, to prevent, restrain or enjoin the violation or threatened violation. If in that action a violation or threatened violation of section 2983 is established, the court may enjoin and restrain or otherwise prohibit the violation or threatened violation. In that action it is not necessary that actual damages to the plaintiff be alleged or proved. In addition to the injunctive relief, the plaintiff in the action is entitled to recover from the defendant 3 times the amount of actual damages sustained by the plaintiff and the costs of the action, including reasonable attorneys' fees.

[RR 2021, c. 1, Pt. B, §144 (COR).]

**2. Damages only.** In the event no injunctive relief is sought or required, any person injured by a violation of section 2983 may maintain an action for damages alone in the Superior Court in the county where the person resides and the measure of damages in the action is the same as prescribed in subsection 1.

[RR 2021, c. 1, Pt. B, §144 (COR).]

#### SECTION HISTORY

PL 1983, c. 484, §2 (NEW). RR 2021, c. 1, Pt. B, §144 (COR).

#### §2989. Civil action by the commission

**1. Civil penalties.** Any dealer or retail store which violates section 2983 shall be subject to the following civil penalties, to be collected by the commission in a civil action:

A. For the first violation, a civil penalty not to exceed \$1,000; and [PL 1983, c. 484, §2 (NEW).]

B. For each subsequent violation, a civil penalty not to exceed \$2,000. [PL 1983, c. 484, §2 (NEW).]

All penalties collected by the commission shall be paid to the Treasurer of State for deposit to the General Fund.

[PL 1983, c. 484, §2 (NEW).]

**2. Injunction.** In lieu of or in addition to the collection of civil penalties under subsection 1, the commission may bring a civil action in the Superior Court to prevent, restrain or enjoin a violation of section 2983. If in that action a violation or threatened violation of section 2983 shall be established, the court may enjoin and restrain or otherwise prohibit the violation or threatened violation. In the action it shall not be necessary that actual damages to any person be alleged or proved.

[PL 1983, c. 484, §2 (NEW).]

## SECTION HISTORY

PL 1983, c. 484, §2 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular and First Special Session of the 131st Maine Legislature and is current through November 1, 2023. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.