

PROHIBIT INTERNET SALE OF HUMAN BREAST MILK

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House Bill 4691 (H-2) as reported from committee
Sponsor: Rep. Erika Geiss
Committee: Health Policy
Complete to 11-27-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4691 would amend the Food Law, which is administered by the Michigan Department of Agriculture and Rural Development (MDARD), to prohibit a person from knowingly selling, for valuable consideration, human breast milk over the Internet. That prohibition would apply only to person-to person direct sales and person-to person sales through classified advertisements. The bill would take effect 90 days after being enacted into law.

Under the Food Law, unless a specific penalty is provided, a person who violates any provision of the act or rules promulgated under the act is guilty of a misdemeanor, punishable by a fine of not less than \$250 or more than \$2,500, or by imprisonment for not more than 90 days, or both.

Proposed MCL 289.5106

FISCAL IMPACT:

MDARD currently has regulatory authority over state food safety and quality assurance programs. Program activities are authorized under the Food Law of 2000 (2000 PA 92). Appropriations for those activities in the 2016-17 fiscal year total \$14.0 million, with 93.0 authorized full-time equated positions. The department indicates that it anticipates limited, complaint-based activities related to the proposed human breast milk regulatory program. As a result, costs of administering the program are anticipated to be small and would be borne out of existing resources.

The bill adds a new misdemeanor. Misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Misdemeanor fines go to public libraries.

THE APPARENT PROBLEM:

This bill is understood to address sale of human milk on websites such as "Only the Breast," a site which uses a classified advertising format, on which nursing mothers can sell breast milk. These sites allow people to advertise milk from women with specific diets (gluten-free, vegan) or specific-aged children (based on the premise that breast milk provides

different nutrients based on the nursing child's age) for approximately \$1-3/oz. A baby's consumption peaks at about 30 ounces a day.

Breast milk is generally considered more nutritious for the child and as a protection against certain diseases, such as asthma, ear infections, and gastrointestinal distress. Because some women are unable to produce the necessary amount, there is a large and growing market for the sale of breast milk. However, critics say these websites operate with virtually no regulation, thus necessitating this bill.

ARGUMENTS:

For:

Although extensive research supports the health benefits of breast milk, especially for premature or ill infants, online marketplaces operate with virtually no regulation. Human milk sold online is not likely to be screened for infectious diseases, such as HIV, or contamination by nicotine, alcohol, prescription drugs, or illegal drugs. Also, it may not be handled using sanitized equipment and containers, stored at the correct temperature, or transported to ensure freshness.

Accordingly, the United States Food and Drug Administration¹ and the American Academy of Pediatrics (AAP)² recommend against feeding infants milk acquired over the internet. A 2013 study published in the AAP journal found that 74% of milk samples purchased over the internet for the study contained bacteria such as those colloquially referred to as staph, strep, salmonella, and E.coli.³ Approximately 10% also contained cow's milk.⁴ Consumption of cow's milk is not recommended until an infant is a year old.

Against:

Critics say that this bill interferes with the rights of people to contract freely. While \$1/oz for milk purchased from a website may seem expensive, it may be far less expensive than other options, given the pasteurization, screening, and transportation protocols in place for nonprofit milk banking companies. HMBANA charges hospitals a processing fee of \$4 to \$5 per ounce, a price it says does not always cover its costs. Moreover, that milk is allocated to the neediest babies first, especially premature or ill infants. This may leave the parents of healthy babies, or babies who do not need it as desperately, who are unable to secure breast milk for those babies, with little choice but to resort to the internet.

¹ U.S. Food and Drug Administration website, "Use of Donor Human Milk"

<http://www.fda.gov/ScienceResearch/SpecialTopics/PediatricTherapeuticsResearch/ucm235203.htm>

² Trisha Koriath, "Breast milk is best from mom or milk bank, not bought online" in AAP News, October 21, 2013, <http://www.aappublications.org/content/early/2013/10/21/aapnews.20131021-1>

³ Sarah A. Keim et al., "Microbial Contamination of Human Milk Purchased Via the Internet" <http://pediatrics.aappublications.org/content/pediatrics/early/2013/10/16/peds.2013-1687.full.pdf>

⁴ Sarah A. Keim et al., "Cow's Milk Contamination of Human Milk Purchased via the Internet" in PEDIATRICS Vol. 135, No. 5, May 2015, <http://pediatrics.aappublications.org/content/135/5/e1157.abstract?sid=65e79de4-92da-462a-8456-bbcd832f3dc8>

POSITIONS:

The following organizations support the bills:

Michigan Council for Maternal and Child Health (9-29-15)

Necrotizing Enterocolitis Society (9-29-15)

Black Mothers Breast Feeding Association (9-29-15)

Mothers' Milk Bank, Bronson Methodist Hospital—Kalamazoo (9-29-15)

American Academy of Pediatrics, Michigan Chapter (9-29-15)

Ascension Michigan (9-6-16)

American Association of University Women (9-6-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.