

Act No. 361
Public Acts of 1996
Approved by the Governor
July 2, 1996
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Green, Horton, Kukuk, Goschka, Rhead, Hill, Lowe, Gernaat, Gnodtke, Jellema, Llewellyn, Middleton, Cropsey, Baade, Geiger and Alley

ENROLLED HOUSE BILL No. 5879

AN ACT to amend sections 1, 3a, 3b, 3c, 3e, 3j, 3k, and 6 of Act No. 222 of the Public Acts of 1913, entitled as amended "An act to define milk, cream, and related foods; to prevent and punish the sale of unclean and insanitary cream and milk and manufactured dairy products and their use in the manufacture of food products; to prohibit unclean and insanitary conditions of milk and cream handling and processing establishments; to establish production and handling standards of sanitary milk and cream for manufacturing and manufactured dairy products; to regulate the sale and transportation of milk and cream for manufacturing purposes; to license certain persons and provide for the revocation or suspension of licenses under certain circumstances; to impose certain fees; to require certain security devices; and to prescribe the powers and duties of certain departments and officers," as amended by Act No. 134 of the Public Acts of 1993, being sections 288.101, 288.103a, 288.103b, 288.103c, 288.103e, 288.103j, 288.103k, and 288.106 of the Michigan Compiled Laws; to add section 3l; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 1, 3a, 3b, 3c, 3e, 3j, 3k, and 6 of Act No. 222 of the Public Acts of 1913, as amended by Act No. 134 of the Public Acts of 1993, being sections 288.101, 288.103a, 288.103b, 288.103c, 288.103e, 288.103j, 288.103k, and 288.106 of the Michigan Compiled Laws, are amended and section 3l is added to read as follows:

Sec. 1. (1) This act shall be known and may be cited as the "manufacturing milk act".

(2) As used in this act:

(a) "Adulteration" means the commingling of a liquid or dry product with another in a manner not approved by the department.

(b) "Cream" means the fresh and clean substance containing at least 18% milk fat that rises to the surface of standing milk or that is separated from standing milk by centrifugal force.

(c) "Dairy plant" means a milk plant, transfer or receiving station, creamery, cheese plant, or other plant receiving dairy products or processing dairy products into manufactured dairy products.

(d) "Dairy product" means milk or cream.

(e) "Department" means the department of agriculture.

(f) "Dry milk product" means a product resulting from the drying of milk or a milk product.

(g) "Dryer" means equipment that dries milk or a milk product.

(h) "Milk" means either of the following:

(i) The fresh, clean, lacteal secretion obtained by the complete milking of 1 or more healthy cows, properly fed and kept, excluding a lacteal secretion obtained within 15 days before and 5 days after calving, that contains not less than 8.25% of milk solids not fat, and not less than 3.25% of milk fat.

(ii) The lacteal secretion, practically free from colostrum, obtained by the complete milking of 1 or more healthy goats.

(i) "Milk product" or "manufactured dairy product" means butter, dry skim milk, dry cream, cheese, milk casein, ice cream, malted or milk sugar, infant formula manufactured with dairy ingredients, or other form of processed dairy product.

(j) "Person" means an individual, partnership, limited liability company, cooperative, association, or corporation.

(k) "Producer" means a person who owns or operates a dairy farm and sells or distributes milk produced on that farm. Producer includes a person who markets milk on behalf of another producer pursuant to a marketing agreement.

(l) "Sterilization" means the complete destruction of living organisms by 1 of the following methods:

(i) Heating a container and its contents to a temperature between 212 degrees Fahrenheit to 280 degrees Fahrenheit for a period of time established by the department.

(ii) Creating a continuous product flow above a temperature of 280 degrees Fahrenheit for a period of time established by the department.

(iii) Employing a process described in subdivision (i) or (ii), and following packaging of the sterilized product, applying a heat treatment approved by the department.

(m) "Verified financial statement" means a financial statement that contains a notarized statement, signed and sworn to by the dairy plant operator attesting that the financial statement is correct.

Sec. 3a. (1) Before operating a dairy plant, a person, owning or intending to operate a dairy plant shall apply for and obtain a license from the director of the department.

(2) An applicant for an initial license as a dairy plant that produces manufactured dairy products shall apply to the department on a form supplied by the department and provide a statement containing the following:

(a) The dairy plant's correct legal name and any name by which the dairy plant is doing business, and, if the dairy plant is a person not an individual, the name of each officer and director, and partner, member, or owner owning in excess of 35% of equity or stock.

(b) The location of the dairy plant to which the statement pertains and the name of the responsible person who may be contacted at that location.

(c) The anticipated value of greatest milk receipts the dairy plant expects to receive during a consecutive 30-day period within the licensing period.

(d) A list of producers, including names, mailing addresses, and department producer permit number, with whom the dairy plant intends to do business except that not later than 90 days after becoming licensed for the first time, the dairy plant shall send an updated list to the department.

(e) The name of the financial institution through which milk checks are to be issued to producers.

(3) A dairy plant shall annually renew a license issued under this act by applying to the department at least 30 days before the expiration of the existing license. The anniversary date of a license for a dairy plant that is providing a financial statement as a security device shall be 130 days after the close of the licensee's fiscal year. All other licenses issued under this act expire on June 30 following the date of issuance. The dairy plant shall apply for renewal of a license on a form supplied by the department and provide a statement containing the following:

(a) The dairy plant's correct legal name and any name by which the dairy plant is doing business, and, if the dairy plant is a person not an individual, the name of each officer and director, and partner, member, or owner owning in excess of 35% of equity or stock.

(b) The location of the dairy plant to which the statement pertains and the name of the responsible person who may be contacted at that location.

(c) The greater of either the value of greatest milk receipts that the dairy plant received within a consecutive 30-day period during its last license year or the greatest milk receipts that the dairy plant is anticipated to receive during a consecutive 30-day period within the licensing period.

(d) A complete list of producers, including names, mailing addresses, and department producer permit number, with whom the dairy plant is doing business.

(e) The name of the financial institution through which milk checks are issued to producers.

(4) At the time of application, the applicant shall pay to the department an annual license fee of \$50.00 for each dairy plant the applicant operates or intends to operate.

(5) The department may issue a temporary license if the department determines that issuance of the license will not be detrimental to the protection of the public health, safety, or welfare or will not cause an imminent threat of financial loss to producers.

(6) The department may examine the books, records, and accounts of a dairy plant that produces manufactured dairy products if the dairy plant has not responded to requests from the department pursuant to section 3j.

Sec. 3b. Upon receipt of an application under section 3a for an unlicensed dairy plant or for a dairy plant previously denied a license under this act, the department shall investigate the sanitary conditions of the dairy plant or place of business. The director shall not issue a license under this act upon determining that the sanitary conditions of the applicant's dairy plant or place of business do not comply with this act and rules and regulations promulgated under this act.

Sec. 3c. (1) Except as otherwise provided for in subsection (6), before suspending, revoking, or denying a license, the department shall provide the affected licensee with a written notice that identifies all of the following:

- (a) The intent to suspend, revoke, or deny.
- (b) The grounds upon which the intended suspension, revocation, or denial is based.
- (c) The time and place of hearing.

(2) The department shall personally serve or send by certified mail to the licensee the notice of suspension, revocation, or denial at least 10 days before the date set for the hearing. The hearing shall be conducted in a manner prescribed by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The department shall notify in writing each producer with whom a dairy plant does business not less than 5 days before the date of the hearing set under subsection (1).

(4) The director of the department may revoke or suspend a license issued under this act upon determining that the licensee has done 1 or more of the following:

- (a) Failed to provide information required to be supplied to the department under this act or information requested by the department under section 3j(1)(a).
- (b) Failed to provide a security device in the amount and manner requested by the department under section 3j(11).
- (c) Knowingly provided materially false or fraudulent information or made a material misrepresentation on an application.
- (d) Knowingly provided materially false or fraudulent information or made a material misrepresentation in response to a request for information by the department.
- (e) Failed to pay a producer in the manner provided for in section 3e(1).
- (f) Knowingly possessed, sold, offered for sale, or purchased any milk or cream for use in a human food product that has been condemned under this act.
- (g) Violated this act or a rule promulgated under this act.

(5) A person whose license has been suspended, revoked, or denied shall immediately discontinue operation of the business for which the license was issued.

(6) A person whose license has been suspended or revoked is not eligible for a license until the department determines that the violation has been remedied.

(7) The department shall summarily suspend the license of a licensee if the department determines that such a suspension is necessary to protect the health, safety, or welfare of the public. The department shall incorporate this determination in its order of summary suspension. Summary suspension may be ordered effective on the date specified in the order or upon service upon the licensee of that certified order, whichever is later, and is effective during the proceedings. The proceedings shall be promptly commenced and determined.

(8) If the department has provided notice to a licensee under subsection (1) and subsequently determines that summary suspension of the licensee's license is necessary to prevent an imminent threat of financial loss to 1 or more producers with whom the licensee does business, the department may summarily suspend the licensee's license. The department shall incorporate the determination in its order of summary suspension. Summary suspension may be ordered effective on the date specified in the order or the date of service upon the licensee, whichever is later, and is effective during the proceedings. The proceedings shall be promptly commenced and determined.

Sec. 3e. (1) A person purchasing milk for resale or manufacture into another product shall pay the milk's producer an advance payment on or before the last day of each month for milk received during the first 15 days of the month and a final payment on or before the fifteenth day after the end of the month for milk received during the preceding month. The department shall revoke or deny a license required by this act for a violation of this subsection.

(2) A dairy plant that produces manufactured dairy products shall not issue a check to the producer unless the name of the dairy plant is noted on the check.

Sec. 3j. (1) The department shall revoke or deny a license for a dairy plant that produces manufactured dairy products if the licensee or applicant fails to provide 1 of the security devices required as a condition to licensure. As a condition to licensure, a dairy plant that produces manufactured dairy products shall provide 1 of the following security devices:

(a) An audited fiscal year end financial statement prepared by a certified public accountant according to generally accepted accounting principles and a quarterly verified financial statement that verify the licensee's ability to meet the ratio of 1.2:1 for minimum liquidity requirements of current assets to current liabilities. The audited financial statement shall be filed not later than 120 days after the close of the licensee's fiscal year end. The audited year end financial statement shall contain a balance sheet, income statement, equity statement, statement of cash flow, notes to the statements, and any other information required by the department. The department may extend the date for filing the audited year end financial statement by up to 30 days only upon the written request of the dairy plant or the dairy plant's accountant preparing the statement if the request is made not less than 10 days before the deadline for the filing of the statement. The request shall state the reason for the delay. The verified quarterly financial statements shall be filed within 60 days after the end of the fiscal quarter to which the statement pertains. The verified quarterly financial statement shall include, but not be limited to, a balance sheet, income statement, and any other information required by the department. The department may require a dairy plant that produces manufactured dairy products to file a supplementary or interim financial statement or provide additional information at any time pertaining to the financial statements filed under this subdivision or to specific information requests made by the department. In determining whether the dairy plant has met the minimum liquidity requirement described in this subdivision in an audited or verified financial statement, the department shall exclude all intangible assets and assets the department determines to be of doubtful value and may also exclude nontrade notes; accounts receivable from officers, directors, employees, partners, or stockholders or from members of their families; and notes and accounts receivable from parent organizations, subsidiaries, or affiliates if the department determines them to be of doubtful value. An applicant for a license that has not been in the business of receiving milk during the preceding 12 months shall only provide a security device other than an audited financial statement for at least the initial 12 months of licensed operation. At the end of the initial 12-month period, the department may allow the dairy plant to utilize an audited financial statement as a security device if the statement meets minimum liquidity requirements of this subdivision and if the dairy plant is otherwise in compliance with this act.

(b) Any of the following forms of security, in a form and subject to terms and conditions considered necessary by the department, for the benefit of producers who may be damaged by a default in payment, the value of which shall be in an amount determined by the department to be the greater of the value of the greatest milk receipts that the dairy plant has received within a consecutive 30-day period during that dairy plant's most recent fiscal year or the value of the greatest milk receipts that the dairy plant is anticipated to receive during a consecutive 30-day period within the licensing period:

(i) A commercial surety bond made payable to the department and subject to cancellation only after written notice to the department at least 90 days before cancellation. The commercial surety bond shall be issued by a surety company authorized to do business in this state and conditioned upon the faithful and proper discharge of the duty to pay a producer, when payment is due as provided for in section 3e(1), for milk received by the dairy plant.

(ii) A certificate of deposit or money market certificate that is issued or endorsed to the department and that cannot be canceled or redeemed, or funds transferred or withdrawn, without the written authorization of the department. The certificate shall be from a financial institution authorized to do business in this state whose deposits are insured by the federal deposit insurance corporation.

(iii) Stocks, bonds, or securities acceptable to the department that are issued or endorsed to the department and readily convertible to cash by the department and subject to redemption or sale only upon written permission of the department.

(iv) An irrevocable letter of credit filed as security with the department and made payable to the department issued by a financial institution acceptable to the department and licensed to do business in this state. The letter of credit shall provide for automatic renewal unless, at least 90 days before the scheduled renewal date, the issuing financial institution gives written notice that the letter of credit shall not be renewed. The department may request information from the financial institutions bureau of the department of consumer and industry services regarding the financial viability of the financial institution.

(v) Life insurance policies acceptable to the department that are issued or endorsed to the department so that the insurer cannot make any payment to the policy beneficiaries unless the insurer first pays the equivalent of the cash surrender value to the department and so that the cash surrender value is paid to the department upon cancellation or surrender of the policy.

(vi) Other security acceptable to the department.

(c) An agreement in which the dairy plant prepays for its milk supply by providing cash payments before or at the time of delivery of dairy products.

(2) A dairy plant that produces manufactured dairy products shall not cancel or modify a security device unless written notice is given to the department by the dairy plant at least 90 days before the date of cancellation or modification. The dairy plant shall send the notice of cancellation or modification to the department by certified mail.

(3) A dairy plant that produces manufactured dairy products shall notify the department at least 30 days before receiving dairy products that will increase the amount due and accrued from the dairy plant to an amount greater than the amount represented as a basis for the issuance of the license.

(4) This section does not apply to the sale of dairy products or manufactured dairy products in interstate commerce to an out of state purchaser not licensed under this act. The protection provided by this section is available to a producer in another state selling dairy products to a licensee in this state.

(5) Except as otherwise provided for in subsection 6, financial and product information filed by a dairy plant that produces manufactured dairy products is not subject to disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(6) Upon receipt of a written request, the department shall provide a producer a copy of the most recent audited financial statement of the dairy plant that produces the dairy products of that producer.

(7) A producer may file a written complaint with the department requesting an independent audit regarding the ability of a dairy plant that files an audited financial statement as a security device and that produces the dairy products of the individual producer to meet the minimum liquidity requirement described in subsection (1)(a). The complaint shall be accompanied by a certified check in the amount of \$100.00 and a signed document guaranteeing full payment for the audit if required under subsection (8). Upon receipt of the complaint and check, the department shall notify the dairy plant and advise the dairy plant of the choice of either having an independent audit conducted or of voluntarily modifying the security device to either of the alternatives provided for in subsection (1)(b) or (c).

(8) A dairy plant that requests an independent audit under subsection (7) shall bear the cost of that audit if the department determines that the independent audit establishes the dairy plant's inability to meet the minimum liquidity requirement described in subsection (1)(a). The complainant shall bear the cost of the audit if the department determines that the audit establishes that the dairy plant meets the minimum liquidity requirement described in subsection (1)(a).

(9) If the dairy plant fails to meet the minimum liquidity requirement described in subsection (1)(a), the department shall return to the complainant the fee described in subsection (7) and suspend or revoke the dairy plant's license in the manner provided for in section 3c. The department may reinstate a suspended license or reissue a revoked license if the dairy plant provides the department with a security device described in subsection (1)(b) or (c). If the department determines that the dairy plant meets the minimum liquidity requirement described in subsection (1)(a), the \$100.00 fee shall be forfeited to the dairy plant.

(10) A dairy plant that produces manufactured dairy products may request a change in its security device at any time. The department shall allow the change in the dairy plant's security device if all requirements for the new security device have been met and all producers doing business with the licensee have been duly notified by the department.

(11) The department may require a dairy plant to provide a change or increase in a security device if the department has reason to believe after reviewing relevant financial information that the dairy plant no longer meets the minimum liquidity requirement of this act, that the dairy plant can no longer make payments in the manner provided for in section 3e(1), or that the value of the dairy plant's security device falls below the requirements of this subsection due to depreciation in the value of the security, an increase in the maximum liability to producers, or the cancellation or change of the security device. The department shall send written notice by certified mail to the dairy plant stating the reasons for the demand for change or increase in a security device and setting the date for providing the changed or increased security device.

(12) The department shall notify all producers shipping dairy products to a dairy plant that produces manufactured dairy products of the decision to require the dairy plant to modify or change a security device. The notice required under this subsection shall be provided within 5 days after the department's issuance of the order to require another security device.

Sec. 3k. (1) A person injured by the breach of an obligation secured by a security device described in section 3j, including a producer and a person representing a commodity checkoff program, may file with the department a verified proof of claim or other evidence of default. Upon receipt of a verified proof of claim or other evidence of default, the department may issue an order requiring each interested creditor to file a verified proof of claim before a certain date, or be barred from participating in any recovery made by the department. The department shall provide notice of the entry of an order by posting a copy of the order on the premises described in the license and by publication in accordance with the Michigan court rules that govern service of process by publication. Publication shall be completed at least 30 days before the the final date for the filing of claims. The department shall make the necessary audit and

issue an order allowing or disallowing each claim presented. Within 30 days of that order, the department shall send to the principal and surety by certified mail, notice of allowance or disallowance and request for the payment. The department may demand, collect, and receive from the licensee or from the surety or sureties of the licensee, the amount determined to be necessary to satisfy the claims with interest at the judgment rate computed from the date of loss. The department may request that the department of attorney general commence an action for that purpose in the court of competent jurisdiction. If the attorney general prevails in whole or in part, the court shall award interest from the date of loss at the judgment rate. Upon receipt of money paid in partial or complete satisfaction of a claim as provided in this section, the department shall make distribution to the claimant in accordance with the order allowing the claim, in full or proportionally, as the case may be.

(2) This section does not affect or impair any other lien, security, or priority for the claim or judgment.

Sec. 3l. The department shall notify producers delivering dairy products to a licensed dairy plant that produces manufactured dairy products of the type of security device used for the benefit of producers and shall notify producers any time a license is issued, renewed, or modified. The notice sent by the department shall substantially conform to the following:

"Michigan law requires dairy plant licensees to demonstrate a reasonable degree of financial responsibility to the Michigan department of agriculture. This law is designed to provide reasonable assurance that producers will be paid for their milk; however, it does not guarantee that producers will be paid. Each producer has some responsibility for determining the credit worthiness of the dairy plant to which the producer is selling milk. A dairy plant licensee may qualify for a license by doing 1 of the following:

(a) Filing financial statements audited by a certified public accountant with the department demonstrating that the dairy plant meets the minimum liquidity requirement.

(b) Filing security with the department in an amount determined by the department to be the greater of the following:

(1) The value of the greatest milk receipts that the dairy plant received within a consecutive 30-day period during that dairy plant's most recent fiscal year.

(2) The greatest milk receipts that the dairy plant is anticipated to receive during a 30-day period within the licensing period.

(c) _____, (Name of dairy plant licensee) is currently licensed on the basis of its audited financial statement meeting the minimum liquidity requirement of a current ratio of at least 1.2 to 1 current assets to current liabilities. The licensee's most recent year-end financial statement audited by the firm of _____ (auditor's name) meets the following minimum liquidity requirement, or _____ (name of dairy plant licensee) has filed security with the department to secure payment to producers. The maximum amount of security is the amount determined to be the greater of the following:

(1) The value of the greatest milk receipts that the dairy plant received within a consecutive 30-day period during that dairy plant's most recent fiscal year.

(2) The greatest milk receipts that the dairy plant is anticipated to receive within a 30-day period within the licensing period, whichever is greater.

The security filed is in the following form or forms:

_____".

Sec. 6. (1) Subject to subsection (4), a person who directly, through an agent, or as the agent of another person does 1 or both of the following is guilty of a misdemeanor, punishable by a fine of not less than \$50.00 or more than \$500.00, or imprisonment for not more than 90 days, or both:

(a) Violates this act or R 285.407.1 to R 285.407.6 of the Michigan administrative code.

(b) Provides materially false or fraudulent information on an application or in response to a request from the department.

(2) In addition to the remedies provided by this act and notwithstanding the existence of an adequate remedy at law, the department may apply to a court of competent jurisdiction for a temporary or permanent injunction restraining a person from violating this act or a rule promulgated under this act.

(3) The director of the department shall impose upon a producer who violates this act by selling or offering for sale milk which has a positive reaction to a drug residue test performed pursuant to section 2b the following administrative fines:

(a) First positive test for a drug residue within a 12-month period: \$50.00.

(b) Second positive test for a drug residue within a 12-month period: \$200.00.

(c) Third positive test for a drug residue within a 12-month period: \$500.00.

(4) Subsection (1) applies to a producer who violates this act by selling or offering for sale milk that has a positive reaction to a drug residue test performed pursuant to section 2b only under the following circumstances:

(a) The producer fails to pay the civil fine required by subsection (3) within 10 days of the notification of the violation.

(b) The producer has been fined under subsection (3) 3 times within the preceding 12-month period.

(5) A person subject to an administrative fine imposed under subsection (3) shall pay the fine to the department within 10 days after notification of the violation. The department shall deposit the administrative fines under this section into the general fund.

Section 2. Sections 6a and 14 of Act No. 222 of the Public Acts of 1913, being sections 288.106a and 288.114 of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.