

HOUSE BILL No. 5635

March 4, 1998, Introduced by Reps. Wetters, McBryde and Hood and referred to the Committee on Agriculture.

A bill to amend 1965 PA 233, entitled "Fluid milk act of 1965," (MCL 288.21 to 288.29a) by amending the title, as amended by 1993 PA 5, and by adding sections 1b and 1c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2 An act to regulate the production, transportation, handling,
3 processing, delivery, PRICING, and sale of grade A milk and milk
4 products; to define grade A milk and milk products and to estab-
5 lish standards and requirements for grade A milk and milk pro-
6 ducts; to provide for licenses and producer permits and revoca-
7 tion of licenses and producer permits; to impose certain fees; TO
8 PROVIDE FOR CERTAIN REFERENDA FOR CERTAIN PURPOSES; to require
9 certain security arrangements of milk plants to ensure the prompt
10 payment of producers; to prescribe the powers and duties of

1 certain state departments and officers; to provide for certain
2 milk containers and set standards for certain milk containers; to
3 provide for uniform standards and uniform inspection; to provide
4 for certain remedies and penalties; to provide for the transfer
5 of personnel and the rights of transferred personnel; and to
6 repeal ~~certain~~ acts and parts of acts.

7 SEC. 1B. (1) AS USED IN THIS SECTION:

8 (A) "BOARD" MEANS THE MARKETING POOL BOARD.

9 (B) "CLASS I MILK" MEANS THAT TERM AS DEFINED UNDER 7
10 C.F.R. SECTION 1040.40 AND 7 C.F.R. SECTION 1044.40.

11 (C) "COOPERATIVE ASSOCIATION" MEANS ANY ASSOCIATION OF MILK
12 PRODUCERS AUTHORIZED BY THE COOPERATIVE MARKETING ASSOCIATION
13 ACT, 42 STAT. 388 (1922); 7 U.S.C. 291, QUALIFIED TO DO BUSINESS
14 IN THIS STATE, HAS ITS ENTIRE ACTIVITIES UNDER CONTROL OF ITS
15 MEMBERS, AND EXERCISES FULL AUTHORITY IN THE MARKETING OF MILK
16 FOR ITS MEMBERS.

17 (D) "DEALER" MEANS A PERSON WHO OPERATES A PLANT IN THIS
18 STATE IN WHICH GRADE A MILK IS RECEIVED FOR THE PURPOSE OF PRO-
19 CESSING AND PACKAGING FOR CLASS I MILK PURPOSES.

20 (E) "GRADE A MILK" MEANS MILK AS DESCRIBED IN SECTION 1.

21 (F) "MARKET AREA" MEANS THE AREA THE DIRECTOR DESIGNATES AS
22 A MARKET AREA AND IS THE AREA DESCRIBED IN 7 C.F.R. SECTION
23 1040.2 OR THE AREA DESCRIBED IN 7 C.F.R. SECTION 1040.2 TOGETHER
24 WITH THE AREA DESCRIBED IN 7 C.F.R. SECTION 1044.5, A STATE
25 MARKET AREA CREATED UNDER SECTION 1C, OR THE ENTIRE STATE.

26 (G) "MILK HANDLER" MEANS A PERSON WHO OPERATES A PLANT
27 EQUIPPED WITH STATIONARY MILK HOLDING FACILITIES IN THIS STATE IN

1 WHICH GRADE A MILK IS RECEIVED FOR PROCESSING, ASSEMBLY, OR
2 SHIPPING.

3 (H) "MILK PRODUCER" MEANS ANY PERSON WHO PRODUCES MILK IN
4 THIS STATE AND IS LICENSED BY THE DEPARTMENT TO SELL OR OFFER FOR
5 SALE GRADE A MILK AND WHOSE GRADE A MILK IS DELIVERED TO A MILK
6 HANDLER IN THIS STATE. MILK PRODUCER DOES NOT INCLUDE PRODUCERS
7 WHOSE GRADE A MILK IS DELIVERED TO A MILK HANDLER OUTSIDE THIS
8 STATE.

9 (I) "PRODUCTION VOLUME" MEANS TOTAL PRODUCTION BY A LICENSEE
10 IN THE PREVIOUS CALENDAR YEAR DIVIDED BY 12.

11 (2) THE DIRECTOR OF THE DEPARTMENT SHALL DESIGNATE 1 OR MORE
12 MARKET AREAS FOR PURPOSES OF THIS SECTION AND, UPON THE PETITION
13 OF 10% BY NUMBER OF MILK PRODUCER LICENSEES IN THAT MARKET AREA,
14 SHALL CONDUCT A REFERENDUM TO DETERMINE WHETHER MILK PRODUCERS
15 WHOSE MILK IS DELIVERED TO A MILK HANDLER IN THE MARKET AREA
16 AGREE TO HAVE THE MINIMUM PRICES ESTABLISHED PURSUANT TO THIS
17 SECTION ON CLASS I MILK TO BE PAID TO MILK PRODUCERS BY DEALERS
18 IN THE MARKET AREA. THE DIRECTOR OF THE DEPARTMENT SHALL CERTIFY
19 THE PETITION WITHIN 15 DAYS AFTER RECEIPT OF THE PETITION. THE
20 DIRECTOR OF THE DEPARTMENT SHALL CONDUCT THE REFERENDUM WITHIN 30
21 DAYS AFTER THE PETITION IS CERTIFIED. THE AFFECTED MILK PRODUC-
22 ERS ARE CONSIDERED TO HAVE ASSENTED TO THE ESTABLISHMENT OF AN
23 OVER-ORDER PREMIUM PRICE ON CLASS I MILK AND CLASS II MILK TO BE
24 PAID TO MILK PRODUCERS BY DEALERS IN A MARKET AREA IN THE STATE
25 PURSUANT TO THIS SECTION IF MORE THAN 50% BY NUMBER AND 50% BY
26 PRODUCTION VOLUME OF THOSE VOTING ASSENT TO THE PROPOSAL. FOR

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1 PURPOSES OF REFERENDA UNDER THIS SECTION, A MILK PRODUCER IS
2 ENTITLED TO 1 VOTE PER MILK PRODUCER LICENSEE.

3 (3) THERE IS CREATED A 6-MEMBER MARKETING POOL BOARD WITHIN
4 THE DEPARTMENT CONSISTING OF MEMBERS WHOSE TERMS SHALL LAST THE
5 DURATION OF THE PRICING ORDER. THE BOARD SHALL DETERMINE THE
6 OVER-ORDER PREMIUM PRICE FOR CLASS I MILK TO BE PAID TO MILK PRO-
7 DUCERS BY DEALERS IN THE MARKET AREA IN THE MANNER PROVIDED FOR
8 IN SUBSECTION (4). THE BOARD SHALL CONSIST OF THE DIRECTOR OF
9 THE MICHIGAN DEPARTMENT OF AGRICULTURE OR HIS OR HER DESIGNATED
10 REPRESENTATIVE, A REPRESENTATIVE MEMBER OF THE MICHIGAN AGRICUL-
11 TURE COMMISSION DESIGNATED BY THE COMMISSION AS AN EX OFFICIO
12 MEMBER, A REPRESENTATIVE OF THE DEPARTMENT OF AGRICULTURAL ECO-
13 NOMICS AT MICHIGAN STATE UNIVERSITY DESIGNATED BY THE CHAIRPERSON
14 OF THAT DEPARTMENT AS A NONVOTING EX OFFICIO MEMBER, A REPRES-
15 TATIVE OF THE MICHIGAN DAIRY FOODS ASSOCIATION, AND THE 2
16 FARMER-PRESIDENTS OF THE MILK PRODUCER COOPERATIVE ASSOCIATIONS
17 HAVING THE LARGEST NUMBER OF MILK PRODUCER MEMBERS IN THIS STATE
18 OR FARMER-BOARD MEMBERS DESIGNATED BY THE ASSOCIATIONS. A MEMBER
19 OF THE BOARD MAY BE REMOVED BY THE GOVERNOR UPON NOTICE AND HEAR-
20 ING FOR NEGLECT OF DUTY, FOR CORRUPT CONDUCT IN OFFICE, AND FOR
21 ANY MISFEASANCE OR MALFEASANCE BUT FOR NO OTHER CAUSE. A VACANCY
22 IN THE BOARD DOES NOT IMPAIR THE RIGHT OF THE REMAINING MEMBERS
23 TO EXERCISE ALL OF THE POWERS OF THE BOARD. ANY 3 VOTING MEMBERS
24 OF THE BOARD CONSTITUTE A QUORUM. THE BOARD SHALL MEET AT LEAST
25 ONCE EVERY 6 MONTHS. MEMBERS OF THE BOARD ARE ENTITLED TO
26 RECEIVE PER DIEM COMPENSATION FIXED BY THE LEGISLATURE AND ALL
27 NECESSARY TRAVELING AND SUBSISTENCE EXPENSES INCURRED WHILE

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1 ATTENDING MEETINGS OF THE BOARD OR ENGAGED IN THE PERFORMANCE OF
2 OFFICIAL RESPONSIBILITIES DELEGATED BY THE BOARD OR SUCH OTHER
3 AMOUNTS AS APPROPRIATED BY THE LEGISLATURE.

4 (4) AN OVER-ORDER PREMIUM PRICE ESTABLISHED BY THE BOARD
5 SHALL TAKE EFFECT ON THE FIRST DAY OF THE MONTH FOLLOWING THE
6 ESTABLISHMENT OF THE PRICE BY THE BOARD. IN DETERMINING AN
7 OVER-ORDER PREMIUM PRICE, THE BOARD SHALL TAKE INTO CONSIDERATION
8 AT LEAST ALL OF THE FOLLOWING:

9 (A) THE FEDERAL ORDER CLASS I MINIMUM PRICE CURRENTLY BEING
10 PAID BY DEALERS AS REQUIRED UNDER 7 C.F.R. SECTIONS 1000 TO
11 1199.

12 (B) THE COST OF MILK PRODUCTION TO MILK PRODUCERS IN THE
13 STATE.

14 (C) THE LEVEL OF MILK PRICES PAID TO MILK PRODUCERS IN
15 ADJOINING STATES.

16 (D) THE COST OF MILK TO DEALERS LOCATED IN ADJOINING
17 STATES.

18 (E) THE INTERESTS OF THE GENERAL PUBLIC.

19 (F) THE COMMUNITY INTERESTS OF THE MILK PRODUCERS INCLUDED
20 IN THE POOL.

21 (G) THE PATTERN OF PAST MARKETING OF THE COMMODITY.

22 (H) THE WISHES OF THE MILK PRODUCERS.

23 (I) THE LONG-TERM ECONOMIC IMPACT ON THE MICHIGAN DAIRY
24 INDUSTRY.

25 (5) UPON REQUEST OF THE DEPARTMENT, THE FEDERAL MARKET
26 ADMINISTRATOR SHALL PROVIDE TO THE DIRECTOR RECORDS RELATING TO
27 PRODUCTION VOLUME ONLY FOR THE PURPOSE OF VERIFICATION OF A

1 REFERENDUM CONDUCTED UNDER THIS SECTION. THE PRODUCTION VOLUME
2 RECORDS ARE EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMA-
3 TION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

4 (6) THE BOARD SHALL CONDUCT A PUBLIC HEARING IN CONNECTION
5 WITH ESTABLISHING OR CHANGING AN OVER-ORDER PREMIUM PRICE, AND
6 THE DIRECTOR SHALL ISSUE A DECISION ON THE OVER-ORDER PREMIUM
7 PRICE WITHIN 30 DAYS AFTER THE PUBLIC HEARING. AN OVER-ORDER
8 PREMIUM PRICE ESTABLISHED BY THE BOARD FOR A MARKET AREA SHALL
9 NOT EXCEED 10% OF THE APPLICABLE FEDERAL ORDER CLASS I MINIMUM
10 PRICE DETERMINED PURSUANT TO 7 C.F.R. SECTIONS 1000 TO 1199 FOR
11 THAT MARKET AREA.

12 (7) DEALERS SHALL PAY THE BOARD OR ITS DESIGNATED AGENT, ON
13 OR BEFORE THE FIFTEENTH DAY OF EACH MONTH, THE DIFFERENCE BETWEEN
14 THE OVER-ORDER PREMIUM PRICE FOR CLASS I MILK SET BY THE BOARD
15 FROM TIME TO TIME PURSUANT TO THIS SECTION AND THE APPLICABLE
16 FEDERAL ORDER CLASS I MINIMUM PRICE DETERMINED PURSUANT TO 7
17 C.F.R. SECTIONS 1000 TO 1199 FOR THE PREVIOUS MONTH. THE BOARD
18 OR ITS DESIGNATED AGENT SHALL EQUALIZE THESE PAYMENTS AND FORWARD
19 THE PAYMENTS TO DEALERS OR HANDLERS WHO PURCHASE MILK DIRECTLY
20 FROM MILK PRODUCERS IN THE MARKET AREA OR TO THOSE MILK
21 PRODUCERS' COOPERATIVE ASSOCIATIONS SO THAT ALL MILK PRODUCERS
22 DELIVERING GRADE A MILK TO MILK HANDLERS IN THE MARKET AREA SHARE
23 EQUALLY, IN PROPORTION TO THEIR PRODUCTION OF GRADE A MILK DELIV-
24 ERED TO MILK HANDLERS IN THE MARKET AREA, THE AMOUNTS BY WHICH
25 THE OVER-ORDER PREMIUM PRICE FOR CLASS I MILK SET PURSUANT TO
26 THIS SECTION EXCEED THE APPLICABLE FEDERAL ORDER CLASS I MINIMUM
27 PRICE. THIS PAYMENT SHALL BE MADE BY THE SEVENTEENTH DAY OF EACH

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1 MONTH. THE BOARD OR ITS DESIGNATED AGENT MAY CONTRACT WITH A
2 BANK OR OTHER DEPOSITORY AUTHORIZED TO DO BUSINESS IN THIS STATE
3 OR WITH A CERTIFIED PUBLIC ACCOUNTANT FOR THE EQUALIZATION SERV-
4 ICES DESCRIBED IN THIS SUBSECTION. THE BOARD OR ITS DESIGNATED
5 AGENT SHALL RETAIN AN AMOUNT NOT TO EXCEED 1/4 CENT PER HUNDRED-
6 WEIGHT OF ALL MILK ACCOUNTED FOR UNDER THIS SECTION IN ORDER TO
7 ADMINISTER THIS SECTION IN THE MANNER THE BOARD CONSIDERS
8 NECESSARY.

9 (8) EVERY 5 YEARS AFTER THE ESTABLISHMENT OF A MARKET AREA,
10 THE DIRECTOR OF THE DEPARTMENT SHALL CONDUCT A REFERENDUM REGARD-
11 ING THE CONTINUATION OF THE OVER-ORDER PREMIUM PRICE IN THE
12 MARKET AREA. THE AFFECTED MILK PRODUCERS ARE CONSIDERED TO HAVE
13 ASSENTED TO THE CONTINUATION OF AN ASSESSMENT IMPOSED UNDER THIS
14 SECTION IF MORE THAN 50% BY NUMBER AND 50% BY PRODUCTION VOLUME
15 OF THOSE VOTING FAVOR THE CONTINUATION.

16 (9) NOT LATER THAN 24 MONTHS AFTER THE INITIAL ESTABLISHMENT
17 OR 5-YEAR RENEWAL PERIOD OF THE ESTABLISHMENT OF A MARKET AREA,
18 THE MILK PRODUCERS DESIRING THE TERMINATION OF THE OVER-ORDER
19 PREMIUM FOR CLASS I MILK TO BE PAID BY DEALERS IN THE MARKET AREA
20 MAY, IN ANY 90-DAY PERIOD, COLLECT AND SUBMIT SIGNATURES REQUEST-
21 ING A REFERENDUM REGARDING THE TERMINATION. THE DIRECTOR SHALL
22 ONLY CONDUCT THE REFERENDUM IF 35% OF THE MILK PRODUCERS BY
23 NUMBER AND 35% BY PRODUCTION VOLUME SIGN THE PETITION WITHIN THAT
24 90-DAY PERIOD. AFTER SUBMISSION OF THE PETITION TO AND VERIFICA-
25 TION BY THE DIRECTOR OF THE DEPARTMENT, THE DIRECTOR OF THE
26 DEPARTMENT SHALL CONDUCT THE REFERENDUM TO DETERMINE WHETHER THE
27 OVER-ORDER PREMIUM SHOULD BE TERMINATED. THE AFFECTED MILK

1 PRODUCERS ARE CONSIDERED TO HAVE ASSENTED TO THE TERMINATION OF
2 THE ASSESSMENT IF MORE THAN 50% BY NUMBER AND 50% BY PRODUCTION
3 VOLUME OF THOSE VOTING FAVOR TERMINATION.

4 (10) IN ANY REFERENDUM OR PETITION CONDUCTED UNDER THIS SEC-
5 TION, THE DIRECTOR SHALL ALLOW ONLY 1 SIGNATURE PER LICENSE AND
6 SHALL ALLOW ONLY 1 VOTE PER LICENSE. IF MORE THAN 1 SIGNATURE IS
7 SUBMITTED PER LICENSE, ALL SIGNATURES FOR THAT LICENSE ARE CON-
8 SIDERED INVALID.

9 SEC. 1C. IF ANY FEDERAL MARKETING ORDERS ARE RESCINDED BY
10 ACTION OF THE UNITED STATES DEPARTMENT OF AGRICULTURE OR BY COURT
11 ORDER, THE MICHIGAN COMMISSION OF AGRICULTURE, BY MAJORITY VOTE,
12 MAY DIRECT THE DIRECTOR OF THE DEPARTMENT TO ESTABLISH AND IMPLE-
13 MENT A PROCESS FOR THE CREATION OF A STATE MILK MARKETING ORDER.
14 IF SUCH AN ORDER IS CREATED, ANY PROCESS DEVELOPED SHALL INCLUDE
15 AT LEAST A REFERENDUM OF ALL AFFECTED MILK PRODUCERS AND SHALL
16 REQUIRE A 2/3 VOTE BY BOTH NUMBER AND PRODUCTION VOLUME.