

§3155-A. Predatory behavior of eligible marketing cooperative prohibited

1. Violations. No eligible marketing cooperative may:

A. Collect or attempt to collect from a Maine market dealer, directly or indirectly, all or any part of an over-order premium with respect to the milk of a Maine market producer who has not designated that cooperative to receive the over-order premium pursuant to section 3153, subsection 2, paragraph C; [PL 1987, c. 447, §12 (NEW).]

B. Collect or attempt to collect from a Maine market dealer, directly or indirectly, any handling charge, fee or other payment in lieu of an over-order premium which the cooperative is barred from collecting under paragraph A; [PL 1987, c. 447, §12 (NEW).]

C. Discriminate against any Maine market dealer making payments in accordance with section 3153, subsection 2, paragraph C, in the marketing of its members' milk based in whole or in part on the extent to which the dealer's producers have joined or refused to join the cooperative; or [PL 1987, c. 447, §12 (NEW).]

D. Collect or attempt to collect all or any part of an over-order premium from a Maine market dealer prior to determination of its eligibility or during any period for which its eligible status has been revoked by the commissioner. [PL 1987, c. 447, §12 (NEW).]

[PL 1987, c. 447, §12 (NEW).]

2. Civil penalties. Each violation of this section is punishable by a civil penalty not to exceed \$2,000 for a first violation and \$5,000 for each subsequent violation, which penalties may be collected by the commissioner in a civil action. All penalties collected by the commissioner shall be paid to the Treasurer of State for deposit into the General Fund.

[PL 1987, c. 447, §12 (NEW).]

3. Injunctive relief. The Superior Court shall have jurisdiction upon complaint filed by the commissioner to restrain or enjoin any person from committing any act prohibited by subsection 1 or from violating any order or decision issued by the commissioner pursuant to subsection 4. The commissioner shall not be required to post a bond when applying for an injunction under this subsection.

[PL 1987, c. 447, §12 (NEW).]

4. Administrative enforcement. When the commissioner, after such investigation as the commissioner determines appropriate, believes that a violation of this section has occurred, the commissioner may order the eligible marketing cooperative to cease that violation. In lieu of, or in addition to, such an order and notwithstanding Title 4, section 152, subsection 9 and Title 5, section 10051, subsection 1, the commissioner may also revoke the eligible status of the cooperative for purposes of this chapter for a period not to exceed one year for a first violation, 2 years for a 2nd violation and permanently for a 3rd or subsequent violation. Before issuing such an order or revoking a cooperative's eligibility, the commissioner shall afford the cooperative an opportunity for a hearing. Any person aggrieved by a final order or decision issued under this subsection may obtain judicial review in Superior Court by filing a petition in accordance with Title 5, section 11001 and the Maine Rules of Civil Procedure, Rule 80C. In responding to such a petition, the commissioner may seek enforcement of the order or decision, including civil penalties for any violation found, and the court, if it upholds the order or decision, may order its enforcement, including civil penalties.

[PL 1999, c. 547, Pt. B, §23 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

Nothing in this section is intended to require that the commissioner take administrative enforcement action prior to seeking judicial relief for any violation of this section or is intended to limit the commissioner's ability to bring an independent action to enforce any decision or order issued by him, including civil penalties for any violation found by him. [PL 1987, c. 447, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 447, §12 (NEW). PL 1999, c. 547, §B23 (AMD). PL 1999, c. 547, §B80 (AFF).

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