

REPRINT

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4820

(As passed the Senate October 25, 2001)

A bill 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 dairy food safety; to provide for the sampling, sampling analysis, and transportation of milk and milk products; to regulate the labeling, manufacture, distribution, and sale of milk and milk products for the protection of the consuming public and to prevent fraud and deception by prohibiting the misbranding, adulteration, manufacture, distribution, and sale of milk and milk products; to provide for enforcement; to provide for licenses and permits and revocation of licenses and permits; to impose certain fees; to require certain security arrangements of milk plants to ensure the prompt payment of producers; to prescribe powers and duties of certain state departments and

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officers; to provide for uniform standards and uniform inspection; to provide for promulgation of rules; to provide for certain remedies and penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 ARTICLE 1

2 Sec. 1. This act shall be known and may be cited as the
3 "grade A milk law of 2001".

4 Sec. 2. As used in this act:

5 (a) "Adulterated" means food or milk to which any of the
6 following apply:

7 (i) It bears or contains any poisonous or deleterious sub-
8 stance that may render it injurious to health except that, if the
9 substance is not an added substance, the food or milk is not con-
10 sidered adulterated if the quantity of that substance in the food
11 or milk does not ordinarily render it injurious to health.

12 (ii) It bears or contains any added poisonous or added dele-
13 terious substance, other than a substance that is a pesticide
14 chemical in or on a raw agricultural commodity; a food additive;
15 or a color additive considered unsafe within the meaning of sub-
16 paragraph (v).

17 (iii) It is a raw agricultural commodity that bears or con-
18 tains a pesticide chemical considered unsafe within the meaning
19 of subparagraph (v).

20 (iv) It bears or contains any food additive considered
21 unsafe within the meaning of subparagraph (v) provided that where

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1 a pesticide chemical has been used in or on a raw agricultural
2 commodity in conformity with an exemption granted or tolerance
3 prescribed under subparagraph (v) and the raw agricultural com-
4 modity has been subjected to processing the residue of that pes-
5 ticide chemical remaining in or on that processed food is, not-
6 withstanding the provisions of subparagraph (v) and this subdivi-
7 sion, not be considered unsafe if that residue in or on the raw
8 agricultural commodity has been removed to the extent possible in
9 good manufacturing practice and if the concentration of that res-
10 idue in the processed food when ready to eat is not greater than
11 the tolerance prescribed for the raw agricultural commodity.

12 (v) Any added poisonous or deleterious substance, any food
13 additive, and pesticide chemical in or on a raw agricultural com-
14 modity, or any color additive is considered unsafe for the pur-
15 pose of application of this definition, unless there is in effect
16 a federal regulation or exemption from regulation under the fed-
17 eral act, meat inspection act, poultry product inspection act, or
18 other federal acts, or a rule adopted under this act limiting the
19 quantity of the substance, and the use or intended use of the
20 substance, and the use or intended use of the substance conforms
21 to the terms prescribed by the rule.

22 (vi) It is or contains a new animal drug or conversion pro-
23 duct of a new animal drug that is unsafe within the meaning of
24 section 512 of the federal act.

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1 (vii) It consists in whole or in part of a diseased,
2 contaminated, filthy, putrid, or decomposed substance or it is
3 otherwise unfit for food.

4 (viii) It has been produced, prepared, packed, or held under
5 insanitary conditions in which it may have become contaminated
6 with filth or in which it may have been rendered diseased,
7 unwholesome, or injurious to health.

8 (ix) It is the product of a diseased animal or an animal
9 that has died other than by slaughter or that has been fed
10 uncooked garbage or uncooked offal from a slaughterhouse.

11 (x) Its container is composed, in whole or in part, of any
12 poisonous or deleterious substance that may render the contents
13 injurious to health.

14 (xi) A valuable constituent has been in whole or in part
15 omitted or abstracted from the food; a substance has been substi-
16 tuted wholly or in part for the food; damage or inferiority has
17 been concealed in any manner; or a substance has been added to
18 the food or mixed or packed with the food so as to increase its
19 bulk or weight, reduce its quality or strength, or make it appear
20 better or of greater value than it is.

21 (xii) It is confectionery and has partially or completely
22 imbedded in it any nonnutritive object except in the case of any
23 nonnutritive object if, as provided by rules, the object is of
24 practical functional value to the confectionery product and would
25 not render the product injurious or hazardous to health; it bears
26 or contains any alcohol other than alcohol not in excess of 1/2
27 of 1% by volume derived solely from the use of flavoring

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1 extracts; or it bears or contains any nonnutritive substance
2 except a nonnutritive substance such as harmless coloring, harm-
3 less flavoring, harmless resinous glaze not in excess of 4/10 of
4 1%, harmless natural wax not in excess of 4/10 of 1%, harmless
5 natural gum and pectin or to any chewing gum by reason of its
6 containing harmless nonnutritive masticatory substances which is
7 in or on confectionery by reason of its use for some practical
8 functional purpose in the manufacture, packaging, or storage of
9 such confectionery if the use of the substance does not promote
10 deception of the consumer or otherwise result in adulteration or
11 misbranding in violation of the provisions of this act. For the
12 purpose of avoiding or resolving uncertainty as to the applica-
13 tion of this subdivision, the director may issue rules allowing
14 or prohibiting the use of particular nonnutritive substances.

15 (xiii) It is or bears or contains any color additive that is
16 unsafe within the meaning of subparagraph (v).

17 (xiv) It has been intentionally subjected to radiation,
18 unless the use of the radiation was in conformity with a rule or
19 exemption under this act or a regulation or exemption under the
20 federal act.

21 (xv) It is bottled water that contains a substance at a
22 level higher than allowed under this act.

23 (b) "Approved laboratory" means a laboratory that is listed
24 in the IMS list of sanitation compliance and enforcement ratings
25 of interstate milk shippers distributed by the United States food
26 and drug administration and as approved by the director.

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1 (c) "Approved sample container" means a presterilized,
2 suitable nontoxic single service container of adequate size that
3 complies with the requirements of standard methods.

4 (d) "Audited financial statement" means a fiscal year end
5 financial statement prepared by a certified public accountant
6 according to generally accepted accounting principles.

7 Sec. 3. As used in this act:

8 (a) "Bulk milk hauler/sampler" means any person who collects
9 official samples and may transport raw milk from a farm or raw
10 milk products to or from a milk plant, receiving station, or
11 transfer station and has in his or her possession a license or
12 permit issued by the department to sample those products.

13 (b) "Bulk milk pickup tanker" means a vehicle, including
14 truck, tank, and those appurtenances necessary for its use, used
15 by a bulk milk hauler/sampler to transport bulk raw milk for pas-
16 teurization from a dairy farm to a milk plant, receiving station,
17 or transfer station.

18 (c) "Department" means the Michigan department of
19 agriculture.

20 (d) "Director" means the director of the Michigan department
21 of agriculture or his or her designee.

22 (e) "Distributor" means a person other than a producer or
23 processor who offers for sale or sells to another for resale at
24 retail milk or milk products. A distributor's facilities include
25 warehousing, refrigerated storage, and distribution vehicles.

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1 (f) "Farm tank" means the farm bulk milk tank, milk tank
2 truck, or silo used for the storage or cooling, or both, of milk
3 prior to pickup and transport from the farm.

(g) "Federal act" means the federal food, drug, and cosmetic
act, chapter 675, 52 Stat. 1040, 21 U.S.C. 301 to 321, 331 to 333,
334 to 343-3, 344 to 346a, 347, 348 to 356c, 358 to 360, 360b to
360dd, 360hh to 360oo, 360rr to 363, 371 to 376, and 378 to 397.

4 (h) "First receiving point" means the milk plant where the
5 milk is first received for processing and manufacturing. First
6 receiving point for producer security requirements does not
7 include receiving stations and transfer stations.

8 (i) "Grade A milk" means milk or milk products produced in
9 substantial compliance with the requirements of this act.

10 Sec. 4. As used in this act:

11 (a) "Imminent or substantial health hazard" means a determi-
12 nation of the director of either or both of the following:

13 (i) A condition that exists at a dairy farm or dairy plant
14 requiring immediate action to prevent endangering the public
15 health or safety.

16 (ii) A milk product may be unwholesome or unsafe.

17 (b) "Label" means a display of written, printed, or graphic
18 matter upon the immediate container of any article conforming to
19 a requirement imposed under this act that any word, statement, or
20 other information appearing on the label appears on the outside
21 container or wrapper of the retail package of the article or be
22 easily legible through the outside container or wrapper.

23 (c) "Labeling" means all labels and other written, printed,
24 or graphic matter upon an article or any of its containers or
25 wrappers or accompanying the article.

26 (d) "Milk buyer" means any producer, milk producer marketing
27 organization, milk plant, receiving station, transfer station, or

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1 bulk milk hauler that either takes delivery of raw milk or raw
2 milk product or manages the sale of the raw milk or raw milk pro-
3 duct, or both.

4 (e) "Milk plant" means any place, premises, or establishment
5 where milk or milk products are collected, handled, processed,
6 stored, pasteurized, aseptically processed, bottled, or prepared
7 for distribution.

8 (f) "Milk product" means cream, light cream, light whipping
9 cream, heavy cream, heavy whipping cream, whipped cream, whipped
10 light cream, sour cream, acidified sour cream, cultured sour
11 cream, half-and-half, sour half-and-half, acidified sour
12 half-and-half, cultured sour half-and-half, reconstituted or
13 recombined milk and milk products, concentrated milk, concen-
14 trated milk products, skim milk, lowfat milk, frozen milk concen-
15 trate, eggnog, buttermilk, cultured milk, cultured lowfat milk,
16 cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidi-
17 fied milk, acidified lowfat milk, acidified skim milk, low-sodium
18 milk, low-sodium lowfat milk, low-sodium skim milk,
19 lactose-reduced milk, lactose-reduced lowfat milk,
20 lactose-reduced skim milk, aseptically processed and packaged
21 milk, milk products with added safe and suitable microbial organ-
22 isms, and any other milk product made by the addition or subtrac-
23 tion of milkfat or addition of safe and suitable optional ingre-
24 dients for protein, vitamin, or mineral fortification. Unless a
25 product is considered a milk product under this subdivision, milk
26 product does not include dietary products, infant formula, ice

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1 cream or other desserts, cheese, or butter. Milk products
2 include the following:

3 (i) Those dairy foods made by modifying the federally stan-
4 dardized products described in this section in accordance with 21
5 C.F.R. 130.10.

6 (ii) Those milk and milk products that have been aseptically
7 processed and then packaged.

8 (iii) Those products that have been retort processed after
9 packaging or that have been concentrated, condensed, or dried
10 only if they are used as an ingredient to produce any milk or
11 milk product or if they are grade A IMS listed.

12 Sec. 5. As used in this act:

13 (a) "Milk tank truck" means both a bulk milk pickup tanker
14 and a milk transport tank.

15 (b) "Milk tank truck cleaning facility" means any place,
16 premises, or establishment, separate from a milk plant, receiving
17 station, or transfer station where a milk tank truck is cleaned
18 and sanitized.

19 (c) "Milk tank truck driver" means any person who transports
20 raw or pasteurized milk products to or from a milk plant, receiv-
21 ing station, or transfer station.

22 (d) "Milk transportation company" means the company that is
23 the person responsible for a milk tank truck.

24 (e) "Milk transport tank" means a vehicle, including the
25 truck and tank, used by a bulk milk hauler/sampler to transport
26 bulk shipments of milk from a milk plant, receiving station, or

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1 transfer station to another milk plant, receiving station, or
2 transfer station.

3 (f) "Offering for sale" means selling, offering to sell,
4 holding for sale, preparing for sale, trading, bartering, offer-
5 ing as a gift as an inducement for sale of, and advertising for
6 sale in any media.

7 (g) "Other security" means a mutually acceptable producer
8 security agreement, acceptable to the director, approved and
9 signed by the milk buyer and all milk sellers selling milk to
10 that milk buyer.

11 Sec. 6. As used in this act:

12 (a) "Pasteurized milk ordinance" or "PMO" means the
13 2001 edition of the grade A pasteurized milk ordinance, recommen-
14 dations of the United States department of health and human
15 services, public health service/food and drug
16 administration, with administrative procedures and appendices,
17 set forth in the public health service/food and drug administra-
18 tion publication no. 229, and the provisions of the 1995 grade A
19 condensed and dry milk products and condensed and dry
20 whey-supplement I to the grade A pasteurized milk ordinance, with
21 administrative procedures and appendices.

22 (b) "Person" means an individual, partnership, company,
23 limited liability company, cooperative, association, firm, trust-
24 ee, educational institution, state or local government unit, or
25 corporation.

26 (c) "Processor" means the owner or operator of a milk
plant.

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1 (d) "Producer" means a person who owns or operates a dairy
2 farm and sells or distributes milk produced on that farm
3 including a person who markets milk on behalf of another producer
4 pursuant to a marketing agreement.

5 (e) "Receiving station" means any place, premises, or estab-
6 lishment where raw milk is received, collected, handled, stored,
7 or cooled and is prepared for further transporting.

8 (f) "Sample transfer instrument" means any of the
9 following:

10 (i) Individually wrapped, sterile, single-service sampling
11 tubes.

12 (ii) Stainless steel metal dippers, with long handles having
13 capacities of 10 milliliters or greater.

14 (iii) Sampling devices approved by the director.

15 (g) "Sanitary standards" means the dairy equipment construc-
16 tion standards or accepted dairy system operating practices for-
17 mulated by 1 of the following:

18 (i) 3-A sanitary standards committees representing the
19 international association for food protection, the United States
20 public health service, the United States department of agricul-
21 ture, and the dairy industry committee as approved by the
22 director.

23 (ii) If sanitary standards are not available for a particu-
24 lar piece of equipment, general sanitary construction standards
25 for dairy equipment formulated by the United States department of
26 agriculture or the food and drug administration as approved by
27 the director.

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1 are used in these ordinances, they are amended to read the
2 "Michigan department of agriculture".

3 (2) Water for the milkhouse and milking operations and for
4 milk plant purposes shall be from a supply properly located and
5 protected and shall be easily accessible, adequate, and of a safe
6 sanitary quality. Recommendations shall be made to the depart-
7 ment by the department of environmental quality according to the
8 safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

9 Sec. 21. (1) A political subdivision of the state shall not
10 impose any different standards or requirements for grade A milk
11 and grade A milk products other than those provided for in this
12 act and shall not prohibit the sale of grade A milk and grade A
13 milk products if produced and processed as grade A milk under
14 supervision of the department. The director shall furnish copies
15 of its inspection reports on any dairy farm producing grade A
16 milk to a purchaser of grade A milk from that farm upon written
17 request.

18 (2) A sanitary standard or similar requirement issued under
19 this act shall not prohibit the sale of grade A milk or grade A
20 milk products that are produced or processed under laws or rules
21 of a governmental unit, outside the state, that are substantially
22 equivalent to the requirements of the rules promulgated under
23 this act and which are enforced with equal effectiveness, as
24 determined by the director, if the governmental unit accepts
25 Michigan grade A milk and milk products certified by a Michigan
26 sanitation rating officer.

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Sub. HB 4820 (S-2) as amended December 12, 2001

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1 Sec. 22. The director, after proper identification, is
2 authorized and has the power to enter all dairy farms, milk
3 plants, single service manufacturing facilities, milk tank truck
4 cleaning facilities, receiving stations, transfer stations, dis-
5 tribution facilities, vehicles used to transport milk and milk
6 products, and single service manufacturers under its jurisdiction
7 for the purpose of inspecting, sampling, and investigating condi-
8 tions relating to the enforcement of this act.

9 Sec. 23. The director may seize or hold for investigation
10 any milk, milk product, or equipment that the director has reason
11 to believe is adulterated, constitutes or may be contributing to
12 an imminent health hazard, or violates this act. Such milk, milk
13 products, or equipment shall not be disposed of until a release
14 is secured from the director. The director shall complete his or
15 her action on any such seized item within a reasonable time, and
16 the farm, plant, or station shall be promptly notified of the
17 director's decision. The director may collect and retain evi-
18 dence to verify the determination of an imminent health hazard.

19 Sec. 24. (1) Whenever the director finds in any dairy farm,
[dairy plant,]
20 receiving station, transfer station, or vehicle any milk, milk
21 product, or other product that contains any unwholesome substance
22 or that may be poisonous or deleterious to health or otherwise
23 unsafe, such milk, milk product, or other product shall be
24 declared by the director as an imminent health hazard. The
25 director shall condemn, destroy, or in any other manner render
26 the same unsalable as human food.

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1 (2) A person shall not remove a condemnation or seizure tag
2 attached to any container of condemned milk or milk product and
3 shall not transfer condemned milk to another container and sell
4 or offer for sale the condemned milk for human consumption.

5 (3) Any dairy animals that are officially classified as
6 tuberculosis reactors as defined in title 9 of the code of fed-
7 eral regulations and the bovine tuberculosis eradication: uni-
8 form methods and rules, effective January 22, 1999, approved by
9 veterinary services of the animal plant health inspection service
10 of the United States department of agriculture, and all amend-
11 ments to those publications thereafter adopted pursuant to rules
12 that the director may promulgate, shall be milked last or in sep-
13 arate equipment and the milk from these dairy animals shall not
14 be used or sold for human or animal consumption.

15 Sec. 25. (1) The fluid milk act of 1965, 1965 PA 233,
16 MCL 288.21 to 288.29a, is repealed effective 30 days after enact-
17 ment of this act.

18 (2) R 285.408.1 to R 285.408.5 of the Michigan administra-
19 tive code are repealed effective 30 days after enactment of this
20 act.

21 ARTICLE III

22 Sec. 30. (1) A person shall not produce, transport, wash
23 milk tank trucks, process, label, or sell grade A milk and grade
24 A milk products and shall not manufacture single service contain-
25 ers and closures unless licensed or permitted under this act.
26 The director may issue a temporary license or permit. State
27 agencies operating dairy facilities under a memorandum of

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1 understanding with the department are not required to be licensed
2 or permitted under this act and are not required to provide
3 producer security under this act.

4 (2) An applicant for an initial grade A dairy farm permit
5 shall complete education, acceptable to the director, on drug
6 residue avoidance control measures, as identified in the pasteur-
7 ized milk ordinance, prior to receiving the permit.

8 (3) The director shall examine the books, records, and
9 accounts of a milk plant if the milk plant has not responded to
10 requests from the director pursuant to section 31 or article IV.
11 All examinations of books, records, and accounts required under
12 this subsection shall be made within this state.

13 (4) All applicants for a permit or license must complete an
14 application provided by the department and meet the minimum
15 requirements of this act, the pasteurized milk ordinance, and
16 rules promulgated under this act.

17 Sec. 31. (1) An applicant for an initial license as a milk
18 plant shall apply to the department on a form supplied by the
19 department and provide a statement containing the following:

20 (a) The milk plant's correct legal name and any name by
21 which the milk plant is doing business. If the milk plant is a
22 person not an individual, the name of each officer and director,
23 and partner, member, or owner owning in excess of 35% of equity
24 or stock.

25 (b) The location of the milk plant to which the statement
26 pertains and the name of the responsible person who may be
27 contacted at that location.

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1 (c) The anticipated value of greatest milk receipts the milk
2 plant expects to receive during a consecutive 30-day period
3 within the licensing period.

4 (d) A list of producers, including names, mailing addresses,
5 and department producer permit number, with whom the milk plant
6 intends to do business except that not later than 90 days after
7 becoming licensed for the first time, the milk plant shall send
8 an updated list to the department.

9 (e) The name of the financial institution through which milk
10 checks are to be issued to producers.

11 (2) A milk plant shall annually renew a license issued under
12 this act by applying to the department at least 30 days prior to
13 the expiration of the existing license. The anniversary date of
14 a license for a milk plant that is providing a financial state-
15 ment as a security device is 130 days after the close of the
16 licensee's fiscal year. The milk plant shall apply for renewal
17 of a license on a form supplied by the department and provide a
18 statement containing the following:

19 (a) The milk plant's correct legal name and any name by
20 which the milk plant is doing business. If the milk plant is a
21 person not an individual, the name of the each officer and direc-
22 tor, and partner, member, or owner owning in excess of 35% of
23 equity or stock.

24 (b) The location of the milk plant to which the statement
25 pertains and the name of the responsible person who may be con-
26 tacted at that location.

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1 (c) The greater of either the value of greatest milk
2 receipts that the milk plant received within a consecutive 30-day
3 period during its last license year or the greatest milk receipts
4 that the milk plant is anticipated to receive during a consecu-
5 tive 30-day period within the licensing period.

6 (d) A complete list of producers, including names, mailing
7 addresses, and department producers permit number, with whom the
8 milk plant is doing business.

9 (e) The name of the financial institution through which milk
10 checks are issued to producers.

11 (3) Each milk plant shall pay a \$175.00 annual licensing or
12 permitting fee, and additionally, an annual fee of \$5.00 for each
13 dairy farm whose milk is received at the milk plant, receiving
14 station, or transfer station, plus an additional \$10.00 per farm
15 shipping to it if the milk plant, receiving station, or transfer
16 station operator does not maintain an adequate number of industry
17 personnel, as determined by the director, who are approved to
18 conduct certified industry farm inspections. The department
19 shall not levy this additional \$10.00 per farm fee if a coopera-
20 tive association is conducting the certified industry farm pro-
21 gram for the milk plant operator. The department shall only
22 charge the dairy farm license fee to the producer if the producer
23 is not assigned to a milk plant that pays the annual fee required
24 by this subsection for the producer. Any such unassigned
25 producer shall be charged a handling fee of \$5.00 plus an addi-
26 tional \$10.00 if certified industry farm inspectors are not
27 assigned to the farm.

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1 Sec. 32. (1) Each certified industry farm inspector shall
2 pay a 3-year license fee of \$60.00 for a license to conduct cer-
3 tified farm inspections. An initial license fee may be prorated
4 in 6-month increments at \$10.00 per increment. License renewal
5 shall take place on the completion date of the 3-year
6 certification.

7 (2) Certified industry farm inspectors must comply with the
8 requirements for certified inspectors listed in the pasteurized
9 milk ordinance and, in addition, shall conduct both of the
10 following:

11 (a) A farm inspection of all producers having the first rou-
12 tine count exceeding legal standards for bacteria or somatic
13 cells, or both.

14 (b) One routine inspection per year of all producers, with a
15 copy of each required inspection forwarded to the local area
16 dairy inspector.

17 (3) Certified industry farm inspectors may perform official
18 inspections, only with authorization by the director.

19 Sec. 33. (1) Each receiving station or transfer station
20 must be licensed or permitted either as part of a milk plant or
21 as a stand-alone facility. Each stand-alone facility will be
22 licensed or permitted at a rate of \$50.00 per year. License
23 renewal shall take place on June 30 every year.

24 (2) Each milk tank truck cleaning facility that cleans milk
25 contact surfaces of milk tank trucks used to haul milk or milk
26 products regulated under this act must be licensed or permitted
27 under this act either as part of a milk plant, receiving station,

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1 or transfer station or a stand-alone milk tank truck cleaning
2 facility. A licensing or permitting fee shall not be charged
3 under this act for a milk tank truck cleaning facility that is a
4 part of a dairy plant, receiving station, or transfer station
5 licensed or permitted under the manufacturing milk law of 2001.
6 Each stand-alone facility will be licensed or permitted at a rate
7 of \$50.00 per year. License renewal shall take place on June 30
8 every year.

9 (3) Each milk transportation company must be licensed or
10 permitted under this act at a rate of \$20.00 per year. License
11 renewal shall take place on June 30 every year.

12 (4) Each milk tank truck must be licensed or permitted under
13 this act at a rate of \$10.00 per year. License renewal shall
14 take place on June 30 every year.

15 (5) Each distributor who is primarily engaged in the distri-
16 bution of finished grade A milk products must be licensed or per-
17 mitted under this act either as part of a milk plant or as a
18 stand-alone distributor. Each stand-alone distribution facility
19 is licensed at a rate of \$50.00 per year. License renewal shall
20 take place on June 30 every year.

21 (6) Each single service containers and closures manufacturer
22 must be licensed or permitted under this act either as part of a
23 milk plant or as a stand-alone manufacturer. Each stand-alone
24 facility will be licensed at a rate of \$50.00 per year. License
25 renewal shall take place on June 30 every year.

26 (7) A person shall not pick up grade A milk in a farm pickup
27 milk tank from a farm bulk milk tank without a hauler/sampler

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1 license issued by the department under this section. Each
2 applicant for a license shall be examined by the director under
3 the provisions of this act to determine his or her qualifications
4 to evaluate milk in a farm bulk milk tank, to accurately measure
5 milk in a farm bulk milk tank, to obtain representative samples
6 of milk from a farm bulk milk tank, to properly handle and
7 deliver the samples, and to pick up milk. The license fee is
8 \$40.00 for 2 years. An initial license fee may be prorated in
9 6-month increments at \$10.00 per increment. A hauler/sampler
10 licensed or permitted in another state shall apply for a license
11 from the department without examination after submitting satis-
12 factory proof of training and current licensing in another state
13 to the department with the license fee and application, unless
14 this requirement is waived by the director based on reciprocal
15 agreements with individual states. The director may deny license
16 renewal to any bulk milk hauler/sampler if the bulk milk
17 hauler/sampler has not had a satisfactory evaluation of their
18 hauler/sampler methods in the previous 2 years. License renewal
19 shall take place on June 30 every 2 years.

20 Sec. 34. The director may issue a temporary license or
21 permit for activities regulated by this act if the director
22 determines that issuance of the license or permit will not be
23 detrimental to the protection of the public health, safety, or
24 welfare or will not cause an imminent threat of financial loss to
25 producers.

26 Sec. 35. A political subdivision of the state shall not
27 levy special license fees or taxes on 1 or more of the persons or

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1 businesses described in this article except for taxes or fees
2 that are generally levied on persons or businesses other than
3 milk plants and milk plant operators.

4 ARTICLE IV

5 Sec. 40. (1) A person purchasing milk for resale or manu-
6 facture into another product shall pay the producer in a manner
7 and on dates set by the United States department of agriculture
8 milk market administrator or as mutually agreed upon by the
9 producers, the milk plant, and the department. The department shall
10 revoke or deny a
11 license issued under this act for a violation of this
12 subsection.

13 (2) A person purchasing milk for resale or manufacture into
14 another product shall not issue a check for payment to the
15 producer unless the name of the person issuing the check is noted
16 on the check.

17 Sec. 41. The department shall revoke or deny a license for
18 a milk plant if the licensee or applicant fails to provide 1 of
19 the security devices required as a condition to issuance and
20 maintenance of a license. As a condition to issuance and mainte-
21 nance of a license, a milk plant that is a first receiving point
22 for milk shall provide 1 or more of the security devices
23 described in section 42, 43, or 44. Milk plants that receive milk
24 only from dairy farms under the same ownership as the milk plant
25 are exempt from the requirements of this section.

26 Sec. 42. (1) A licensee or applicant for a license as a
27 milk plant not providing a security device under section 43 or 44
28 shall provide an audited fiscal year end financial statement
29 prepared by a certified public accountant according to generally

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1 accepted accounting principles and a quarterly verified financial
2 statement that verifies the licensee's ability to meet the ratio
3 of 1.20:1 for minimum liquidity requirements of current assets to
4 current liabilities.

5 (2) The audited financial statement, to be filed by the
6 licensee not later than 120 days after the close of the
7 licensee's fiscal year, shall contain a balance sheet, income
8 statement, equity statement, statement of cash flow, notes to the
9 statements, and any other information required by the
10 department. The department may extend the date for filing the
11 audited year end financial statement by up to 30 days only upon
12 the written request of the milk plant or the milk plant's accoun-
13 tant preparing the statement if the request is made not less than
14 10 days before the deadline for the filing of the statement. The
15 request shall state the reason for the delay.

16 (3) The verified quarterly financial statement shall be
17 filed within 60 days after the end of the fiscal quarter to which
18 the statement pertains. The verified quarterly financial state-
19 ment shall include, but not be limited to, a balance sheet,
20 income statement, and any other information required by the
21 department. The department may require a milk plant to file a
22 supplementary or interim financial statement or provide addi-
23 tional information at any time pertaining to the financial state-
24 ments filed under this subsection or to specific information
25 requests made by the department. In determining whether the milk
26 plant has met the minimum liquidity requirement described in this
27 subsection in an audited or verified financial statement, the

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1 department shall exclude all intangible assets and assets the
2 department determines to be of doubtful value and may also
3 exclude nontrade notes; accounts receivable from officers, direc-
4 tors, employees, partners, or stockholders or from members of
5 their families; and notes and accounts receivable from parent
6 organizations, subsidiaries, or affiliates if the department
7 determines them to be of doubtful value.

8 (4) An applicant for a license that has not been in the
9 business of receiving milk during the preceding 12 months shall
10 only provide a security device other than an audited financial
11 statement for at least the initial 12 months of licensed
12 operation. At the end of the initial 12-month period, the
13 department may allow the milk plant to utilize an audited finan-
14 cial statement as a security device if the statement meets mini-
15 mum liquidity requirements of this subsection and if the milk
16 plant is otherwise in compliance with this act.

17 Sec. 43. (1) A licensee or applicant for a license as a
18 milk plant not providing a security device under section 42 or 44
19 shall provide any of the following forms of security, in a form
20 and subject to terms and conditions considered necessary by the
21 department, for the benefit of producers who may be damaged by a
22 default in payment, the value of which shall be in an amount
23 determined by the department to be the greater of the value of
24 the greatest milk receipts that the milk plant has received
25 within a consecutive 30-day period during that milk plant's most
26 recent fiscal year or the value of the greatest milk receipts

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1 that the milk plant is anticipated to receive during a
2 consecutive 30-day period within the licensing period:

3 (a) A commercial surety bond made payable to the department
4 on a form provided by or acceptable to the department and subject
5 to cancellation only after written notice to the department at
6 least 90 days before cancellation. The commercial surety bond
7 shall be issued by a surety company authorized to do business in
8 this state and conditioned upon the faithful and proper discharge
9 of the duty to pay a producer, when payment is due as provided
10 for in section 40, for milk received by the milk plant.

11 (b) A certificate of deposit or money market certificate
12 that is issued or endorsed to the department and that cannot be
13 canceled or redeemed, or from which funds cannot be transferred
14 or withdrawn, without the written authorization of the
15 department. The certificate shall be from a financial institu-
16 tion authorized to do business in this state whose deposits are
17 federally insured.

18 (c) Stocks, bonds, or securities acceptable to the depart-
19 ment that are issued or endorsed to the department and readily
20 convertible to cash by the department and subject to redemption
21 or sale only upon written permission of the department.

22 (d) An irrevocable letter of credit filed as security on a
23 form provided by or acceptable to the department with the depart-
24 ment and made payable to the department issued by a financial
25 institution acceptable to the department and licensed to do busi-
26 ness in this state. The letter of credit shall provide for
27 automatic renewal unless, at least 90 days before the scheduled

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1 renewal date, the issuing financial institution gives written
2 notice received by the department that the letter of credit is
3 not to be renewed. The irrevocable letter of credit shall pro-
4 vide that in the event the financial institution gives timely
5 notice of nonrenewal as set forth in this subdivision, the
6 department is permitted to draw on the letter of credit to cover
7 any potential losses, whether known or unknown at the time of the
8 draw, that have been or may be incurred on behalf of the
9 producers. The money drawn from the letter of credit shall be
10 held in an interest-bearing account by the department. Money in
11 the account in excess of the total dollar amount of the approved
12 claims after an adequate time period to discover and approve or
13 disapprove claims shall be repaid to the bank. The excess money
14 is to be paid to the milk plant if the bank has provided the
15 department with a waiver of payment to the bank and has autho-
16 rized payment to the dairy plant on a form approved by the
17 department.

18 (e) Life insurance policies acceptable to the department
19 that are issued or endorsed to the department that prohibit the
20 insurer from making any payment to the policy beneficiaries
21 unless the insurer first pays the equivalent of the cash surren-
22 der value to the department and provides that the cash surrender
23 value is paid to the department upon cancellation or surrender of
24 the policy.

25 (f) Other security acceptable to the department.

26 (2) The department may request information from the office
27 of financial and insurance services of the department of consumer

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1 and industry services regarding the financial viability of the
2 financial or insurance institution issuing any security device
3 described in subsection (1).

4 Sec. 44. A licensee or applicant for licensure as a milk
5 plant not providing a security device under section 42 or 43
6 shall provide an agreement in which the milk plant prepays for
7 its milk supply by means of cash payments before or at the time
8 of delivery of milk products.

9 Sec. 45. (1) A milk plant shall not cancel or modify a
10 security device unless written notice is given to the department
11 by the milk plant at least 90 days before the date of cancella-
12 tion or modification and approval is given by the department for
13 the cancellation or modification. The milk plant shall send the
14 notice of cancellation or modification to the department by cer-
15 tified mail.

16 (2) A milk plant that is a first receiving point for milk
17 shall notify the department at least 30 days before receiving
18 milk that will increase the amount due and accrued from the milk
19 plant to an amount greater than the amount represented as a basis
20 for the issuance of the license.

21 (3) Sections 41 to 46 and 48 do not apply to the sale of
22 milk or milk products in interstate commerce to an out-of-state
23 purchaser not licensed under this act. The protection provided
24 by these sections is available to a producer in another state
25 selling milk products to a licensee in this state.

26 (4) Except as otherwise provided for in subsection (5),
27 financial and product information filed by a milk plant that is a

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1 first receiving point for milk is not subject to disclosure under
2 the freedom of information act, 1976 PA 442, MCL 15.231 to
3 15.246.

4 (5) Upon receipt of a written request, the department shall
5 provide a producer a copy of the most recent audited financial
6 statement of the milk plant that is a first receiving point for
7 milk of that producer.

8 (6) A producer may file a written complaint with the depart-
9 ment requesting an independent audit regarding the ability of a
10 milk plant that files an audited financial statement as a secur-
11 ity device and that is the first receiving point for milk of the
12 producer to meet the minimum liquidity requirement described in
13 section 42. The complaint shall be accompanied by a certified
14 check in the amount of \$100.00 and a signed document guaranteeing
15 full payment for the audit if required under subsection (7).
16 Upon receipt of the complaint and check, the department shall
17 notify the milk plant and advise the milk plant of the choice of
18 either having an independent audit conducted or of voluntarily
19 modifying the security device to either of the alternatives pro-
20 vided for in section 43 or 44.

21 (7) A milk plant that requests an independent audit under
22 subsection (6) shall bear the cost of that audit if the depart-
23 ment determines that the independent audit establishes the milk
24 plant's inability to meet the minimum liquidity requirement
25 described in section 42. The complainant shall bear the cost of
26 the audit if the department determines that the audit establishes

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1 that the milk plant meets the minimum liquidity requirement
2 described in section 42.

3 (8) If the milk plant fails to meet the minimum liquidity
4 requirement described in section 42, the department shall return
5 to the complainant the fee described in subsection (6) and sus-
6 pend or revoke the milk plant's license in the manner provided
7 for in section 50 or 51. The department may reinstate a sus-
8 pended license or reissue a revoked license if the milk plant
9 provides the department with a security device described in
10 section 43 or 44. If the department determines that the milk
11 plant meets the minimum liquidity requirement described in
12 section 42, the \$100.00 fee shall be forfeited to the milk
13 plant.

14 Sec. 46. (1) A milk plant may request a change in its
15 security device at any time. The department shall allow the
16 change in the milk plant's security device if all requirements
17 for the new security device have been met and all producers doing
18 business with the licensee have been notified by the department.

19 (2) The department may require a milk plant to provide a
20 change or increase in a security device if the department has
21 reason to believe, after reviewing relevant financial informa-
22 tion, that 1 or more of the following circumstances exist:

23 (a) The milk plant no longer meets the minimum liquidity
24 requirement of this act.

25 (b) The milk plant can no longer make payments in the manner
26 provided for in section 40.

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1 (c) The value of the milk plant's security device falls
2 below the requirements due to depreciation in the value of the
3 security, an increase in the maximum liability to producers, or
4 the cancellation or change of the security device as specified in
5 this act.

6 (3) The department shall send written notice by certified
7 mail to the milk plant stating the reasons for the demand for
8 change or increase in a security device and setting the date for
9 providing the changed or increased security device.

10 (4) The department shall notify all producers shipping milk
11 to a milk plant of the decision to require the milk plant to
12 modify or change a security device. The notice required under
13 this subsection shall be provided within 5 days after the
14 department's issuance of the order to require another security
15 device.

16 Sec. 47. (1) A person injured by the breach of an obliga-
17 tion secured by a security device described in section 42, 43, or
18 44, including, but not limited to, a producer and a person repre-
19 senting a commodity check-off program, may file with the depart-
20 ment a verified proof of claim or other evidence of default.
21 Upon receipt of a verified proof of claim or other evidence of
22 default, the department may issue an order requiring each inter-
23 ested creditor, as may be known to the department, to file a ver-
24 ified proof of claim before a certain date or be barred from par-
25 ticipating in any recovery made by the department.

26 (2) The department shall provide notice of the entry of an
27 order issued under subsection (1) by posting a copy of the order

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1 on the premises described in the license and by publication in
2 accordance with the Michigan court rules that govern service of
3 process by publication. Publication shall be completed at least
4 30 days before the final date for the filing of claims.

5 (3) The department shall make the necessary audit and issue
6 an order allowing or disallowing each claim presented. Within
7 30 days of that order, the department shall send to the principal
8 and surety, by certified mail, notice of allowance or disallow-
9 ance and request for the payment. The department shall demand
10 and may collect and receive from the licensee, or from the surety
11 or sureties of the licensee, the amount determined to be neces-
12 sary to satisfy the claims with interest at the judgment rate
13 computed from the date of loss. The department may request that
14 the department of attorney general commence an action for that
15 purpose in a court of competent jurisdiction. If the attorney
16 general prevails in whole or in part, the court shall award
17 interest from the date of loss at the judgment rate. Upon
18 receipt of money paid in partial or complete satisfaction of a
19 claim as provided in this section, the department shall distrib-
20 ute to the claimant in accordance with the order allowing the
21 claim, in full or proportionally.

22 (4) This section does not affect or impair any other lien,
23 security, or priority for the claim or judgment.

24 Sec. 48. The department shall notify producers delivering
25 milk to a licensed milk plant any time a license is issued,
26 renewed, or modified. The notice sent by the department shall
27 substantially conform to the following:

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1 "Michigan law requires milk plant licensees to demonstrate a
2 reasonable degree of financial responsibility to the Michigan
3 department of agriculture. This act is designed to provide rea-
4 sonable assurance that producers will be paid for their milk;
5 however, it does not guarantee that producers will be paid. Each
6 producer has some responsibility for determining the
7 credit-worthiness of the milk plant to which the producer is
8 selling milk. A milk plant licensee may qualify for a license by
9 doing 1 of the following:

10 (a) Filing financial statements audited by a certified
11 public accountant with the department demonstrating that
12 the milk plant meets the minimum liquidity requirement.

13 (b) Filing security with the department in an amount
14 determined by the department to be the greater of the
15 following:

16 (1) The value of the greatest milk receipts that the
17 milk plant received within a consecutive 30-day period
18 during that milk plant's most recent fiscal year.

19 (2) The greatest milk receipts that the milk plant is
20 anticipated to receive during a 30-day period within
21 the licensing period.

22 (c) _____, (Name of milk plant licensee) is
23 currently licensed on the basis of its audited financial
24 statement meeting the minimum liquidity requirement of a
25 current ratio of at least 1.20 to 1 current assets to cur-
26 rent liabilities. The licensee's most recent year-end
27 financial statement audited by the firm of

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1 _____ (auditor's name) meets the following

2 minimum liquidity requirement,

3 (or)

4 _____ (name of milk plant licensee) has

5 filed security with the department to secure payment to

6 producers. The maximum amount of security is the amount

7 determined to be the greater of the following:

8 (1) The value of the greatest milk receipts that the

9 milk plant received within a consecutive 30-day period

10 during that milk plant's most recent fiscal year.

11 (2) The greatest milk receipts that the milk plant is

12 anticipated to receive within a 30-day period within

13 the licensing period, whichever is greater.

14 The security filed is in the following form or forms and

15 in the amount of: _____

16 _____

17 _____".

18 **ARTICLE V**

19 Sec. 50. (1) The director may revoke or suspend the license

20 or permit of a licensee or permittee issued under this act or

21 impose an administrative fine under section 53 for failure to

22 comply with the requirements of this act, the pasteurized milk

23 ordinance, or a rule promulgated under this act. A license or

24 permit shall be revoked or suspended according to the administra-

25 tive procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

26 (2) The department shall notify in writing each producer

27 with whom a milk plant does business regarding the pendency of

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1 the administrative action not less than 5 days before the date
2 for the formal hearing set under subsection (1).

3 (3) The director may revoke or suspend a license or permit
4 issued under this act, or impose an administrative fine pursuant
5 to section 53, upon determining that the licensee or permittee
6 has done 1 or more of the following:

7 (a) Failed to provide supplementary or interim information
8 or information required to be supplied to the department under
9 this act or information requested by the director under article
10 III or IV.

11 (b) Failed to provide a security device in the amount and
12 manner required by the director under article IV.

13 (c) Knowingly provided false or fraudulent information or
14 made a material misrepresentation on an application.

15 (d) Knowingly provided false or fraudulent information or
16 made a material misrepresentation in response to a request for
17 information by the department.

18 (e) Failed to pay a producer in the manner provided in sec-
19 tion 40.

20 (f) Failed to agitate milk in the farm bulk milk tank before
21 taking a sample for delivery to the milk plant or the
22 department.

23 (g) Failed to take the sample for analysis in accordance
24 with the procedures set forth in the pasteurized milk ordinance,
25 standard methods, and this act.

26 (h) Picked up grade A milk the temperature of which exceeds
27 45 degrees Fahrenheit (7 degrees Celsius).

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

3 (j) In the case of a milk plant, failed to provide a secur-
4 ity device described in article IV.

5 (k) Adulterated milk or milk products.

6 (l) Failed to pay a final civil or administrative fine
7 issued under this act.

8 (m) Violated this act, the pasteurized milk ordinance
9 adopted under this act, or a rule promulgated under this act.

10 (4) The director may summarily suspend a license or permit
11 issued under this act upon determining that the licensee or per-
12 mittee has done 1 or more of the following:

13 (a) Offered for sale or sold milk or milk products from dis-
14 eased animals, or animals otherwise considered abnormal, that
15 have been incorporated with milk or milk products from normal
16 healthy animals.

17 (b) Offered for sale or sold milk or milk products suspected
18 of contamination with any substance considered by the department
19 to be an imminent or substantial health hazard.

20 (c) Offered for sale or sold milk or milk products from pro-
21 duction, transportation, packaging, or storage facilities that
22 have such an accumulation of trash, rubbish, dirt, insects,
23 vermin, human or animal wastes, or spoiled milk or milk products
24 that precludes the reasonable protection of the milk or milk pro-
25 ducts from contamination.

26 (d) Offered for sale or sold milk or milk products produced
27 in equipment with a significant portion of the milk contact

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1 surfaces covered with an accumulation of residues that were left
2 after having gone through a cleaning regimen and that are thick
3 enough that they may be easily scraped to form a body of solids.

4 (e) Offered for sale or sold milk or milk products stored in
5 a container of unapproved construction.

6 (f) Received or picked up milk or milk products stored in a
7 container of unapproved construction.

8 (g) Offered for sale or sold milk or milk products produced
9 from dairy animals with a majority of the milking herd with an
10 excessive accumulation of manure on the flanks, bellies, or
11 udders that precludes the reasonable protection of the milk from
12 contamination during the milking process.

13 (h) Offered for sale or sold milk that was of inadequate
14 volume to properly agitate after the first milking.

15 (i) Offered for sale or sold milk or milk products produced
16 with excessive sediment.

17 (j) Interfered with inspection of milk or milk products.

18 (k) Maintained dead animals on the premises in a manner
19 inconsistent with 1982 PA 239, MCL 287.651 to 287.683.

20 (l) Maintained a minimum of 3 of the last 5 official bac-
21 teria counts illegal.

22 (m) Maintained a minimum of 3 of the last 5 official somatic
23 cell counts illegal.

24 (n) Maintained a minimum of 3 of the last 5 official milk or
25 milk product cooling temperatures illegal.

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1 (o) Failed to provide milk or milk products free of
2 violative drug residues based on tests approved by the food and
3 drug administration.

4 (p) Any other condition that creates an imminent threat to
5 the public health, safety, or welfare.

6 (5) When the director suspends a license or permit under
7 subsection (4), the licensee or permittee shall be allowed a min-
8 imum of 72 hours to regain compliance and reinstatement of the
9 license or permit prior to scheduling an administrative hearing.

10 Sec. 51. (1) A person whose license or permit has been sus-
11 pended, revoked, or denied shall immediately discontinue opera-
12 tion of the business for which the license or permit was issued
13 or requested.

14 (2) A person whose license or permit has been suspended or
15 revoked is not eligible for reinstatement of the license or
16 permit until the director determines that all violations have
17 been corrected.

18 (3) If the department has provided notice to a licensee or
19 permittee as required by the administrative procedures act of
20 1969, 1969 PA 306, MCL 24.201 to 24.328, and subsequently deter-
21 mines that summary suspension of the licensee's or permittee's
22 license or permit is necessary to prevent an imminent threat of
23 financial loss to 1 or more producers with whom the licensee or
24 permittee does business, the director may summarily suspend the
25 licensee's or permittee's license or permit. The director shall
26 incorporate the determination in his or her order of summary
27 suspension. This summary suspension may be ordered effective on

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1 the date specified in the order or the date of service upon the
2 licensee, whichever is later, and is effective during the
3 proceedings. The proceedings shall be promptly commenced and
4 determined.

5 Sec. 52. A person, alone or through an agent, as the agent
6 of any other person, or as the officer or agent of any firm or
7 corporation, who does any of the following is guilty of a misde-
8 meanor punishable by a fine of not less than \$250.00 and not more
9 than \$2,500.00 or imprisonment for not more than 90 days, or
10 both:

11 (a) Violates this act, the pasteurized milk ordinance
12 adopted under this act, or a rule promulgated under this act.

13 (b) Provides false or fraudulent information on an applica-
14 tion or in response to a request from the director.

15 Sec. 53. (1) The director shall impose upon a producer who
16 violates this act by selling or offering for sale milk which has
17 been found positive for violative drug residues on a test per-
18 formed pursuant to the pasteurized milk ordinance, the following
19 sanctions and administrative fines and provide notice and the
20 opportunity for an administrative hearing:

21 (a) The following in the case of a first violative drug res-
22 idue within a 12-month period:

23 (i) The producer's milk shall not be offered for sale until
24 a subsequent sample of the producer's milk tests negative for
25 violative drug residues at an approved laboratory.

26 (ii) The producer shall pay an administrative fine equal to
27 the lost value of the milk on the entire contaminated load and

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1 any costs associated with the disposition of that load. The
2 administrative fine shall be paid directly to the milk buyer.
3 The department shall be provided with written notification of the
4 payment. Written notification shall also be provided to the
5 department of the date and location of the disposal of the entire
6 contaminated load. Where a producer markets their own load of
7 milk, the producer shall provide written notification to the
8 department of the date and location of the disposal of the entire
9 contaminated load. If the producer's violative shipment did not
10 cause partial or total loss of a load of milk as determined by an
11 approved drug residue test, the producer shall pay an administra-
12 tive fine of \$300.00 to the department. The milk buyer may pay
13 the administrative fine, if a like amount has been deducted from
14 the producer's milk check.

15 (b) The following in the case of a second violative drug
16 residue within a 12-month period:

17 (i) The producer's milk shall not be offered for sale until
18 a subsequent sample of the producer's milk tests negative for
19 violative drug residues at an approved laboratory.

20 (ii) The producer shall pay an administrative fine equal to
21 the lost value of the milk on the entire contaminated load and
22 any costs associated with the disposition of that load. The
23 administrative fine shall be paid directly to the milk buyer.
24 The department shall be provided with written notification of the
25 payment. Written notification shall also be provided to the
26 department of the date and location of the disposal of the entire
27 contaminated load. Where a producer markets their own load of

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1 milk, the producer shall provide written notification to the
2 department of the date and location of the disposal of the entire
3 contaminated load. If the producer's violative shipment did not
4 cause partial or total loss of a load of milk as determined by an
5 approved drug residue test, the producer shall pay an administra-
6 tive fine of \$600.00 to the department. The milk buyer may pay
7 the administrative fine, if a like amount has been deducted from
8 the producer's milk check.

9 (iii) The producer will be required to test all milk prior
10 to shipment with a drug residue test acceptable to the director
11 for a minimum of 12 months and must retain records of these tests
12 for a minimum of 18 months.

13 (iv) The producer will be required to maintain complete drug
14 treatment records for all lactating or near lactating dairy ani-
15 mals for a minimum of 12 months and must retain records of these
16 treatments for a minimum of 18 months.

17 (c) The following in the case of a third or any additional
18 violative drug residue within a 12-month period:

19 (i) The producer's milk shall not be offered for sale until
20 a subsequent sample of the producer's milk tests negative for
21 violative drug residues at an approved laboratory.

22 (ii) The producer shall pay an administrative fine equal to
23 the lost value of the milk on the entire contaminated load and
24 any costs associated with the disposition of that load. The
25 administrative fine shall be paid directly to the milk buyer.
26 The department shall be provided with written notification of the
27 payment. Written notification shall also be provided to the

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1 department of the date and location of the disposal of the entire
2 contaminated load. Where a producer markets its own load of
3 milk, the producer shall provide written notification to the
4 department of the date and location of the disposal of the entire
5 contaminated load. If the producer's violative shipment did not
6 cause partial or total loss of a load of milk as determined by an
7 approved drug residue test, the producer shall pay an administra-
8 tive fine of \$1,200.00 to the department. The milk buyer may pay
9 the administrative fine, if a like amount has been deducted from
10 the producer's milk check.

11 (iii) The suspension of the producer's permit for a period
12 not to exceed 60 days after notice and the opportunity for an
13 administrative hearing before the department.

14 (iv) The producer will be required to test all milk prior to
15 shipment with a drug residue test acceptable to the director for
16 a minimum of 12 months and must retain records of these tests for
17 a minimum of 18 months.

18 (v) The producer will be required to maintain complete drug
19 treatment records for all lactating or near lactating dairy ani-
20 mals for a minimum of 12 months and must retain records of these
21 treatments for a minimum of 18 months.

22 (2) The director may accept verification, on forms accept-
23 able to the director, from the violative producer's milk market-
24 ing cooperative or purchaser of milk as satisfying the penalty
25 requirements and may verify the information.

26 (3) The disposal method and location of disposal for
27 violative drug residue milk on the milk tank truck shall be

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1 immediately reported to the director, by the party making the
2 disposal, on forms provided by and acceptable to the director.

3 (4) The director shall investigate the cause of the viola-
4 tive drug residue and shall discuss drug residue avoidance control
5 measures, as outlined in the pasteurized milk ordinance, with the
6 violative producer.

7 (5) Selling or offering for sale milk which has been found
8 positive for violative drug residues is determined by either of
9 the following criteria:

10 (a) When milk is picked up from a producer by a milk tank
11 truck and not commingled with milk from other producers, the milk
12 becomes subject to possible drug residue penalties at the point
13 the milk tank truck leaves the farm with the milk.

14 (b) When milk is picked up from a producer by a milk tank
15 truck and commingled with milk from other producers, it becomes
16 subject to possible drug residue penalties at the point of
17 commingling.

18 (6) Section 52 applies to a producer who violates this act
19 by selling or offering for sale milk which tests positive for
20 violative drug residues on a test performed pursuant to the pas-
21 teurized milk ordinance only under either of the following
22 circumstances:

23 (a) The producer fails to pay the administrative fine
24 required by subsection (1) in compliance with subsections (8) and
25 (9).

26 (b) The producer has been fined under subsection (1) within
27 the preceding 12-month period 3 or more times.

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1 (7) After notice and an opportunity for an administrative
2 hearing pursuant to the administrative procedures act of 1969,
3 1969 PA 306, MCL 24.201 to 24.328, the director may revoke or
4 suspend a license or permit issued under this act for any viola-
5 tion of this act or a rule promulgated under this act. Except as
6 otherwise provided for under subsection (1), upon finding that a
7 person violated a provision of this act or rule promulgated under
8 this act, the director may impose an administrative fine of not
9 more than \$1,000.00 and the actual costs of the investigation of
10 the violation.

11 (8) The administrative fines imposed under subsection (1) or
12 (7) shall be paid to the department within 10 days after notifi-
13 cation of the violation or within 10 days after notification of
14 adverse findings following a hearing or appeal, or both. The
15 administrative fines received by the department under subsection
16 (1) shall be deposited in the general fund and shall be appropri-
17 ated for the purpose of the training or education of producers in
18 management procedures to avoid drug residue contamination, and
19 administrative fines received pursuant to subsection (7) shall be
20 deposited in the general fund.

21 (9) Failure to pay a load contamination or any other admin-
22 istrative fine imposed under this section within 120 days without
23 making acceptable arrangements for payment of the fine may result
24 in license revocation or permit suspension or court action, fol-
25 lowing notice and the opportunity for an administrative hearing.

26 (10) The director shall advise the attorney general of the
27 failure of any person to pay an administrative fine imposed under

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1 this section. The attorney general shall bring an action in a
2 court of competent jurisdiction to recover the fine.

3 (11) A decision of the director under this section is
4 subject to judicial review as provided by law.

5 (12) This section does not require the director to issue an
6 administrative fine or initiate court action for minor violations
7 of this act whenever the department believes that the public
8 interest will be adequately served under the circumstances by a
9 suitable written notice or warning.

10 Sec. 54. In addition to the remedies otherwise provided in
11 this act, the department may apply to circuit court to grant a
12 temporary or permanent injunction restraining any person from
13 violating this act or any rule promulgated pursuant to this act,
14 irrespective of whether there exists an adequate remedy at law.

15 ARTICLE VI

16 Sec. 60. Packaged milk products shall be labeled as speci-
17 fied in the pasteurized milk ordinance and in the food law of
18 2000, 2000 PA 92, MCL 289.1101 to 289.8111.

19 Sec. 61. (1) A bulk milk hauler/sampler shall not take milk
20 from a farm tank without first determining that the farmer has a
21 valid permit if a permit is required. Milk shall be picked up
22 from only an approved farm tank, constructed to sanitary stan-
23 dards with agitation and cooling except as approved in writing by
24 the director on a case-by-case basis.

25 (2) A bulk milk hauler/sampler shall pick up only milk that
26 appears to be normal and does not contain off odors or visible
27 foreign material and that has been stored on the farm for no more

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1 than 72 hours. Goat milk may be stored up to 7 days in a farm
2 tank if properly cooled. Sheep milk may be frozen for storage.

3 (3) A bulk milk hauler/sampler shall not record or report
4 inaccurately a milk measurement taken in the farm tank. A mea-
5 surement shall be made with a measuring gauge that is clean and
6 wiped dry with a sanitary towel or by any other measuring method
7 meeting the requirements of section 65(3).

8 (4) After measuring the milk in the farm tank, the bulk milk
9 hauler/sampler shall promptly, accurately, and legibly record the
10 following information on the pickup record:

11 (a) The gauge or stick reading.

12 (b) The converted gauge or stick reading in pounds.

13 (c) The date and time of pickup.

14 (d) The milk producer's name and permit number.

15 (e) The temperature of the milk from an accurate
16 thermometer.

17 (f) The bulk milk hauler/sampler's identification, including
18 the bulk milk hauler/sampler's name or initials and department
19 issued hauler/sampler identification number.

20 (g) The assigned "bulk tank unit" (BTU) number.

21 (5) A bulk milk hauler/sampler shall provide the original
22 copy of the pickup record to the milk buyer and a duplicate copy,
23 or other record acceptable to the director, to the producer.

24 (6) A milk tank truck driver engaged in direct farm pickup
25 has direct responsibility for accompanying official samples.

26 Sec. 62. (1) During a pickup, a bulk milk hauler/sampler
27 shall take a sanitarily collected representative sample from each

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1 farm tank after the tank is agitated for not less than 5 minutes
2 and for not less than 10 minutes for tanks over 1,500 gallons or
3 for such additional time as may be recommended by the tank manu-
4 facturer or the director, so as to obtain a representative
5 sample.

6 (2) A sample dipper shall be rinsed by the bulk milk
7 hauler/sampler at least twice in the milk prior to transferring
8 the sample to the approved sample container.

9 (3) Sample transfer instruments shall be used by bulk milk
10 hauler/samplers that are of sanitary construction, clean, and
11 sterile, or which are sanitized with approved sanitizers and pro-
12 tected from contamination prior to each use.

13 (4) A bulk milk hauler/sampler shall take a temperature con-
14 trol sample of the milk at the bulk milk hauler/sampler's first
15 sampling point and shall place it in the refrigerated, insulated
16 transport case with the first official sample.

17 (5) The bulk milk hauler/sampler shall identify the tempera-
18 ture control sample with the hauler/sampler identification, time,
19 temperature, date, producer permit number, and letters "T.C.".

20 (6) A bulk milk hauler/sampler shall not sample milk in the
21 farm tank during emptying.

22 (7) A bulk milk hauler/sampler shall not sample milk in the
23 farm tank with a sample container or any other unapproved trans-
24 fer instrument or sampling device.

25 (8) A bulk milk hauler/sampler shall place producer milk
26 samples into approved sample containers only. The sample

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1 containers shall be properly protected and handled to prevent
2 contamination.

3 (9) A bulk milk hauler/sampler shall place milk only in
4 sample containers that are legibly marked with the following:

5 (a) The milk producer's permit number.

6 (b) The date of pickup.

7 (c) The route number.

8 (d) Temperature.

9 (10) The bulk milk hauler/sampler shall store the milk sam-
10 ples in an approved manner to protect the samples from contamina-
11 tion inside a refrigerated, insulated transport case that is kept
12 tightly covered until the samples are delivered to the transfer
13 point, laboratory, or other destination.

14 (11) The hauler shall maintain milk samples in a temperature
15 range of 32 degrees Fahrenheit (0 degree Celsius) to 40 degrees
16 Fahrenheit (4.4 degrees Celsius).

17 Sec. 63. (1) A bulk milk hauler/sampler shall not adulter-
18 ate milk in the farm tank or the milk tank truck.

19 (2) There shall be no partial removal of milk from the farm
20 tank by the bulk milk hauler/sampler except that partial pickups
21 may be permitted when the farm tank is equipped with a 7-day
22 recording device complying with the specifications of pasteurized
23 milk ordinance appendix H, or another recording device acceptable
24 to the department, provided that the farm milk tank shall be
25 cleaned and sanitized when empty and shall be emptied at least
26 every 72 hours. In the absence of a temperature recording
27 device, partial pickups may be permitted as long as the farm tank

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1 is completely empty, clean, and sanitized before the next
2 milking. In the event of emergency situations, seasonal weight
3 restrictions, or the overflow of the milk tank truck, partial
4 pickups will be allowed.

5 (3) A bulk milk hauler/sampler shall carry an accurate,
6 approved dial-type or electronic thermometer with him or her on
7 the route and shall not pickup milk from a farm tank which
8 exceeds the maximum temperature allowed by law.

9 (4) A bulk milk hauler/sampler shall keep his or her sample
10 transfer instrument and sample transport case clean and in good
11 repair.

12 (5) A bulk milk hauler/sampler shall use the hose port pro-
13 vided for him or her in the milkhhouse for accommodation of the
14 pickup milk hose.

15 (6) A bulk milk hauler/sampler shall comply with the
16 requirements of appendix B of the pasteurized milk ordinance,
17 incorporated herein by reference.

18 Sec. 64. (1) The milk transportation company shall be
19 responsible for maintaining the tank and milk contact surfaces of
20 a milk tank truck clean and in good repair. Milk or milk pro-
21 ducts shall not be placed in such tanks unless the tanks have
22 been properly cleaned and sanitized at a milk plant, receiving
23 station, transfer station, or other licensed milk tank truck
24 cleaning facility.

25 (2) Suitable facilities for cleaning and milk contact sur-
26 faces of the milk tank trucks shall be provided and the washing
27 and sanitizing of the tanks shall be carried out by the receiving

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1 milk plant, transfer station, receiving station, or other
2 licensed milk tank truck cleaning facility. The milk transporta-
3 tion company representative or the bulk milk hauler/sampler shall
4 be responsible for cleaning the hose, pump, and valves. After
5 the cleaning and sanitizing operation is completed, a representa-
6 tive of the milk tank truck cleaning facility shall provide a
7 suitable record identifying who washed the milk tank truck, the
8 license or permit identification number of the milk tank truck,
9 the date, and the location of the facility. The milk transporta-
10 tion company representative or the bulk milk hauler/sampler,
11 after inspection of the tank, shall indicate on the record that
12 the tank has been cleaned to that person's satisfaction. A copy
13 of this record shall be kept with the vehicle until it is washed
14 and sanitized again.

15 (3) A bulk milk hauler/sampler operating a bulk milk pickup
16 tanker may make more than 1 trip daily without cleaning and sani-
17 tizing the bulk milk pickup tanker. The bulk milk pickup tanker
18 shall be cleaned and sanitized after the final trip of the day,
19 each day of use.

20 (4) A milk transport tank shall be cleaned and sanitized
21 each time the tank is emptied.

22 (5) Milk may be picked up in the milk tank truck on the
23 return trip to the bulk milk hauler/sampler's home if the milk
24 tank truck is cool enough to maintain the milk placed in it at or
25 below the legal storage temperature and if the pickup hose and
26 pump are washed and sanitized at a licensed wash facility or at a

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1 cleaning facility approved in writing by the director on a
2 case-by-case basis.

3 (6) A milk tank truck may be used to haul potable water, or
4 other wholesome liquid food products, if the milk contact sur-
5 faces are properly cleaned and sanitized prior to picking up raw
6 milk. Certain pasteurized products, as specified in the pasteur-
7 ized milk ordinance, must be transported in milk tank trucks ded-
8 icated to hauling pasteurized products.

9 (7) A milk transfer station or receiving station shall keep
10 daily records identifying which farm loads of milk have been com-
11 mingled in each milk transport tank. These records shall be kept
12 at the transfer station or receiving station for not less than
13 30 days.

14 (8) Producer samples shall accompany the milk transport tank
15 holding the largest amount of the farm bulk milk pickup tanker's
16 milk unless the samples are transferred or held for testing at
17 other locations.

18 Sec. 65. (1) A farm tank on a dairy farm shall be installed
19 so as to remain level at all times.

20 (2) A farm tank shall have an accurate indicating thermome-
21 ter stored in the milkhouse which may be either an integral ther-
22 mometer in the farm tank or an approved thermometer acceptable to
23 the director.

24 (3) A farm tank shall have a calibrated means of measurement
25 and an accurate and legible volume to weight conversion chart
26 unless the farm tank is mounted on an accurate scale. All

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1 measuring devices must be in compliance with the weights and
2 measures act of 1964, 1964 PA 283, MCL 290.601 to 290.634.

3 (4) A conversion chart shall bear the same serial number as
4 that found on the farm tank and measuring rod.

5 (5) The producer is responsible for recalibrating a farm
6 tank that does not have an accurate conversion chart. A recal-
7 bration must be in compliance with the weights and measures act
8 of 1964, 1964 PA 283, MCL 290.601 to 290.634. A person shall not
9 adjust, alter, or change a conversion chart unless the change,
10 alteration, or adjustment is made strictly according to the
11 requirements of the weights and measures act of 1964, 1964
12 PA 283, MCL 290.601 to 290.634.

13 (6) A farm tank shall not be filled to a capacity that
14 exceeds the calibrated limits as indicated by the conversion
15 chart. If the producer wishes to fill the tank nearer to the
16 top, the tank shall be calibrated to an additional height that
17 still permits proper agitation without spillage.

18 (7) Milk to be offered for sale shall be cooled and stored
19 in the farm tank equipped with cooling and agitation. Other
20 cooling and storage vessels may be used when approved in writing
21 by the director on a case-by-case basis.

22 (8) Milk production shall be of sufficient quantity so that
23 it can be properly agitated not later than at the completion of
24 the first milking into the farm tank.

25 (9) Facilities for effectively sanitizing farm tanks shall
26 be provided by the producer.

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1 (10) Nonelectric farms shall provide battery powered
2 lighting for farm tanks that will adequately illuminate each farm
3 tank opening. Fuels used for milkhouse operations shall not
4 cause odors that may impart off-flavors.

5 Sec. 66. The care and handling of milk samples by all per-
6 sons in the chain of possession shall be in substantial compli-
7 ance with standard methods.

8 Sec. 67. (1) Methods of analysis, including butterfat anal-
9 ysis, shall comply with the requirements of sections 6 and 7 of
10 the pasteurized milk ordinance. Analysis required on producer,
11 raw, and finished product samples shall comply with the pasteur-
12 ized milk ordinance.

13 (2) The milk buyer of grade A raw milk shall be responsible
14 for making the quality tests on the raw milk, at the producer
15 level, that are required by law unless the director specifies
16 otherwise. It shall be the responsibility of the bulk milk
17 hauler/sampler to collect the samples for analysis. In situa-
18 tions where the producer is not represented by a milk buyer or
19 handler that provides an approved sample analysis and reporting
20 service, it shall be the responsibility of the producer to insure
21 that the proper number of samples are submitted to an approved
22 laboratory for analysis and that the results are reported to the
23 department. In all situations, it is ultimately the producer's
24 responsibility to insure that a minimum of 4 official sample
25 results for the previous 6 months' production are reported to the
26 department. The test results shall be reported to the department
27 as requested.

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(3) Methods for determining the sediment content of milk shall be those described in standard methods. Sediment content shall be based on comparison with official United States department of agriculture sediment standards, incorporated by reference.

(4) If the sediment disc is classified as no. 1, no. 2, or no. 3, the producer's milk may be accepted. If the milk contains more sediment than a no. 3, it is considered rejectable.

9 Sec. 68. [(1) Only pasteurized milk and milk products shall
10 be offered for sale or sold, directly or indirectly, to the
11 final consumer or to restaurants, grocery stores, or similar
12 establishments.

13

14]

15 (2) All milk and milk products shall be pasteurized accord-
16 ing to the requirements of the pasteurized milk ordinance and the
17 time-temperature relationships described in the pasteurized milk
18 ordinance.

19 (3) All dairy plant by-products used for feeding purposes
20 for farm animals shall be pasteurized or be derived from pasteur-
21 ized products.

22 Sec. 69. (1) Each processor and manufacturer of milk and
23 milk products sold in this state shall place on each container of
24 milk and milk products a recommended last day of sale by month
25 and date.

26 (2) The sell-by date shall be expressed by the first 3
27 letters of the month followed by the numeral designating the

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1 appropriate calendar day or by expressing the calendar month
2 numerically followed by a numeral designating the calendar day.

3 (3) The sell-by date shall appear on that part of the con-
4 tainer that is most likely to be displayed, presented, or shown
5 under customary display conditions of sale. However, a cup con-
6 tainer may have the sell-by date placed on the bottom.

7 (4) The sell-by date on the container shall be legible and
8 shall not interfere with the legibility of other information
9 required to be on the product.

10 (5) Processors and manufacturers of milk and milk products
11 shall register the following information with the department on
12 forms provided by the department:

13 (a) The assigned sell-by date of each milk and milk product
14 processed and the length of time between production and the
15 sell-by date. Plant records of a testing program conducted shall
16 substantiate this length of time by the processor or
17 manufacturer.

18 (b) The method of application and location of the sell-by
19 date for each size and style of container.

20 (c) Changes in the time interval of the sell-by date prior
21 to the effective day of the change.

22 (6) Milk and milk products shall maintain nutritional levels
23 and shall not have a flavor change before the sell-by date.

24 (7) The director shall periodically sample and analyze milk
25 and milk products to determine if the flavor has changed by the
26 sell-by date. Milk and milk products obtained for analysis by
27 the director prior to the sell-by date shall be stored at a

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1 temperature of 44 degrees Fahrenheit (6.5 degrees Celsius), plus
2 or minus 1 degree Fahrenheit (0.5 degree Celsius), until
3 analyzed.

4 (8) The processor or manufacturer of milk or milk products
5 which do not maintain their flavor until the sell-by date shall,
6 upon receipt of written or verbal notice from the director, make
7 the changes necessary to improve product quality or alter the
8 sell-by date so as to comply with the law. The processor or man-
9 ufacturer is not responsible for milk and milk products when the
10 nutritive value loss or flavor deterioration of those products
11 can be determined to be caused by mishandling, improper storage,
12 or lack of refrigeration at points beyond his or her control.

13 (9) Milk and milk products shall not be offered for sale
14 after the sell-by date unless they are advertised to the final
15 consumer in a prominent manner as being beyond the recommended
16 last day of sale.

17 (10) The final seller is fully responsible for the proper
18 advertisement of milk and milk products sold beyond the sell-by
19 date.

20 Sec. 70. This act takes effect 30 days after enactment.

21 Enacting section 1. This act does not take effect unless
22 House Bill No. 4829 of the 91st Legislature is enacted into law.