

Act No. 91  
Public Acts of 1996  
Approved by the Governor  
February 25, 1996  
Filed with the Secretary of State  
February 27, 1996

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

**Introduced by Reps. Gernaat, Gnodtke, Hill, London, McManus, Harder, McBryde, Bobier, Oxender, Green, Wetters, Anthony, Alley, Middaugh, Goschka, Lowe, Gagliardi, Cropsey, Jellema, Dalman, Perricone, Bush, Walberg, Voorhees, Randall, Horton, Griffin, Baade and Llewellyn**

# **ENROLLED HOUSE BILL No. 5209**

AN ACT to amend sections 1, 2, 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," as amended by Act No. 5 of the Public Acts of 1993, being sections 288.21, 288.22, and 288.29 of the Michigan Compiled Laws; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Section 1. Sections 1, 2, and 9 of Act No. 233 of the Public Acts of 1965, as amended by Act No. 5 of the Public Acts of 1993, being sections 288.21, 288.22, and 288.29 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 1. (1) The department of agriculture shall administer this act and shall promulgate rules pursuant to 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, 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 grade A pasteurized milk ordinance-1993 recommendations of the United States public health service/food and drug administration, with administrative procedures and appendixes, set forth in the public health service/food and drug administration publication no. 229, and the provisions of the 1995 grade A condensed and dry milk products and condensed and dry whey— supplement I to the grade A pasteurized milk ordinance, 1995 recommendations 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 of agriculture 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 grade A pasteurized milk ordinance-1993 recommendations of the United States public health service/food and drug administration, with administrative procedures and appendices, set forth in the public health service/food and drug administration publication no. 229, 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) A person shall not produce, transport, process, label, or sell grade A milk and grade A milk products unless licensed under this section. An applicant for a license shall apply to the department of agriculture on a form supplied by the department of agriculture and pay the appropriate fee as provided in this section. A licensee may annually renew a license issued under this section by applying to the department of agriculture at least 10 days before the expiration of the existing license. The anniversary date of a license for a milk plant providing a current certified audited financial statement as a means of compliance with producer security requirements is 130 days after the close of the licensee's fiscal year, that date being determined by the records of the department of agriculture. The department of agriculture may issue a renewal license for a milk plant providing a current certified financial statement pending the department of agriculture's audit of that financial statement except that if the department of agriculture determines, after an audit of that financial statement, that the financial statement does not meet the producer security requirements, then the department of agriculture may summarily revoke the license without refunding the license fee. All other licenses issued under this section expire on June 30 following the date of issuance.

(2) Subject to subsection (3), 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 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. The department of agriculture shall not levy this additional \$10.00 per farm fee if a cooperative association is doing the farm supervision for the milk plant operator. The department of agriculture shall not charge the license fee to the producer.

(3) Each milk plant that is a first receiving point for milk shall pay a \$50.00 licensing fee. This fee is 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 is 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 regulated by 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, being section 288.103d of the Michigan Compiled Laws. The license fee is \$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. A license issued under this act or section 3d of Act No. 222 of the Public Acts of 1913 may be revoked or suspended if the person licensed does any of the following:

- (a) 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.
- (b) Fails to take the sample for analysis in accordance with the procedures established by departmental rules.

(c) Picks up grade A milk the temperature of which exceeds 45 degrees Fahrenheit.

(d) 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) The state or any subdivision of the state shall not levy special license fees or taxes on any 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.

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 grade A pasteurized milk ordinance, —1993 recommendations of the United States public health service/food and drug administration, 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 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 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) 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 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.

Section 2. Section 6 of Act No. 233 of the Public Acts of 1965, being section 288.26 of the Michigan Compiled Laws, is repealed.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.