

SUBSTITUTE FOR
SENATE BILL NO. 1131

A bill to amend 2001 PA 266, entitled
"Grade A milk law of 2001,"
by amending sections 31, 32, 33, and 53 (MCL 288.501, 288.502,
288.503, and 288.523), sections 31 and 53 as amended by 2008 PA
136.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

14 **(F) THE ANNUAL VOLUME OF RAW MILK THE MILK PLANT ANTICIPATES**
15 **RECEIVING.**

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

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

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

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

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

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

14 **(F) THE ANNUAL VOLUME OF RAW MILK EACH MILK PLANT ANTICIPATES**
15 **RECEIVING. THE DEPARTMENT MAY CONDUCT AN AUDIT TO VERIFY THE**
16 **ACCURACY OF THE ANNUAL VOLUME OF RAW MILK RECEIPTS REPORTED AND MAY**
17 **REASSESS THE LICENSE FEE ACCORDINGLY. IN THE ALTERNATIVE, THE**
18 **DEPARTMENT MAY UTILIZE AN AUDIT CONDUCTED BY THE UNITED STATES**
19 **DEPARTMENT OF AGRICULTURE OR ANY OTHER AUDIT ACCEPTABLE TO THE**
20 **DIRECTOR.**

21 ~~(3) Each milk plant shall pay a \$175.00 annual licensing or~~
22 ~~permitting fee, and additionally, an annual fee of \$5.00 for each~~
23 ~~dairy farm whose milk is received at the milk plant, receiving~~
24 ~~station, or transfer station, plus an additional \$10.00 per farm~~
25 ~~shipping to it if the milk plant, receiving station, or transfer~~
26 ~~station operator does not maintain an adequate number of industry~~
27 ~~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.~~ **LICENSE**

RENEWAL FOR A MILK PLANT SHALL TAKE PLACE ON JUNE 30 OF EACH YEAR UNLESS OTHERWISE SPECIFIED IN THIS ACT. A MILK PLANT LICENSED UNDER THIS ACT SHALL PAY AN ANNUAL LICENSE OR PERMIT FEE AS FOLLOWS:

(A) MILK PLANT WITH LESS THAN 20,000,000 POUNDS OF ANTICIPATED RAW MILK RECEIPTS PER YEAR, AT A RATE OF \$400.00 PER YEAR.

(B) MILK PLANT WITH GREATER THAN OR EQUAL TO 20,000,000 BUT LESS THAN 100,000,000 POUNDS OF ANTICIPATED RAW MILK RECEIPTS PER YEAR, AT A RATE OF \$800.00 PER YEAR.

(C) MILK PLANT WITH GREATER THAN OR EQUAL TO 100,000,000 POUNDS OF ANTICIPATED RAW MILK RECEIPTS PER YEAR, AT A RATE OF \$1,600.00 PER YEAR.

(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

1 remodeling shall include a plan that provides for operational or
2 physical isolation of the milk plant from sources of potential
3 product contamination caused by animal production facilities
4 located in close proximity to the milk plant. Retail or public
5 viewing areas shall be separated from processing areas by a solid
6 floor-to-ceiling partition, except that, as approved by the
7 director, other equally effective means of protection may be used.

8 (6) The department may impose a late fee of \$10.00 for a
9 renewal application for each business day the application is late.
10 The total late fee shall not exceed \$100.00. The department shall
11 not issue or renew a license until any fees and fines have been
12 paid. A hearing is not required regarding the department's refusal
13 to issue or renew a license under this subsection except as allowed
14 under the administrative procedures act of 1969, 1969 PA 306, MCL
15 24.201 to 24.328. The department may charge a convenience fee and
16 collect from the applicants any additional costs associated with
17 the method of fee payment for the license or permit fees described
18 in this section and sections 32 and 33, not to exceed the costs to
19 the department.

20 Sec. 32. (1) Each certified industry farm inspector shall pay
21 a 3-year license fee of ~~\$60.00~~ **\$150.00** for a license to conduct
22 certified farm inspections. ~~An initial license fee may be prorated~~
23 ~~in 6 month increments at \$10.00 per increment.~~ License renewal
24 shall take place on the completion date of the 3-year
25 certification.

26 (2) Certified industry farm inspectors must comply with the
27 requirements for certified inspectors listed in the pasteurized

1 milk ordinance and, in addition, shall conduct both of the
2 following:

3 (a) A farm inspection of all producers having the first
4 routine count exceeding legal standards for bacteria or somatic
5 cells, or both.

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

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

11 Sec. 33. (1) Each receiving station or transfer station must
12 be licensed or permitted either as part of a milk plant or as a
13 stand-alone facility. Each stand-alone facility will be licensed or
14 permitted at a rate of ~~\$50.00~~ **\$250.00** per year. License renewal
15 shall take place on June 30 every year.

16 (2) Each milk tank truck cleaning facility that cleans milk
17 contact surfaces of milk tank trucks used to haul milk or milk
18 products regulated under this act must be licensed or permitted
19 under this act either as part of a milk plant, receiving station,
20 or transfer station or a stand-alone milk tank truck cleaning
21 facility. A licensing or permitting fee shall not be charged under
22 this act for a milk tank truck cleaning facility that is a part of
23 a dairy plant, receiving station, or transfer station licensed or
24 permitted under the manufacturing milk law of 2001. Each stand-
25 alone facility will be licensed or permitted at a rate of ~~\$50.00~~
26 **\$250.00** per year. License renewal shall take place on June 30 every
27 year.

1 (3) Each milk transportation company must be licensed or
2 permitted under this act at a rate of ~~\$20.00~~ **\$50.00** per year.
3 License renewal shall take place on June 30 every year.

4 (4) Each milk tank truck must be licensed or permitted under
5 this act at a rate of ~~\$10.00~~ **\$20.00** per year. License renewal shall
6 take place on June 30 every year.

7 (5) Each distributor who is primarily engaged in the
8 distribution of finished grade A milk products must be licensed or
9 permitted under this act either as part of a milk plant or as a
10 stand-alone distributor. Each stand-alone distribution facility is
11 licensed at a rate of ~~\$50.00~~ **\$100.00** per year. License renewal
12 shall take place on June 30 every year.

13 (6) Each single service containers and closures manufacturer
14 must be licensed or permitted under this act either as part of a
15 milk plant or as a stand-alone manufacturer. Each stand-alone
16 facility will be licensed at a rate of ~~\$50.00~~ **\$250.00** per year.
17 License renewal shall take place on June 30 every year.

18 (7) A person shall not pick up grade A milk in a farm pickup
19 milk tank from a farm bulk milk tank without a hauler/sampler
20 license issued by the department under this section. Each applicant
21 for a license shall be examined by the director under the
22 provisions of this act to determine his or her qualifications to
23 evaluate milk in a farm bulk milk tank, to accurately measure milk
24 in a farm bulk milk tank, to obtain representative samples of milk
25 from a farm bulk milk tank, to properly handle and deliver the
26 samples, and to pick up milk. The license fee is ~~\$40.00~~ **\$50.00** for
27 2 years. An initial license fee may be prorated in ~~6-month~~ **1-YEAR**

1 increments at ~~\$10.00~~ **\$25.00** per increment. A hauler/sampler
2 licensed or permitted in another state shall apply for a license
3 from the department without examination after submitting
4 satisfactory proof of training and current licensing in another
5 state to the department with the license fee and application,
6 unless this requirement is waived by the director based on
7 reciprocal agreements with individual states. The director may deny
8 license renewal to any bulk milk hauler/sampler if the bulk milk
9 hauler/sampler has not had a satisfactory evaluation of their
10 hauler/sampler methods in the previous 2 years. License renewal
11 shall take place on June 30 every 2 years.

12 (8) AN APPLICANT FOR AN INITIAL GRADE A DAIRY FARM PERMIT
13 SHALL APPLY TO THE DEPARTMENT ON A FORM SUPPLIED BY THE DEPARTMENT
14 AND PAY THE ANNUAL FEE AS PRESCRIBED BY THIS SECTION.

15 (9) EACH DAIRY FARM PRODUCING GRADE A MILK TO BE OFFERED FOR
16 SALE SHALL BE LICENSED OR PERMITTED ANNUALLY AT EITHER OF THE
17 FOLLOWING RATES:

18 (A) IF THE DAIRY FARM DOES NOT MAINTAIN ADEQUATE INDUSTRY
19 PERSONNEL, AS DETERMINED BY THE DIRECTOR, WHO ARE APPROVED TO
20 CONDUCT CERTIFIED INDUSTRY FARM INSPECTIONS, \$70.00.

21 (B) IF THE DAIRY FARM MAINTAINS ADEQUATE INDUSTRY PERSONNEL,
22 AS DETERMINED BY THE DIRECTOR, WHO ARE APPROVED TO CONDUCT
23 CERTIFIED INDUSTRY FARM INSPECTIONS, \$25.00.

24 (10) THE FEE DESCRIBED IN SUBSECTION (9) SHALL BE PAID TO THE
25 DEPARTMENT BY JUNE 30 EVERY YEAR.

26 (11) A MILK BUYER SHALL PAY THE ANNUAL LICENSE OR PERMIT FEE
27 ON BEHALF OF DAIRY FARMS AND MAY SUBMIT AN INVOICE TO THE DAIRY

1 FARMS FOR REIMBURSEMENT OF THE FEE OR MAY DEDUCT THE FEE FROM THE
2 DAIRY FARMS' MILK CHECK. A MILK BUYER SHALL COMPLETE A FORM
3 PROVIDED BY THE DEPARTMENT THAT INDICATES THE NUMBER OF PRODUCERS
4 FOR WHICH IT IS RESPONSIBLE AND SHALL INCLUDE A LIST OF THE
5 PRODUCER NAMES, ADDRESSES, AND DEPARTMENT PERMIT NUMBERS. THE
6 DEPARTMENT MAY CONDUCT AUDITS TO VERIFY FEE PAYMENTS.

7 (12) THE DEPARTMENT MAY ASSESS A PLAN REVIEW FEE OF \$100.00 TO
8 A POTENTIAL DAIRY LICENSEE OR PERMITTEE, TO BE PAID PRIOR TO AN ON-
9 SITE CONSULTATION. THE PLAN REVIEW FEE IS NOT REFUNDABLE AND DOES
10 NOT APPLY TOWARD ANY FUTURE LICENSE FEES.

11 (13) THE DEPARTMENT MAY ASSESS A \$300.00 FEE ON ANY LICENSEE
12 OR PERMITTEE REQUIRING THE PERFORMANCE OF 2 OR MORE CONSECUTIVE
13 REINSPECTIONS FOR COMPLIANCE OF ITEMS FOUND IN VIOLATION OF THIS
14 ACT.

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 performed
18 pursuant to the pasteurized milk ordinance, the following sanctions
19 and administrative fines and provide notice and the opportunity for
20 an administrative hearing:

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

23 (i) The producer's milk shall not be offered for sale until a
24 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 the~~
27 ~~lost value of the milk on the entire contaminated load and any~~

1 ~~costs associated with the disposition of that load. The~~
2 ~~administrative fine shall be paid directly to the milk buyer. THE~~
3 **PRODUCER SHALL PAY AN ADMINISTRATIVE FINE OF \$300.00 TO THE**
4 **DEPARTMENT UPON THE VIOLATIVE SHIPMENT, AS DETERMINED BY AN**
5 **APPROVED DRUG RESIDUE TEST. THE MILK BUYER MAY PAY THE**
6 **ADMINISTRATIVE FINE, IF A LIKE AMOUNT HAS BEEN DEDUCTED FROM THE**
7 **PRODUCER'S MILK CHECK. IF THE PRODUCER'S VIOLATIVE SHIPMENT CAUSED**
8 **THE PARTIAL OR TOTAL LOSS OF A LOAD OF MILK, THE PRODUCER SHALL PAY**
9 **DIRECTLY TO THE MILK BUYER AN ADDITIONAL ADMINISTRATIVE FINE EQUAL**
10 **TO THE LOST VALUE OF THE CONTAMINATED LOAD AND ANY COSTS ASSOCIATED**
11 **WITH THE DISPOSITION OF THAT LOAD.** The department shall be provided
12 with written notification of the payment. Written notification
13 shall also be provided to the department of the date and location
14 of the disposal of the entire contaminated load. Where a producer
15 markets their own load of milk, the producer shall provide written
16 notification to the department of the date and location of the
17 disposal of the entire contaminated load. ~~If the producer's~~
18 ~~violative shipment did not cause partial or total loss of a load of~~
19 ~~milk as determined by an approved drug residue test, the producer~~
20 ~~shall pay an administrative fine of \$300.00 to the department. The~~
21 ~~milk buyer may pay the administrative fine, if a like amount has~~
22 ~~been deducted from the producer's milk check.~~

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

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

1 (ii) ~~The producer shall pay an administrative fine equal to the~~
2 ~~lost value of the milk on the entire contaminated load and any~~
3 ~~costs associated with the disposition of that load. The~~
4 ~~administrative fine shall be paid directly to the milk buyer. THE~~
5 **PRODUCER SHALL PAY AN ADMINISTRATIVE FINE OF \$600.00 TO THE**
6 **DEPARTMENT UPON THE VIOLATIVE SHIPMENT, AS DETERMINED BY AN**
7 **APPROVED DRUG RESIDUE TEST. THE MILK BUYER MAY PAY THE**
8 **ADMINISTRATIVE FINE, IF A LIKE AMOUNT HAS BEEN DEDUCTED FROM THE**
9 **PRODUCER'S MILK CHECK. IF THE PRODUCER'S VIOLATIVE SHIPMENT CAUSED**
10 **THE PARTIAL OR TOTAL LOSS OF A LOAD OF MILK, THE PRODUCER SHALL PAY**
11 **DIRECTLY TO THE MILK BUYER AN ADDITIONAL ADMINISTRATIVE FINE EQUAL**
12 **TO THE LOST VALUE OF THE CONTAMINATED LOAD AND ANY COSTS ASSOCIATED**
13 **WITH THE DISPOSITION OF THAT LOAD.** The department shall be provided
14 with written notification of the payment. Written notification
15 shall also be provided to the department of the date and location
16 of the disposal of the entire contaminated load. Where a producer
17 markets their own load of milk, the producer shall provide written
18 notification to the department of the date and location of the
19 disposal of the entire contaminated load. ~~If the producer's~~
20 ~~violative shipment did not cause partial or total loss of a load of~~
21 ~~milk as determined by an approved drug residue test, the producer~~
22 ~~shall pay an administrative fine of \$600.00 to the department. The~~
23 ~~milk buyer may pay the administrative fine, if a like amount has~~
24 ~~been deducted from the producer's milk check.~~

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

1 for a minimum of 18 months.

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

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

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

11 ~~(ii) The producer shall pay an administrative fine equal to the~~
12 ~~lost value of the milk on the entire contaminated load and any~~
13 ~~costs associated with the disposition of that load. The~~
14 ~~administrative fine shall be paid directly to the milk buyer. **THE**~~
15 **PRODUCER SHALL PAY AN ADMINISTRATIVE FINE OF \$1,200.00 TO THE**
16 **DEPARTMENT UPON THE VIOLATIVE SHIPMENT, AS DETERMINED BY AN**
17 **APPROVED DRUG RESIDUE TEST. THE MILK BUYER MAY PAY THE**
18 **ADMINISTRATIVE FINE, IF A LIKE AMOUNT HAS BEEN DEDUCTED FROM THE**
19 **PRODUCER'S MILK CHECK. IF THE PRODUCER'S VIOLATIVE SHIPMENT CAUSED**
20 **THE PARTIAL OR TOTAL LOSS OF A LOAD OF MILK, THE PRODUCER SHALL PAY**
21 **DIRECTLY TO THE MILK BUYER AN ADDITIONAL ADMINISTRATIVE FINE EQUAL**
22 **TO THE LOST VALUE OF THE CONTAMINATED LOAD AND ANY COSTS ASSOCIATED**
23 **WITH THE DISPOSITION OF THAT LOAD.** The department shall be provided
24 with written notification of the payment. Written notification
25 shall also be provided to the department of the date and location
26 of the disposal of the entire contaminated load. Where a producer
27 markets its own load of milk, the producer shall provide written

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

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

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

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

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

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

27 (4) The director shall investigate the cause of the violative

1 drug residue and shall discuss drug residue avoidance control
2 measures, as outlined in the pasteurized milk ordinance, with the
3 violative producer.

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

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

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

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

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

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

24 (7) After notice and an opportunity for an administrative
25 hearing pursuant to the administrative procedures act of 1969, 1969
26 PA 306, MCL 24.201 to 24.328, the director may revoke or suspend a
27 license or permit issued under this act for any violation of this

1 act or a rule promulgated under this act. Except as otherwise
2 provided for under subsection (1), upon finding that a person
3 violated a provision of this act or rule promulgated under this
4 act, the director may impose an administrative fine of not more
5 than \$1,000.00 and the actual costs of the investigation of the
6 violation.

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

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

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

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

25 (12) This section does not require the director to issue an
26 administrative fine or initiate court action for minor violations
27 of this act whenever the department believes that the public

- 1 interest will be adequately served under the circumstances by a
- 2 suitable written notice or warning.