

Act No. 136
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Birkholz, Van Woerkom, Cropsey, Kuipers, Barcia, Gleason, Jelinek, Brown and Stamas

ENROLLED SENATE BILL No. 1007

AN ACT to amend 2001 PA 266, entitled "An act to regulate the production, transportation, handling, processing, delivery, and sale of grade A milk and milk products; to define grade A milk and milk products and to establish standards and requirements for grade A milk and milk products; to provide for 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 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," by amending sections 2, 3, 4, 5, 6, 7, 20, 30, 31, 33a, 41, 44, 50, 53, 60, 61, 62, 63, 68, and 69 (MCL 288.472, 288.473, 288.474, 288.475, 288.476, 288.477, 288.490, 288.500, 288.501, 288.503a, 288.511, 288.514, 288.520, 288.523, 288.530, 288.531, 288.532, 288.533, 288.538, and 288.539), section 33a as added by 2004 PA 277.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

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

(i) It bears or contains any poisonous or deleterious substance that may render it injurious to health except that, if the substance is not an added substance, the food or milk is not considered adulterated if the quantity of that substance in the food or milk does not ordinarily render it injurious to health.

(ii) It bears or contains any added poisonous or added deleterious substance, other than a substance that is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive considered unsafe within the meaning of subparagraph (v).

(iii) It is a raw agricultural commodity that bears or contains a pesticide chemical considered unsafe within the meaning of subparagraph (v).

(iv) It bears or contains any food additive considered unsafe within the meaning of subparagraph (v) provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under subparagraph (v) and the raw agricultural commodity has been subjected to processing the residue of that pesticide chemical remaining in or on that processed food is, notwithstanding the provisions of subparagraph (v) and this subdivision, not be considered unsafe if that residue in or on the raw agricultural commodity

has been removed to the extent possible in good manufacturing practice and if the concentration of that residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(v) Any added poisonous or deleterious substance, any food additive, and pesticide chemical in or on a raw agricultural commodity, or any color additive is considered unsafe for the purpose of application of this definition, unless there is in effect a federal regulation or exemption from regulation under the federal act, meat inspection act, poultry product inspection act, or other federal acts, or a rule adopted under this act limiting the quantity of the substance, and the use or intended use of the substance, and the use or intended use of the substance conforms to the terms prescribed by the rule.

(vi) It is or contains a new animal drug or conversion product of a new animal drug that is unsafe within the meaning of section 512 of the federal act, 21 USC 360b.

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

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

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

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

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

(xii) It is confectionery and has partially or completely imbedded in it any nonnutritive object except in the case of any nonnutritive object if, as provided by rules, the object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; it bears or contains any alcohol other than alcohol not in excess of 1/2 of 1% by volume derived solely from the use of flavoring extracts; or it bears or contains any nonnutritive substance except a nonnutritive substance such as harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum and pectin or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of the provisions of this act. For the purpose of avoiding or resolving uncertainty as to the application of this subdivision, the director may issue rules allowing or prohibiting the use of particular nonnutritive substances.

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

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

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

(b) "Advertise" or "advertisement" means a representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or is likely to induce, directly or indirectly, the purchase of milk or milk products.

(c) "Approved laboratory" means a laboratory that is listed in the national conference of interstate milk shipments list of sanitation compliance and enforcement ratings distributed by the United States food and drug administration and as approved by the director.

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

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

Sec. 3. As used in this act:

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

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

(c) "Cash payments", regarding the producer security requirements of this act, means a payment in cash or by check, money order, wire transfer, or draft for a sale in which the title to farm milk is transferred.

(d) "Dairy animal" means any domesticated lactating mammal, including a cow, goat, sheep, water buffalo, or other hooved mammal, which is managed and milked to obtain milk for human consumption.

(e) "Dairy farm" means any place or premises where 1 or more dairy animals are kept for milking purposes, and from which a part or all of the milk is provided, sold, or offered for sale.

(f) "Department" means the Michigan department of agriculture.

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

(h) "Distributor" means a person other than a producer or processor who offers for sale, holds for sale, or sells at wholesale milk or milk products. A distributor's facilities include warehousing, refrigerated storage, and distribution vehicles.

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

(j) "Federal act" means the federal food, drug, and cosmetic act, 21 USC 301 to 321, 331 to 360dd, 360hh to 376, and 378 to 399.

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

(l) "Food law of 2000" means the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111.

(m) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include any of the following:

(i) A motel that serves continental breakfasts only.

(ii) A bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.

(iii) A bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.

(iv) A child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the director to be a food service establishment.

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

Sec. 4. As used in this act:

(a) "Imminent or substantial health hazard" means a determination of the director of either or both of the following:

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

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

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

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

(d) "Manufacturing milk law of 2001" means the manufacturing milk law of 2001, 2001 PA 267, MCL 288.561 to 288.740.

(e) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of 1 or more healthy cows, goats, sheep, or other dairy animals.

(f) "Milk buyer" means any producer, milk producer marketing organization, milk plant, receiving station, transfer station, or bulk milk hauler that either takes delivery of raw milk or raw milk product or manages the sale of the raw milk or raw milk product, or both.

(g) "Milk plant" or "dairy plant" means any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, aseptically processed, packaged, or prepared for distribution.

(h) "Milk product" or "dairy product" means cottage cheese, dry curd cottage cheese, reduced fat cottage cheese, lowfat cottage cheese, cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk,

concentrated milk products, skim milk, lowfat milk, frozen milk concentrate, flavored milk, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Unless a product is considered a milk product under this subdivision, milk product does not include dietary products, infant formula, ice cream or other desserts, cheese, or butter. Milk products include the following:

(i) Those dairy foods made by modifying the federally standardized products described in this section in accordance with 21 CFR 130.10.

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

(iii) Those products that have been retort processed after packaging or that have been concentrated, condensed, or dried only if they are used as an ingredient to produce any milk or milk product or if they are grade A national conference of interstate milk shipments listed.

Sec. 5. As used in this act:

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

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

(c) "Milk tank truck driver" means any person who transports raw or pasteurized milk products to or from a milk plant, receiving station, or transfer station.

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

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

(f) "Misbranded" means food to which any of the following apply:

(i) Its labeling is false or misleading in any particular.

(ii) It is offered for sale under the name of another food.

(iii) It is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated.

(iv) Its container is so made, formed, or filled as to be misleading.

(v) It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations as are permitted and exemptions as to small packages as are established by rules prescribed by the department.

(vi) Any word, statement, or other labeling required by this act is not prominently placed on the label or labeling conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by rules as provided by this act or under the federal act, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard, and, insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

(viii) It purports to be or is represented to be either of the following:

(A) A food for which a standard of quality has been prescribed by this act or rules and its quality falls below such standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and it falls below the standard of fill of container applicable unless its label bears, in such manner and form as the rules specify, a statement that it falls below the standard.

(ix) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and under other circumstances as established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

(x) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless the labeling states that fact and under other circumstances as established by rules regarding exemptions based upon practicality.

(xi) If a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under section 403(q) of the federal act, 21 USC 343.

(xii) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

(xiii) It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

(g) "Offering for sale" means selling, offering to sell, holding for sale, preparing for sale, trading, bartering, offering as a gift as an inducement for sale of, and advertising for sale in any media.

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

Sec. 6. As used in this act:

(a) "Pasteurized milk ordinance" or "PMO" means the 2007 edition of the grade A pasteurized milk ordinance, recommendations of the United States department of health and human services, public health service/food and drug administration, with administrative procedures and appendices, set forth in the public health service/food and drug administration publication no. 229.

(b) "Person" means an individual, partnership, company, limited liability company, cooperative, association, firm, trustee, educational institution, state or local government unit, or corporation.

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

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

(e) "Receiving station" means any place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and is prepared for further transporting.

(f) "Registered name" means either a name that is registered as "doing business as" at the county clerk's office in the county in which the producer or processor resides or that is registered with the state of Michigan as a legal entity registered to do business within the state under an assumed name. Registered name includes, but is not limited to, incorporations, corporations, limited liability companies, limited liability partnerships, and similar entities.

(g) "Retail" means selling or offering for sale dairy products directly to a consumer.

(h) "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment but does not include a food processing plant.

(i) "Sample transfer instrument" means any of the following:

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

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

(iii) Sampling devices approved by the director.

(j) "Sanitary standards" means the dairy equipment construction standards or accepted dairy system operating practices formulated by 1 of the following:

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

(ii) If sanitary standards are not available for a particular piece of equipment, general sanitary construction standards for dairy equipment formulated by the United States department of agriculture or the food and drug administration as approved by the director.

(iii) The equipment or practice is approved by bulletin of the director on a case-by-case basis.

(k) "Sell-by date" means the recommended last date of sale.

(l) "Single service containers and closures" means single use containers or parts of single use containers that become milk product contact surfaces when used for the storage, shipping, or marketing of milk or milk products.

(m) "Standard methods" means the seventeenth edition of "Standard Methods for the Examination of Dairy Products", a publication of the American public health association, incorporated by reference.

Sec. 7. As used in this act:

(a) "Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from 1 milk tank truck to another.

(b) "Verified financial statement" means a financial statement that contains a notarized statement, signed and sworn to by an authorized representative of the milk plant, attesting that the financial statement is correct.

(c) "Wholesale" means selling or offering to sell dairy products to retailers, jobbers, or distributors rather than directly to a consumer.

Sec. 20. (1) The department shall administer this act and may promulgate rules for its implementation and enforcement and adopt revisions of references cited in this act, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except as otherwise specifically defined or described in this act, the pasteurized milk ordinance is adopted and incorporated by reference. Where the words "regulatory agency" are used in these ordinances, they are amended to read the "Michigan department of agriculture" and where "the ____ of ____" are used in these ordinances, they are amended to read "the state of Michigan".

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

Sec. 30. (1) A person shall not do any of the following without being licensed under this act:

(a) Produce grade A milk to be offered for sale.

(b) Collect grade A milk samples for regulatory purposes.

(c) Operate a milk transportation company that owns or operates a bulk milk tank truck.

(d) Process, label, distribute, or sell grade A milk or grade A milk products, except that a person operating a retail food establishment is exempt from licensure under this act if he or she complies with subsection (8) and is licensed under the food law of 2000. This subdivision does not prevent the sale, at wholesale or retail at a retail food establishment licensed under the food law of 2000, of milk or milk products that are packaged in final consumer packages at a facility licensed under this act.

(e) Wash milk tank trucks.

(f) Manufacture single service containers or closures to be used for grade A milk products, except that the manufacture of single service containers and closures for grade A dry milk products are exempt from this section.

(2) A person licensed under the manufacturing milk law of 2001 or this act and engaged in activities regulated under this act shall comply with the requirements of this act, where applicable, and is subject to the penalties set forth in this act, where applicable.

(3) The director may issue a temporary license or permit for activities regulated by this act.

(4) State agencies operating dairy facilities under a memorandum of understanding with the department are not required to be licensed or permitted or to provide producer security under this act but are required to otherwise be in compliance with this act.

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

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

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

(8) Milk products manufactured at retail food establishments licensed under the food law of 2000 are exempt from this act if both of the following conditions are met:

(a) All ingredients contained in these products comply with the requirements of the food law of 2000.

(b) The milk products manufactured are not sold wholesale or to another business entity.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Each milk plant shall pay a \$175.00 annual licensing or permitting fee, and additionally, an annual fee of \$5.00 for each dairy farm whose milk is received at the milk plant, receiving station, or transfer station, plus an additional \$10.00 per farm shipping to it if the milk plant, receiving station, or transfer station operator does not maintain an adequate number of industry personnel, as determined by the director, who are approved to conduct certified industry farm inspections. The department shall not levy this additional \$10.00 per farm fee if a cooperative association is conducting the certified industry farm program for the milk plant operator. The department shall only charge the dairy farm license fee to the producer if the producer is not assigned to a milk plant that pays the annual fee required by this subsection for the producer. Any such unassigned producer shall be charged a handling fee of \$5.00 plus an additional \$10.00 if certified industry farm inspectors are not assigned to the farm.

(4) Any fees, assessments, civil or administrative fines, and money from any other source collected by the department under this act shall be deposited into the dairy and food safety fund created in section 4117 of the food law of 2000, MCL 289.4117.

(5) A milk plant operator shall submit detailed plans to the department for approval before commencing new construction, remodeling, and equipment changes. Plans for new construction or remodeling shall include a plan that provides for operational or physical isolation of the milk plant from sources of potential product contamination caused by animal production facilities located in close proximity to the milk plant. Retail or public viewing areas shall be separated from processing areas by a solid floor-to-ceiling partition, except that, as approved by the director, other equally effective means of protection may be used.

(6) The department may impose a late fee of \$10.00 for a renewal application for each business day the application is late. The total late fee shall not exceed \$100.00. The department shall not issue or renew a license until any fees and fines have been paid. A hearing is not required regarding the department's refusal to issue or renew a license under this subsection except as allowed under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may charge a convenience fee and collect from the applicants any additional costs associated with the method of fee payment for the license or permit fees described in this section and sections 32 and 33, not to exceed the costs to the department.

Sec. 33a. (1) The department shall issue an initial or renewal license or permit for regulated activities described in sections 31 and 33, other than a grade A dairy farm, a bulk milk hauler/sampler, or a certified industry farm inspector, not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan.

(2) If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license or permit and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license or permit.

(3) If the department fails to issue or deny a license or permit within the time required by this section, the department shall return the license or permit fee and shall reduce the license or permit fee for the applicant's next renewal application, if any, by 15%. The failure to issue or deny a license or permit within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license or permit fee was refunded or discounted under this subsection.

(4) Beginning October 1, 2005, the director shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with agricultural and food issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (1).

(b) The number of applications denied.

(c) The number of applicants not issued a license or permit within the 90-day time period and the amount of money returned to licensees and permittees under subsection (3).

(5) As used in this section, "completed application" means an application that is complete on its face and submitted with any applicable licensing or permit fees and fines as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan. Under appropriate circumstances, completed application includes the completion of construction or renovation of any facility and the passing of a satisfactory inspection.

Sec. 41. (1) The department shall revoke or deny a license for a milk plant if the licensee or applicant fails to provide 1 of the security devices required as a condition to issuance and maintenance of a license. As a condition to issuance and maintenance of a license, a milk plant that is a first receiving point for milk shall provide 1 or more of the security devices described in section 42, 43, or 44.

(2) Milk plants that receive milk only from dairy farms under the same sole proprietorship, the same registered partnership, or the same corporate ownership having the same registered name as the milk plant are exempt from the requirements of this section.

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

Sec. 50. (1) The director may revoke or suspend the license or permit of a licensee or permittee issued under this act or impose an administrative fine under section 53 for failure to comply with the requirements of this act, the pasteurized milk ordinance, or a rule promulgated under this act. A license or permit shall be revoked or suspended according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall notify in writing each producer with whom a milk plant does business regarding the pendency of the administrative action not less than 5 days before the date for the formal hearing set under subsection (1).

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

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

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

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

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

(e) Failed to pay a producer in the manner provided in section 40.

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

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

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

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

(j) In the case of a milk plant, failed to provide a security device described in article IV.

(k) Adulterated milk or milk products.

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

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

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

(a) Offered for sale or sold milk or milk products from diseased animals, or animals otherwise considered abnormal, that have been incorporated with milk or milk products from normal healthy animals.

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

(c) Offered for sale or sold milk or milk products from production, transportation, packaging, or storage facilities that have such an accumulation of trash, rubbish, dirt, insects, vermin, human or animal wastes, or spoiled milk or milk products that precludes the reasonable protection of the milk or milk products from contamination.

(d) Offered for sale or sold milk or milk products produced in equipment with a significant portion of the milk contact surfaces covered with an accumulation of residues that were left after having gone through a cleaning regimen and that are thick enough that they may be easily scraped to form a body of solids.

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

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

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

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

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

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

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

(l) Maintained a minimum of 3 of the last 5 official bacteria counts illegal.

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

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

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

(p) Offered for sale or sold milk or milk products that present an imminent or substantial health hazard due to improper or unknown storage temperature.

(q) Offered for sale or sold milk or milk products that present an imminent or substantial health hazard due to improper allergen labeling.

(r) Knowingly possessed, sold, offered for sale, or purchased any milk or milk product for use in a human food product that has been condemned under this act.

(s) Offered for sale or sold packaged milk or milk products that present an imminent or substantial health hazard due to improper pasteurization times or temperatures outside the requirements set forth in the PMO.

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

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

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

(a) The following in the case of a first violative drug residue within a 12-month period:

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

(ii) The producer shall pay an administrative fine equal to the lost value of the milk on the entire contaminated load and any costs associated with the disposition of that load. The administrative fine shall be paid directly to the milk buyer. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load. If the producer's violative shipment did not cause partial or total loss of a load of milk as determined by an approved drug residue test, the producer shall pay an administrative fine of \$300.00 to the department. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check.

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

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

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

provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load. If the producer's violative shipment did not cause partial or total loss of a load of milk as determined by an approved drug residue test, the producer shall pay an administrative fine of \$600.00 to the department. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check.

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

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

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

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

(ii) The producer shall pay an administrative fine equal to the lost value of the milk on the entire contaminated load and any costs associated with the disposition of that load. The administrative fine shall be paid directly to the milk buyer. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets its own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load. If the producer's violative shipment did not cause partial or total loss of a load of milk as determined by an approved drug residue test, the producer shall pay an administrative fine of \$1,200.00 to the department. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check.

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

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

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

(2) The director may accept verification, on forms acceptable to the director, from the violative producer's milk marketing cooperative or purchaser of milk as satisfying the penalty requirements and may verify the information.

(3) The disposal method and location of disposal for violative drug residue milk on the milk tank truck shall be immediately reported to the director, by the party making the disposal, on forms provided by and acceptable to the director.

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

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

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

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

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

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

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

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

(8) The administrative fines imposed under subsection (1) or (7) shall be paid to the department within 10 days after notification of the violation or within 10 days after notification of adverse findings following a hearing or appeal, or both. The administrative fines received by the department under subsections (1) and (7) shall be deposited in the dairy and food safety fund.

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

(10) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

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

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

Sec. 60. (1) Packaged milk products shall be labeled as specified in the pasteurized milk ordinance and in the food law of 2000.

(2) Milk and milk products shall be advertised as specified in the food law of 2000.

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

(2) A bulk milk hauler/sampler shall pick up only milk that appears to be normal and does not contain off odors or visible foreign material and that has been stored on the farm for no more than 72 hours, except that milk produced under the manufacturing milk law of 2001 may be stored as provided under that act. Goat milk may be stored up to 7 days in a farm tank if properly cooled. Sheep milk may be frozen for storage.

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

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

(a) The gauge or stick reading.

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

(c) The date and time of pickup.

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

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

(f) The bulk milk hauler/sampler's permit identification, which is the first and last name, or the hauler/sampler's identification number printed on the license.

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

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

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

Sec. 62. (1) During a pickup, a bulk milk hauler/sampler shall take a sanitarily collected representative sample from each farm tank after the tank is agitated for not less than 5 minutes and for not less than 10 minutes for tanks over 1,500 gallons or for such additional time as may be recommended by the tank manufacturer or the director, so as to obtain a representative sample.

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

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

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

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

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

(7) A bulk milk hauler/sampler shall not sample milk in the farm tank with a sample container or any other unapproved transfer instrument or sampling device.

(8) A bulk milk hauler/sampler shall place producer milk samples into approved sample containers only. The sample containers shall be properly protected and handled to prevent contamination.

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

- (a) The milk producer's permit number.
- (b) The date of pickup.
- (c) Temperature.

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

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

Sec. 63. (1) A bulk milk hauler/sampler shall not adulterate milk in the farm tank or the milk tank truck.

(2) There shall be no partial removal of milk from the farm tank by the bulk milk hauler/sampler except that partial pickups may be permitted when the farm tank is equipped with a 7-day recording device complying with the specifications of pasteurized milk ordinance appendix H, or another recording device acceptable to the department, provided that the farm milk tank shall be cleaned and sanitized when empty and shall be emptied at least every 72 hours. In the absence of a temperature recording device, partial pickups may be permitted as long as the farm tank is completely empty, clean, and sanitized before the next milking. In the event of emergency situations or seasonal weight restrictions, partial pickups will be allowed.

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

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

(5) A bulk milk hauler/sampler shall use the hose port provided for him or her in the milkhouse for accommodation of the pickup milk hose.

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

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

(2) All milk and milk products shall be pasteurized according to the requirements of the pasteurized milk ordinance and the time-temperature relationships described in the pasteurized milk ordinance.

(3) All dairy plant by-products used for feeding purposes for farm animals shall be pasteurized or be derived from pasteurized products when specified by the director.

(4) Milk and milk products may be aseptically processed as low-acid foods provided they comply with the following requirements:

(a) All thermally processed milk and milk products that are packaged in hermetically sealed containers shall be processed in a milk processing facility licensed under this act, the manufacturing milk law of 2001, or the food law of 2000.

(b) All processors of acidified milk and milk products packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 108, 21 CFR part 110, and 21 CFR part 114.

(c) All thermally processed milk and milk products that are packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 108, 21 CFR part 110, and 21 CFR part 113.

(d) Hermetically sealed packages shall be handled to maintain product and container integrity.

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

(2) The sell-by date shall be expressed by the first 3 letters of the month followed by the numeral designating the appropriate calendar day or by expressing the calendar month numerically followed by a numeral designating the calendar day.

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

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

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

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

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

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

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

(7) The director shall periodically sample and analyze milk and milk products to determine if the flavor has changed by the sell-by date. Milk and milk products obtained for analysis by the director prior to the sell-by date shall be stored at a temperature of 44 degrees Fahrenheit (6.5 degrees Celsius), plus or minus 1 degree Fahrenheit (0.5 degree Celsius), until analyzed.

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

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

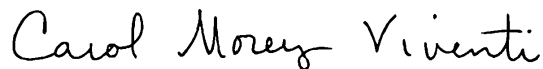
(10) The final seller is fully responsible for the proper advertisement of milk and milk products sold beyond the sell-by date.

(11) Packaged fluid dairy products that exceed the sell-by date shall not be reused in any dairy products regulated by this act or the manufacturing milk law of 2001 unless a protocol for such reprocessing is approved by the department. The protocol shall include consideration of storage temperatures, bacterial counts, age past sell-by date, sight and smell grading qualities, added ingredients, and any other factors considered critical by the director.

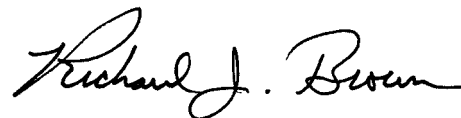
(12) Packaged fluid dairy products that have left the control of a dairy plant but are returned or delivered to a dairy plant, commonly referred to as "returned products", shall not be reprocessed into milk or milk products regulated under this act or the manufacturing milk law of 2001.

Enacting section 1. This amendatory act takes effect 30 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor