



HOUSE BILL No. 5209

October 5, 1995, 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 and referred to the Committee on Agriculture and Forestry.

A bill to amend sections 1, 2, and 9 of Act No. 233 of the Public Acts of 1965, entitled as amended

"Fluid milk act 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; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 Sec. 1. (1) The department of agriculture shall administer
6 this act and shall promulgate rules pursuant to THE
7 ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the Public
8 Acts of 1969, ~~as amended,~~ being sections 24.201 to 24.328 of

1 the Michigan Compiled Laws, governing the production,
2 transportation, processing, labeling, and sale of grade A milk
3 and grade A milk products. Except as otherwise specifically
4 defined or described in this act, the provisions of the ~~1989~~
5 ~~edition of the grade A pasteurized milk ordinance and administra-~~
6 ~~tive procedures and appendices~~ GRADE A PASTEURIZED MILK
7 ORDINANCE-1993 RECOMMENDATIONS OF THE UNITED STATES PUBLIC HEALTH
8 SERVICE/FOOD AND DRUG ADMINISTRATION, WITH ADMINISTRATIVE PROCE-
9 DURES AND APPENDIXES, SET FORTH IN THE PUBLIC HEALTH SERVICE/FOOD
10 AND DRUG ADMINISTRATION PUBLICATION NO. 229, and the provisions
11 of the ~~1989~~ 1995 grade A condensed and dry milk products and
12 condensed and dry whey -- SUPPLEMENT I TO THE GRADE A PASTEURIZED
13 MILK ordinance, ~~and administrative procedures and appendices~~
14 ~~from the 1989 recommendations as set forth in the public health~~
15 ~~service/United States food and drugs administration publication~~
16 ~~number 229~~ 1995 RECOMMENDATIONS are adopted and declared to be
17 the law of this state. Where the words "regulatory agency" are
18 used in these ordinances they are amended to read the "Michigan
19 department of agriculture".

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

1 (3) The department OF AGRICULTURE shall promulgate rules to
2 do the following:

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

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

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

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

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

14 (4) The addition of vitamin A to lowfat milk and skim milk
15 as provided for in appendix L of the ~~1989 edition of the grade A~~
16 ~~pasteurized milk ordinance and~~ GRADE A PASTEURIZED MILK
17 ORDINANCE-1993 RECOMMENDATIONS OF THE UNITED STATES PUBLIC HEALTH
18 SERVICE/FOOD AND DRUG ADMINISTRATION, WITH administrative proce-
19 dures and appendices, SET FORTH IN THE PUBLIC HEALTH SERVICE/FOOD
20 AND DRUG ADMINISTRATION PUBLICATION NO. 229, is optional, if the
21 lowfat milk and skim milk are intended for sale solely in this
22 state and provided that appropriate labeling on the cap or carton
23 states that the product does not contain supplemental vitamin A.
24 In addition, a person shall not sell lowfat milk or skim milk
25 that does not contain supplemental vitamin A, unless a placard of
26 not less than 8 by 10 inches printed in letters of not less than
27 14-point boldfaced type is posted prominently in the ~~display~~

1 DISPLAY area where the milk is offered for sale, which placard
2 states the following: "This milk does not contain supplemental
3 vitamin A, therefore does not meet federal requirements and
4 should not ordinarily be consumed by infants".

5 Sec. 2. (1) ~~There shall be paid to the department of agri-~~
6 ~~culture the fees provided for in this section. The license shall~~
7 ~~be applied for on forms provided by the department of~~
8 ~~agriculture. The license shall be renewed annually and applica-~~
9 ~~tion for renewal made 10 days before expiration of the existing~~
10 ~~license. The anniversary of the license for purpose of renewal~~
11 ~~is 130 days after the close of the licensee's fiscal year. The~~
12 ~~department of agriculture may issue a temporary license~~ A PERSON
13 SHALL NOT PRODUCE, TRANSPORT, PROCESS, LABEL, OR SELL GRADE A
14 MILK AND GRADE A MILK PRODUCTS UNLESS LICENSED UNDER THIS
15 SECTION. AN APPLICANT FOR A LICENSE SHALL APPLY TO THE DEPART-
16 MENT OF AGRICULTURE ON A FORM SUPPLIED BY THE DEPARTMENT OF AGRI-
17 CULTURE AND PAY THE APPROPRIATE FEE AS PROVIDED IN THIS SECTION.
18 A LICENSEE MAY ANNUALLY RENEW A LICENSE ISSUED UNDER THIS SECTION
19 BY APPLYING TO THE DEPARTMENT OF AGRICULTURE AT LEAST 10 DAYS
20 BEFORE THE EXPIRATION OF THE EXISTING LICENSE. THE ANNIVERSARY
21 DATE OF A LICENSE FOR A MILK PLANT PROVIDING A CURRENT CERTIFIED
22 AUDITED FINANCIAL STATEMENT AS A MEANS OF COMPLIANCE WITH
23 PRODUCER SECURITY REQUIREMENTS IS 130 DAYS AFTER THE CLOSE OF THE
24 LICENSEE'S FISCAL YEAR, THAT DATE BEING DETERMINED BY THE RECORDS
25 OF THE DEPARTMENT OF AGRICULTURE. THE DEPARTMENT OF AGRICULTURE
26 MAY ISSUE A RENEWAL LICENSE FOR A MILK PLANT PROVIDING A CURRENT
27 CERTIFIED FINANCIAL STATEMENT PENDING THE DEPARTMENT OF

1 AGRICULTURE'S AUDIT OF THAT FINANCIAL STATEMENT EXCEPT THAT IF
2 THE DEPARTMENT OF AGRICULTURE DETERMINES, AFTER AN AUDIT OF THAT
3 FINANCIAL STATEMENT, THAT THE FINANCIAL STATEMENT DOES NOT MEET
4 THE PRODUCER SECURITY REQUIREMENTS, THEN THE DEPARTMENT OF AGRI-
5 CULTURE MAY SUMMARILY REVOKE THE LICENSE WITHOUT REFUNDING THE
6 LICENSE FEE. All other licenses issued under this section expire
7 on June 30 following the date of issuance.

8 (2) ~~Each~~ SUBJECT TO SUBSECTION (3), A milk plant, receiv-
9 ing station, or transfer station shall pay an annual fee of \$5.00
10 for each dairy farm whose milk is first received at the milk
11 plant or receiving station or transfer station, plus an addi-
12 tional \$10.00 per farm shipping to it if the milk plant or
13 receiving station or transfer station operator does not maintain
14 an adequate number of industry personnel who are certified to
15 conduct farm supervision and who do not in fact conduct farm
16 supervision. ~~This~~ THE DEPARTMENT OF AGRICULTURE SHALL NOT LEVY
17 THIS additional \$10.00 per farm fee ~~shall not be levied~~ if a
18 cooperative association is doing the farm supervision for the
19 milk plant operator. The DEPARTMENT OF AGRICULTURE SHALL NOT
20 CHARGE THE license fee ~~shall not be charged~~ to the producer.

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

24 (4) Each milk distributor or grade A milk plant operator
25 shall pay an annual fee of \$10.00 for each delivery vehicle
26 operated. This fee ~~shall be~~ IS the sole distributor or vendor
27 license fee required by the state or any subdivision of the state

1 where the principal purpose of the vehicle is the delivery and
2 distribution of the products ~~defined in~~ REGULATED BY this act.

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

5 (6) A person shall not pick up grade A milk in a farm pickup
6 milk tank from a farm bulk milk tank without a license issued by
7 the department of agriculture under this section or under section
8 3d of Act No. 222 of the Public Acts of 1913, ~~as amended,~~
9 being section 288.103d of the Michigan Compiled Laws. The
10 license fee ~~shall be~~ IS \$20.00. Every applicant for a license
11 shall be examined by the department of agriculture under the pro-
12 visions of this act and rules promulgated pursuant to this act to
13 determine his or her qualifications to evaluate milk in a farm
14 bulk milk tank, to accurately measure milk in a farm bulk milk
15 tank, to obtain representative samples of milk from a farm bulk
16 milk tank, to properly handle and deliver the samples, and to
17 pick up milk. ~~It is a violation of this act and any~~ A license
18 issued under this act or section 3d of Act No. 222 of the Public
19 Acts of 1913 ~~, as amended,~~ may be revoked or suspended if the
20 person licensed ~~fails~~ DOES ANY OF THE FOLLOWING:

21 (A) FAILS to agitate grade A milk in the farm bulk milk tank
22 before taking a sample for delivery to the milk plant or the
23 department. ~~, fails~~

24 (B) FAILS to take the sample for analysis in accordance with
25 the procedures established by departmental rules. ~~, picks up~~

26 (C) PICKS UP grade A milk the temperature of which exceeds
27 45 degrees Fahrenheit. ~~, or fails~~

1 (D) FAILS to accurately report the weight or temperature of
2 grade A milk picked up from a farm bulk milk tank.

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

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

10 (9) ~~Other~~ THE STATE OR ANY SUBDIVISION OF THE STATE SHALL
11 NOT LEVY special license fees or taxes ~~shall not be levied~~ on
12 any of the persons or businesses described in this section, ~~by~~
13 ~~the state or any subdivision of the state,~~ except for taxes or
14 fees that are generally levied on persons or businesses other
15 than dairy plants and dairy plant operators.

16 Sec. 9. (1) Subject to subsection (3), any person who,
17 alone or through his or her servant or agent, as the servant or
18 agent of any other person, or as the officer, servant, or agent
19 of any firm or corporation, violates any of the provisions of
20 this act; ordinances adopted pursuant to this act; rule no. 407
21 governing haulers' duties and prohibitions, cleaning and sanitiz-
22 ing milk pickup tanks and transport tanks, records, and samples,
23 qualifications of grade A plants for reduced licensing fees,
24 dairy farm requirements, milk sample handling and records; ~~—~~ or
25 rule no. 408 governing fluid milk and milk products, definitions,
26 last date of sale, time interval of date, flavor, and sale after
27 date which are in effect on December 30, 1980, is guilty of a

1 misdemeanor, punishable by a fine of not less than \$50.00 and not
2 more than \$500.00, or imprisonment for not more than 90 days, or
3 both.

4 (2) The director of the department of agriculture shall
5 impose upon a producer who violates this act by selling or offer-
6 ing for sale milk which has been found positive for drug residues
7 on a test performed pursuant to appendix N and section 7 of the
8 ~~1989~~ GRADE A pasteurized milk ordinance, --1993 RECOMMENDATIONS
9 OF THE UNITED STATES PUBLIC HEALTH SERVICE/FOOD AND DRUG
10 ADMINISTRATION, the following sanctions and civil fines:

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

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

16 (ii) The sum of \$300.00 to be paid to the department of
17 agriculture. If the producer has VOLUNTARILY participated in the
18 milk and dairy beef quality assurance program within the ~~12~~ 36
19 months immediately preceding the date of the violative sample, as
20 evidenced by a properly signed completion certificate, \$200.00 of
21 the fine will be suspended. The civil fine may be paid by the
22 milk buyer, if a like amount has been deducted from the
23 producer's milk check.

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

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

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

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

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

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

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

20 (3) ~~The provisions of subsection~~ SUBSECTION (1) ~~shall~~
21 ~~apply~~ APPLIES to a producer who violates this act by selling or
22 offering for sale milk which tests positive for drug residues on
23 a test performed pursuant to appendix N and section 7 of the
24 ~~1989~~ GRADE A pasteurized milk ordinance, --1993 RECOMMENDATIONS
25 OF THE UNITED STATES PUBLIC HEALTH SERVICE/FOOD AND DRUG
26 ADMINISTRATION, only under the following circumstances:

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

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

6 (4) The civil fines imposed under subsection (2) shall be
7 paid to the department of agriculture within 10 days after noti-
8 fication of the violation. The civil fines received by the
9 department of agriculture under subsection (2) shall be deposited
10 in the state general fund and shall be expended for the purpose
11 of enforcing this section.

12 Section 2. Section 6 of Act No. 233 of the Public Acts of
13 1965, being section 288.26 of the Michigan Compiled Laws, is
14 repealed.