

Act No. 41  
Public Acts of 2010  
Approved by the Governor  
March 31, 2010  
Filed with the Secretary of State  
March 31, 2010  
EFFECTIVE DATE: March 31, 2010

**STATE OF MICHIGAN  
95TH LEGISLATURE  
REGULAR SESSION OF 2010**

**Introduced by Senator Van Woerkom**

# **ENROLLED SENATE BILL No. 1131**

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 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:*

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.

(f) The annual volume of raw milk the milk plant anticipates receiving.

(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.

(f) The annual volume of raw milk each milk plant anticipates receiving. The department may conduct an audit to verify the accuracy of the annual volume of raw milk receipts reported and may reassess the license fee accordingly. In the alternative, the department may utilize an audit conducted by the United States department of agriculture or any other audit acceptable to the director.

(3) 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 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. 32. (1) Each certified industry farm inspector shall pay a 3-year license fee of \$150.00 for a license to conduct certified farm inspections. License renewal shall take place on the completion date of the 3-year certification.

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

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

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

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

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

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

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

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

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

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

(7) A person shall not pick up grade A milk in a farm pickup milk tank from a farm bulk milk tank without a hauler/sampler license issued by the department under this section. Each applicant for a license shall be examined by the director under the provisions of this act to determine his or her qualifications to evaluate milk in a farm bulk milk tank, to accurately measure milk in a farm bulk milk tank, to obtain representative samples of milk from a farm bulk milk tank, to properly handle and deliver the samples, and to pick up milk. The license fee is \$50.00 for 2 years. An initial license fee may be prorated in 1-year increments at \$25.00 per increment. A hauler/sampler licensed or permitted in another state shall apply for a license from the department without examination after submitting satisfactory proof of training and current licensing in another state to the department with the license fee and application, unless this requirement is waived by the director based on reciprocal agreements with individual states. The director may deny license renewal to any bulk milk hauler/sampler if the bulk milk hauler/sampler has not had a satisfactory evaluation of their hauler/sampler methods in the previous 2 years. License renewal shall take place on June 30 every 2 years.

(8) An applicant for an initial grade A dairy farm permit shall apply to the department on a form supplied by the department and pay the annual fee as prescribed by this section.

(9) Each dairy farm producing grade A milk to be offered for sale shall be licensed or permitted annually at either of the following rates:

(a) If the dairy farm does not maintain adequate industry personnel, as determined by the director, who are approved to conduct certified industry farm inspections, \$70.00.

(b) If the dairy farm maintains adequate industry personnel, as determined by the director, who are approved to conduct certified industry farm inspections, \$25.00.

(10) The fee described in subsection (9) shall be paid to the department by June 30 every year.

(11) A milk buyer shall pay the annual license or permit fee on behalf of dairy farms and may submit an invoice to the dairy farms for reimbursement of the fee or may deduct the fee from the dairy farms' milk check. A milk buyer shall complete a form provided by the department that indicates the number of producers for which it is responsible and shall include a list of the producer names, addresses, and department permit numbers. The department may conduct audits to verify fee payments.

(12) The department may assess a plan review fee of \$100.00 to a potential dairy licensee or permittee, to be paid prior to an on-site consultation. The plan review fee is not refundable and does not apply toward any future license fees.

(13) The department may assess a \$300.00 fee on any licensee or permittee requiring the performance of 2 or more consecutive reinspections for compliance of items found in violation of this act.

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 of \$300.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the

contaminated load and any costs associated with the disposition of that load. 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.

(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 of \$600.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. 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.

(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 shall 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 shall 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 of \$1,200.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. 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.

(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 shall 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 and fine 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.

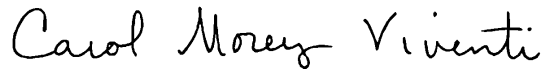
(9) Failure to pay a load contamination or any other administrative fine imposed under this section within 120 days without making acceptable arrangements for payment of the fine may result in license revocation or permit suspension or court action, following notice and the opportunity for an administrative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

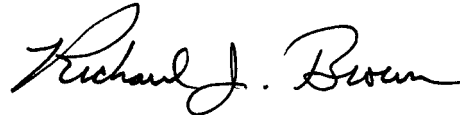
(11) A decision of the director under this section is subject to judicial review as provided by law.

(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.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor