

Act No. 362
Public Acts of 1996
Approved by the Governor
July 2, 1996
Filed with the Secretary of State
July 2, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Lowe, Green, Gernaat, Goschka, Hill, Rhead, Llewellyn, Horton, Cropsey, Kukuk, Gnodtke and McManus

ENROLLED HOUSE BILL No. 5880

AN ACT to amend sections 2, 4, 4a, 4b, and 9 of Act No. 233 of the Public Acts of 1965, entitled as amended "An act to regulate the production, transportation, handling, processing, delivery, and sale of grade A milk and milk products; to define grade A milk and milk products and to establish standards and requirements for grade A milk and milk products; to provide for licenses and producer permits and revocation of licenses and producer permits; to impose certain fees; to require certain security arrangements of milk plants to ensure the prompt payment of producers; to prescribe the powers and duties of certain state departments and officers; to provide for certain milk containers and set standards for certain milk containers; to provide for uniform standards and uniform inspection; to provide for certain remedies and penalties; to provide for the transfer of personnel and the rights of transferred personnel; and to repeal certain acts and parts of acts," sections 2 and 9 as amended by Act No. 91 of the Public Acts of 1996 and sections 4a and 4b as amended by Act No. 5 of the Public Acts of 1993, being sections 288.22, 288.24, 288.24a, 288.24b, and 288.29 of the Michigan Compiled Laws; and to add sections 1a, 2a, and 4c.

The People of the State of Michigan enact:

Section 1. Sections 2, 4, 4a, 4b, and 9 of Act No. 233 of the Public Acts of 1965, sections 2 and 9 as amended by Act No. 91 of the Public Acts of 1996 and sections 4a and 4b as amended by Act No. 5 of the Public Acts of 1993, being sections 288.22, 288.24, 288.24a, 288.24b, and 288.29 of the Michigan Compiled Laws, are amended and sections 1a, 2a, and 4c are added to read as follows:

Sec. 1a. As used in this act:

- (a) "Dairy product" means a grade A milk or cream.
- (b) "Department" means the department of agriculture.
- (c) "Milk plant" means a plant processing dairy products into grade A milk products.
- (d) "Person" means an individual, partnership, limited liability company, cooperative, association, or corporation.
- (e) "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.
- (f) "Verified financial statement" means a financial statement that contains a notarized statement, signed and sworn to by the milk plant operator attesting that the financial statement is correct.

Sec. 2. (1) A person shall not produce, transport, process, label, or sell grade A milk and grade A milk products unless licensed under this act.

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

(a) The milk plant's correct legal name and any name by which the milk plant is doing business. If the milk 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 milk 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 milk plant intends to do business except that not later than 90 days after becoming licensed for the first time, the milk 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 milk 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 milk 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 milk plant shall apply for renewal of a license on a form supplied by the department and provide a statement containing the following:

(a) The milk plant's correct legal name and any name by which the milk plant is doing business. If the milk 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 milk 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 milk plant received within a consecutive 30-day period during its last license year or the greatest milk receipts that the milk 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 milk plant is doing business.

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

(4) Subject to (5), a milk plant, receiving station, or transfer station shall pay an annual fee of \$5.00 for each dairy farm whose milk is first received at the milk plant, receiving station, or transfer station, plus an additional \$10.00 per farm shipping to it if the milk plant, receiving station, or transfer station operator does not maintain an adequate number of industry personnel who are certified to conduct farm supervision and who do not, in fact, conduct farm supervision. The department shall not levy this additional \$10.00 per farm fee if a cooperative association is conducting the farm supervision for the milk plant operator. The department shall not charge the license fee described in this subsection to the producer.

(5) Each milk plant that is a first receiving point for milk shall pay a \$50.00 licensing fee in addition to the annual license fee required in subsection (4).

(6) Each milk distributor or grade A milk plant operator shall pay an annual fee of \$10.00 for each delivery vehicle operated. The fee imposed under this subsection is the sole distributor or vendor license fee required by the state or a political subdivision of the state if the principal purpose of the vehicle is the delivery and distribution of the products regulated by this act.

(7) Each certified industry fieldman shall pay an annual license fee of \$10.00 for a license to conduct certified farm inspections.

(8) A person shall not pick up grade A milk in a farm pickup milk tank from a farm bulk milk tank without a license issued by the department under this section or under section 3d of the manufacturing milk act, Act No. 222 of the Public Acts of 1913, being section 288.103d of the Michigan Compiled Laws. The license fee is \$20.00 per year. Each applicant for a license shall be examined by the department under the provisions of this act and rules promulgated pursuant to this act to determine his or her qualifications to evaluate milk in a farm bulk milk tank, to accurately measure milk in a farm bulk milk tank, to obtain representative samples of milk from a farm bulk milk tank, to properly handle and deliver the samples, and to pick up milk.

(9) 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.

(10) Each milk plant or transfer station shall pay an annual license fee of \$25.00 for each location which is not a first receiving point for dairy farm milk.

(11) The state or a political subdivision of the state shall not levy special license fees or taxes on 1 or more of the persons or businesses described in this section except for taxes or fees that are generally levied on persons or businesses other than dairy plants and dairy plant operators.

(12) The department may examine the books, records, and accounts of a milk plant if the milk plant has not responded to requests from the department pursuant to section 4a.

Sec. 2a. (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 on the intended suspension or revocation.

(2) The department shall personally serve or send by certified mail to the licensee the notice of the hearing on the intended suspension or revocation 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 milk plant does business not less than 5 days before the date of the hearing set under subsection (1).

(4) 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 supplementary or interim information or information required to be supplied to the department under this act or information requested by the department under section 4a(1).
- (b) Failed to provide a security device in the amount and manner requested by the department under section 4a(12).
- (c) Knowingly provided false or fraudulent information or made a material misrepresentation on an application.
- (d) Knowingly provided 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 4(1).
- (f) Failed to agitate grade A milk in the farm bulk milk tank before taking a sample for delivery to the milk plant or the department.
- (g) Failed to take the sample for analysis in accordance with the procedures established by rules promulgated by the department.
- (h) Picked up grade A milk the temperature of which exceeds 45 degrees Fahrenheit.
- (i) Failed to accurately report the weight or temperature of grade A milk picked up from a farm bulk milk tank.
- (j) In the case of a milk plant, failed to provide a security device described in section 4a(1).
- (k) 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 or requested.

(6) A person whose license has been suspended or revoked is not eligible for reinstatement of the 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. 4. (1) A person purchasing milk for the purposes of reselling or of manufacturing that milk into other products shall pay the 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.

(2) A person purchasing milk for the purposes of reselling or of manufacturing that milk into other products shall not issue a check unless the name of the person is noted on the check issued to the producer.

(3) The department shall revoke or deny a license required by this act for a violation of subsection (1).

Sec. 4a. (1) The department shall revoke or deny a license for a milk plant 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 milk plant that is a first receiving point for milk 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 quarterly verified financial statements that verify the licensee's ability to meet a minimum liquidity requirement of current assets to current liabilities in the ratio of 1.2:1. The audited financial statement shall be filed not later than 120 days after the close of the licensee's fiscal year end. The audited 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 milk plant or the milk plant's accountant preparing the statement if the request is made not less than 10 days before the deadline for 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 statements 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 milk plant 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 licensee 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 considers 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 licensee to utilize an audited financial statement as a security device if the statement meets the minimum liquidity requirement of this subdivision and if the licensee 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 milk plant has received within a consecutive 30-day period during that milk plant's most recent fiscal year or the value of the greatest milk receipts that the milk 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 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 4(1), for milk received by the milk 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 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 annual 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 bank.

(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 milk plant prepays for its milk supply by providing cash payment not later than the time of delivery of dairy products.

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

(3) Upon receipt or renewal of a license and any time the type of licensing is modified, the department shall notify, in the manner provided for in section 4c, each producer delivering milk to the milk plant of the financial basis on which the license was issued. The notice shall conform to section 4c.

(4) A milk plant that is a first receiving point for milk shall notify the department at least 30 days before receiving milk which will increase the amount due and accrued from the milk plant to an amount greater than the amount represented as a basis for the issuance of the license.

(5) This section does not apply to the sale of milk or milk products in interstate commerce to an out of state purchaser not licensed pursuant to this act. The protection provided by this section shall be available to a producer in another state selling milk products to a licensee in this state.

(6) Except as otherwise provided for in subsection (7), financial and product information filed by a milk plant that is a first receiving point for milk 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.

(7) A producer shall, upon written request to the department, be given a copy of the most recent audited financial statement of a milk plant that is the first receiving point for the milk of that producer.

(8) An individual producer may file a written complaint with the department requesting an independent audit regarding the ability of a licensee that files an audited financial statement as a security device and that is the first receiving point for the milk of the individual producer to meet the minimum liquidity requirements 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 (9). Upon receipt of the complaint and check, the department shall notify the licensee and advise the licensee of the choice of either having an independent audit conducted or of voluntarily modifying the security arrangement to any of the alternatives provided for in subsection (1)(b) or (c).

(9) A licensee that requests an independent audit under subsection (8) shall bear the cost of that audit if the department determines that the independent audit establishes the licensee's inability to meet the minimum liquidity requirement as defined in subsection (1)(a). If the licensee meets the minimum liquidity requirement, the complainant shall bear the cost of the audit.

(10) If the milk plant fails to meet the minimum liquidity requirement described in subsection (1)(a), the department shall suspend or revoke the milk plant's license in the manner provided for in section 2a until such time as the milk plant meets the security requirements in subsection (1)(b) or (c) and the \$100.00 shall be returned to the complainant. If the milk plant meets the minimum liquidity requirements, the \$100.00 shall be forfeited to the milk plant.

(11) A licensee may request a modification in its security device at any time. The department shall allow the modification in the licensee's security device if all requirements for the new security arrangement have been met and all producers doing business with the licensee have been duly notified.

(12) The department may require a milk plant to provide increased or modified security if the department has reason to believe after reviewing relevant financial information that the milk no longer meets the minimum liquidity requirement of this act or that the milk plant can no longer make payments in the manner provided for in section 4(1). The department shall send written notice by certified mail to the milk plant stating the reasons for the demand for increase or modification in security and setting the date for providing the increased or modified security.

(13) The department shall notify all producers shipping milk to the licensee of the decision to require the milk 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. 4b. (1) A person injured by the breach of an obligation secured by a security device described in section 4a, including, but not limited to, 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, by order, may require all interested creditors to file their verified proofs of claim before a certain date, or be barred from participating in any recovery made by the department. Notice of the entry of an order shall be given by posting a copy of the order on the premises described in the license, and by publication of a notice pursuant to the rules for service by publication contained in the Michigan court rules. The date of last publication shall be not less than 30 days before the last day for the filing of claims. The department of agriculture shall make the necessary audit and shall, by order, allow or disallow each claim presented. Notice of allowance or disallowance and request for the payment within 30 days of the claims allowed shall be sent to the principal and surety by registered mail. 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 the department of attorney general to commence an action for that purpose in a 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 the money to be applied to the satisfaction of a claim as provided in this section, the department shall make a distribution to the claimant in accordance with the order allowing the claim, in full or proportionally.

(2) This section and section 4a do not affect or impair any other lien, security, or priority for the claim or judgment.

Sec. 4c. The department shall provide notice to 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 milk 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 milk plant to which the producer is selling milk. A milk 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 milk plant received within a consecutive 30-day period during that milk plant's most recent fiscal year.

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

(c) _____, (Name of milk 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. Our most recent year-end financial statement audited by the firm of _____ (auditor's name) meets the following minimum liquidity requirement, or _____ (name of milk plant licensee) has filed security with the department to secure payment to its 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 milk plant received within a consecutive 30-day period during that milk plant's most recent fiscal year.

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

The security filed is in the following form or forms:

_____".

Sec. 9. (1) Subject to subsection (3), any person who, alone or through an agent, as the agent of any other person, or as the officer or agent of any firm or corporation, who does any of the following is guilty of a misdemeanor punishable by a fine of not less than \$50.00 and not more than \$500.00, or imprisonment for not more than 90 days, or both:

(a) Violates this act or a rule promulgated pursuant to this act.

(b) Violates no. 407 governing haulers' duties and prohibitions, cleaning and sanitizing milk pickup tanks and transport tanks, records, and samples, qualifications of grade A plants for reduced licensing fees, dairy farm requirements, milk sample handling and records.

(c) Violates no. 408 governing fluid milk and milk products, definitions, last date of sale, time interval of date, flavor, and sale after date which are in effect on December 30, 1980.

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

(2) The director of the department of agriculture shall impose upon a producer who violates this act by selling or offering for sale milk which has been found positive for drug residues on a test performed pursuant to appendix N and section 7 of the grade A pasteurized milk ordinance, —1993 recommendations of the United States public health service/food and drug administration, the following sanctions and administrative fines:

(a) Both of the following in the case of a first positive test within a 12-month period:

(i) A written notification from the buyer of the milk in the form of a pay deduction, that the milk picked up from the farm testing positive was not paid for.

(ii) The sum of \$300.00 to be paid to the department of agriculture. If the producer has voluntarily participated in the milk and dairy beef quality assurance program within the 36 months immediately preceding the date of the violative sample, as evidenced by a properly signed completion certificate, \$200.00 of the administrative fine will be suspended. The administrative fine may be paid by the milk buyer, if a like amount has been deducted from the producer's milk check.

(b) Both of the following in the case of a second positive test within a 12-month period:

(i) A written notification from the buyer of the milk in the form of a pay deduction, that the milk picked up from the farm testing positive was not paid for.

(ii) The sum of \$600.00 to be paid to the department of agriculture, no part of which shall be suspended. This sum may be paid by the milk buyer if a like amount has been deducted from the producer's milk check.

(c) All of the following in the case of a third positive test within a 12-month period:

(i) A written notification from the buyer of the milk in the form of a pay deduction, that the milk picked up from the farm testing positive was not paid for.

(ii) The sum of \$1,200.00 to be paid to the department of agriculture, no part of which shall be suspended. This sum may be paid by the milk buyer if a like sum has been deducted from the producer's milk check.

(iii) The suspension of the producer's permit for a period not to exceed 60 days after notice and the opportunity for a hearing before the department of agriculture.

(3) Subsection (1) applies to a producer who violates this act by selling or offering for sale milk which tests positive for drug residues on a test performed pursuant to appendix N and section 7 of the grade A pasteurized milk ordinance, —1993 recommendations of the United States public health service/food and drug administration, only under the following circumstances:

(a) The producer fails to pay the administrative fine required by subsection (2) within 10 days of the notification of the violation.

(b) The producer has been fined under subsection (2) 3 times within the preceding 12-month period.

(4) The administrative fines imposed under subsection (2) shall be paid to the department within 10 days after notification of the violation. The administrative fines received by the department under subsection (2) shall be deposited in the state general fund and shall be expended for the purpose of enforcing this section.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.