

Act No. 05
Public Acts of 1993
Approved by the Governor
March 16, 1993
Filed with the Secretary of State
March 17, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senator McManus

ENROLLED SENATE BILL No. 75

AN ACT to amend the title and sections 1, 2, 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 with respect to the security arrangements; to provide for certain milk containers and set standards for certain milk containers; to provide for uniform standards and uniform inspection; to fix penalties for violations; to provide for the transfer of personnel and the rights of transferred personnel; and to repeal certain acts and parts of acts," section 1 as amended by Act No. 142 of the Public Acts of 1981, section 2 as amended and sections 4a and 4b as added by Act No. 139 of the Public Acts of 1982, and section 9 as amended by Act No. 18 of the Public Acts of 1986, being sections 288.21, 288.22, 288.24a, 288.24b, and 288.29 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. The title and sections 1, 2, 4a, 4b, and 9 of Act No. 233 of the Public Acts of 1965, section 1 as amended by Act No. 142 of the Public Acts of 1981, section 2 as amended and sections 4a and 4b as added by Act No. 139 of the Public Acts of 1982, and section 9 as amended by Act No. 18 of the Public Acts of 1986, being sections 288.21, 288.22, 288.24a, 288.24b, and 288.29 of the Michigan Compiled Laws, are amended to read as follows:

TITLE

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.

Sec. 1. (1) The department of agriculture shall administer this act and shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, governing the production, transportation, processing, labeling, and sale of grade A milk and grade A milk products. Except as otherwise specifically defined or described in this act, the provisions of the 1989 edition of the grade A pasteurized milk

ordinance and administrative procedures and appendices, and the provisions of the 1989 grade A condensed and dry milk products and condensed and dry whey ordinance and administrative procedures and appendices from the 1989 recommendations as set forth in the public health service/United States food and drug administration publication number 229 are adopted and declared to be the law of this state. Where the words "regulatory agency" are used in these ordinances they are amended to read the "Michigan department of agriculture".

(2) Water for the milkhouse and milking operations and for milk plant purposes shall be from a supply properly located and protected, shall be easily accessible, adequate, and of a safe sanitary quality. Recommendations shall be made to the department of agriculture by the department of public health according to the safe drinking water act, Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws.

(3) The department shall promulgate rules to do the following:

(a) Require recommended last date of sale by month and date to appear on pasteurized fluid milk and milk products.

(b) Require that each processor establish his or her own recommended last date of sale based on his or her quality control information.

(c) Require that each processor's established last date of sale is such that the milk has not lost its nutritional value and no change in flavor can be detected by that date.

(d) Provide that the products may be sold after recommended last date of sale if so advertised to the consumer.

(e) Implement the requirements of subsection (2).

(4) The addition of vitamin A to lowfat milk and skim milk as provided for in appendix L of the 1989 edition of the grade A pasteurized milk ordinance and administrative procedures and appendices is optional, if the lowfat milk and skim milk are intended for sale solely in this state and provided that appropriate labeling on the cap or carton states that the product does not contain supplemental vitamin A. In addition, a person shall not sell lowfat milk or skim milk that does not contain supplemental vitamin A, unless a placard of not less than 8 by 10 inches printed in letters of not less than 14-point boldfaced type is posted prominently in the display area where the milk is offered for sale, which placard states the following: "This milk does not contain supplemental vitamin A, therefore does not meet federal requirements and should not ordinarily be consumed by infants".

Sec. 2. (1) There shall be paid to the department of agriculture the fees provided for in this section. The license shall be applied for on forms provided by the department of agriculture. The license shall be renewed annually and application for renewal made 10 days before expiration of the existing license. The anniversary of the license for purpose of renewal is 130 days after the close of the licensee's fiscal year. The department of agriculture may issue a temporary license.

(2) Each 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 or receiving station or transfer station, plus an additional \$10.00 per farm shipping to it if the milk plant or 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. This additional \$10.00 per farm fee shall not be levied if a cooperative association is doing the farm supervision for the milk plant operator. The license fee shall not be charged to the producer.

(3) Each milk plant that is a first receiving point for milk shall pay a \$50.00 licensing fee. This fee shall be in addition to the annual license fee required in subsection (2).

(4) Each milk distributor or grade A milk plant operator shall pay an annual fee of \$10.00 for each delivery vehicle operated. This fee shall be the sole distributor or vendor license fee required by the state or any subdivision of the state where the principal purpose of the vehicle is the delivery and distribution of the products defined in this act.

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

(6) 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 of agriculture under this section or under section 3d of Act No. 222 of the Public Acts of 1913, as amended, being section 288.103d of the Michigan Compiled Laws. The license fee shall be \$20.00. Every applicant for a license shall be examined by the department of agriculture 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. It is a violation of this act and any license issued under this act or section 3d of Act No. 222 of the Public Acts of 1913, as amended, may be revoked or suspended if the person licensed fails to agitate grade A milk in the farm bulk milk tank before taking a sample for delivery to the milk plant or the department, fails to take the sample for analysis in accordance with the procedures established by departmental rules, picks up grade A milk the temperature of which exceeds 45 degrees Fahrenheit, or fails to accurately report the weight or temperature of grade A milk picked up from a farm bulk milk tank.

(7) As used in this section, "person" means a natural person operating his or her own farm pickup milk tank or the farm pickup milk tank of another person, who is actually engaged in picking up milk in a farm pickup milk tank from farm bulk milk tanks.

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

(9) Other special license fees or taxes shall not be levied on any of the persons or businesses described in this section by the state or any subdivision of the state, except for taxes or fees that are generally levied on persons or businesses other than dairy plants and dairy plant operators.

Sec. 4a. (1) A license shall be granted under this act to a milk plant that is a first receiving point for milk if 1 of the following security arrangements is filed with the director of the department of agriculture:

(a) A current certified, audited financial statement prepared by a certified public accountant. The licensee shall also submit to the department of agriculture copies of new year end certified audits within 120 days of the licensee's year end. The certified audited statement shall verify the licensee's ability to meet minimum liquidity requirements of current assets to current liabilities which shall have a ratio of 1.2:1.

(b) A bond 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, for milk received; cash, in an amount not to exceed the value of the 30 days of highest milk receipts that the milk plant received during the most recent completed fiscal year or the value of the 30 days of highest milk receipts that the milk plant is anticipated to receive during the license period, whichever is higher; or other security acceptable to the department of agriculture, including, but not limited to, an irrevocable letter of credit less any offsetting balances owed by the producer to the milk plant. The bond or other security shall be payable to the department of agriculture and the cash shall be paid to the department of agriculture, for the benefit of the producers who would be damaged by a default in payment.

(c) An agreement in which the milk plant prepays for its milk supply, by providing cash payment not later than the time of delivery.

(2) Upon receipt or renewal of a license and any time the type of licensing is altered, the director of the department of agriculture shall notify each producer delivering milk to the plant of the financial basis on which the license was issued. The notice shall state the type and amount of security provided pursuant to this section.

(3) A milk plant that is a first receiving point for milk shall not receive milk which will increase the amount due and accrued from the plant to an amount greater than the amount represented as a basis for the issuance of the license, without first notifying the department of agriculture.

(4) This section shall not be construed to 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.

(5) 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, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(6) An individual milk producer or an agent of the producer shall, upon written request to the department of agriculture, be given a copy of the certified audited financial statement of a milk plant that is the first receiving point for the milk of that producer.

(7) An individual milk producer or an agent of the producer may file a written complaint with the department of agriculture requesting an audit of the ability of the milk plant that is the first receiving point for the milk of the individual producer to meet the minimum liquidity requirements pursuant to 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 an audit if required under subsection (8). Upon receipt of the complaint and check, the department of agriculture shall notify the appropriate milk plant and present to the milk plant the choice of either having an independent audit conducted, or voluntarily changing the security arrangement to either of the alternatives provided for in subsection (1)(b) or (c).

(8) If the milk plant requests an independent audit, the cost of that audit shall be borne by the milk plant if the audit shows an inability to meet minimum liquidity requirements as defined in subsection (1)(a) and the rules promulgated thereunder, or by the complainant if the milk plant meets the minimum liquidity requirements.

(9) If the milk plant fails to meet the minimum liquidity requirements, the department of agriculture shall, in conformance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, suspend or revoke the milk plant's license until such time as the milk plant meets the licensing 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.

(10) A licensee may request a change in its security arrangement at any time if all requirements for the new security arrangement have been met and all producers doing business with the licensee have been duly notified.

(11) The department of agriculture shall deny an application for or revoke a license of a milk plant that is a first receiving point for milk and that fails to provide 1 of the security arrangements provided for in subsection (1).

Sec. 4b. (1) A person injured by the breach of an obligation for which a security arrangement has been entered into pursuant to section 4a may file with the department of agriculture 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 of agriculture, 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 of agriculture. 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 of agriculture 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. The department of agriculture may request the department of attorney general to commence an action for that purpose in a court of competent jurisdiction. Upon receipt of the money to be applied to the satisfaction of a claim as provided in this section, the department of agriculture 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. 9. (1) Subject to subsection (3), any person who, alone or through his or her servant or agent, as the servant or agent of any other person, or as the officer, servant, or agent of any firm or corporation, violates any of the provisions of this act; ordinances adopted pursuant to this act; rule 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, or rule 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, 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.

(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 1989 pasteurized milk ordinance, the following sanctions and civil 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 participated in the milk and dairy beef quality assurance program within the 12 months immediately preceding the date of the violative sample, as evidenced by a properly signed completion certificate, \$200.00 of the fine will be suspended. The civil 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) The provisions of subsection (1) shall apply 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 1989 pasteurized milk ordinance, only under the following circumstances:

(a) The producer fails to pay the civil 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 civil fines imposed under subsection (2) shall be paid to the department of agriculture within 10 days after notification of the violation. The civil fines received by the department of agriculture 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.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.