

SENATE BILL NO. 1054

October 30, 2024, Introduced by Senator GEISS and referred to the Committee on Housing and Human Services.

A bill to require individuals, hospitals, human milk banks, and human milk banking companies to comply with certain standards; to provide for education and support of certain breastfeeding individuals; to prescribe the duties of certain state departments and agencies; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Adulterated" means human breast milk that is any of the
3 following:

1 (i) Has been improperly processed, including, but not limited
2 to, improper or unknown storage temperatures after receipt by a
3 human milk bank or human milk banking company or improper
4 pasteurization times or temperatures based on standards set by the
5 Human Milk Banking Association of North America.

6 (ii) Is contaminated with a poisonous or deleterious substance
7 that may render the human milk injurious to the health of an
8 infant.

9 (iii) Any other condition that creates a risk to public health,
10 safety, or welfare.

11 (b) "Department" means the department of health and human
12 services.

13 (c) "Director" means the director of the department or the
14 director's designee.

15 (d) "Distribution" means removal of human milk from a human
16 milk bank or human milk banking company to any other location for
17 processing or storage or for the purpose of providing human milk to
18 a hospital or selling human milk to another entity.

19 (e) "Donor" means a lactating individual who voluntarily
20 contributes the individual's own expressed breast milk to a human
21 milk bank or human milk banking company for use by an infant or
22 child other than the individual's own infant or child. A donor may
23 be provided supplies reasonably necessary for safe milk expression,
24 storage, or transport under this act.

25 (f) "Hospital" means that term as defined in section 5883 of
26 the public health code, 1978 PA 368, MCL 333.5883.

27 (g) "Human milk bank" means a member in good standing of the
28 Human Milk Banking Association of North America, a hospital-based
29 or affiliated organization, or other not-for-profit organization

1 that is focused on procuring, processing, storing, and distributing
2 human milk for use by individuals most in need, including, but not
3 limited to, the following:

4 (i) Medically fragile, low birth weight, or preterm infants.

5 (ii) Individuals with delayed lactation.

6 (iii) Infants recovering from serious abdominal or
7 gastrointestinal complications or surgery.

8 (h) "Human milk banking company" means a company,
9 organization, or cooperative that may engage in the practice of
10 providing remuneration to lactating individuals for their expressed
11 human milk or otherwise collects human milk. Remuneration does not
12 include receipt of a breast pump or other supplies reasonably
13 necessary for safe milk expression, storage, or transport.

14 (i) "Processing" means the use of rigorous protocols and
15 requirements based on scientific evidence and recommendations from
16 the Food and Drug Administration, the Centers for Disease Control
17 and Prevention, and the Human Milk Banking Association of North
18 America that are required to prepare, identify, and label human
19 milk, including, but not limited to, 21 CFR part 110 and 21 CFR
20 part 117.

21 (j) "Procuring" means obtaining human milk.

22 (k) "Storage" or "storing" means holding human milk in
23 connection with procuring or processing it before distribution and
24 during the time held before distribution.

25 Sec. 3. (1) Procuring, processing, storing, distributing, or
26 using human milk for the purpose of infant consumption from a human
27 milk bank is a rendering of a service and not the sale of human
28 milk for profit or financial gain.

29 (2) An individual, hospital, human milk bank, or human milk

1 banking company that procures, processes, stores, or distributes
2 human milk from an individual to nourish a child other than the
3 individual's own child shall not provide adulterated human milk for
4 the purpose of infant consumption and shall comply with the
5 standards set forth by the department under this act and standards
6 set forth by the Food and Drug Administration, the Centers for
7 Disease Control and Prevention, and the Human Milk Banking
8 Association of North America. An individual, hospital, human milk
9 bank, or human milk banking company that knowingly provides
10 adulterated human milk is guilty of 1 or more of the following:

11 (a) If the violation does not result in physical injury or
12 death, a state civil infraction and may be ordered to pay a civil
13 fine of not more than \$5,000.00.

14 (b) If the violation results in physical injury, a felony
15 punishable by imprisonment for not more than 5 years, or a fine of
16 not more than \$10,000.00 plus twice the amount of any economic
17 benefit associated with the violation, or both. As used in this
18 subdivision and subdivision (c), "economic benefit" includes any
19 collection or processing fee related to the violation.

20 (c) If the violation results in death, a felony punishable by
21 imprisonment for not more than 15 years, or a fine of not more than
22 \$15,000.00 plus twice the amount of any economic benefit associated
23 with the violation, or both.

24 (3) Subsection (2) does not prohibit an individual, hospital,
25 human milk bank, or human milk banking company from being charged
26 with, convicted of, or punished for any other violation of law
27 committed by that individual, hospital, human milk bank, or human
28 milk banking company while knowingly violating or knowingly
29 attempting to violate subsection (2), including the underlying

1 offense.

2 (4) If a donor provides human milk to a hospital, human milk
3 bank, or human milk banking company, that donor must be screened
4 for drugs, substances, and pathological diseases tested
5 serologically, as determined by the Human Milk Banking Association
6 of North America. Screening is not required on human milk collected
7 from an individual exclusively for the individual's own child.

8 Sec. 5. (1) An individual, human milk bank, or human milk
9 banking company that provides human milk for the purpose of human
10 consumption shall not provide raw human milk for the purpose of
11 infant consumption and must comply with the rules promulgated under
12 this act. An individual, human milk bank, or human milk banking
13 company that knowingly violates this subsection is guilty of 1 or
14 more of the following:

15 (a) If the violation does not result in physical injury or
16 death, a state civil infraction and may be ordered to pay a civil
17 fine of not more than \$5,000.00.

18 (b) If the violation results in physical injury, a felony
19 punishable by imprisonment for not more than 5 years, or a fine of
20 not more than \$10,000.00 plus twice the amount of any economic
21 benefit associated with the violation, or both. As used in this
22 subdivision and subdivision (c), "economic benefit" includes any
23 collection or processing fee related to the violation.

24 (c) If the violation results in death, a felony punishable by
25 imprisonment for not more than 15 years, or a fine of not more than
26 \$15,000.00 plus twice the amount of any economic benefit associated
27 with the violation, or both.

28 (2) Subsection (1) does not prohibit an individual, human milk
29 bank, or human milk banking company from being charged with,

1 convicted of, or punished for any other violation of law committed
2 by that individual, human milk bank, or human milk banking company
3 while knowingly violating or knowingly attempting to violate
4 subsection (1), including the underlying offense.

5 Sec. 7. (1) A person shall not, for valuable consideration,
6 knowingly sell human breast milk over the internet. This subsection
7 applies only to person-to-person direct sales and person-to-person
8 sales through classified advertisements.

9 (2) The prohibition under subsection (1) does not apply to
10 informal milk sharing between families done without taking monetary
11 payment or a community-based milk sharing program. As used in this
12 subsection, "community-based milk sharing program" means any formal
13 or informal organization with the intent to provide human milk to
14 those in need without compensation.

15 (3) A person that violates subsection (1) is subject to a
16 civil fine of not less than \$1,000.00 or more than \$10,000.00. The
17 prosecutor of the county in which the violation occurred or the
18 attorney general may bring an action to collect the fine.

19 Sec. 9. A human milk bank or human milk banking company shall
20 provide or refer the donor to receive lactation support and
21 education that prioritizes the needs of the donor's infant. The
22 education may include information on the nutritional needs of the
23 donor's infant, and breast milk supply and demand, and may be
24 provided by a lactation professional working with a community-based
25 group or hospital-based lactation service.

26 Sec. 11. A human milk bank or human milk banking company
27 operating in this state shall disclose to participating individuals
28 what it does with all of the procured human milk, regardless of
29 whether the human milk is accepted or rejected by the human milk

1 bank or human milk banking company. The disclosure under this
2 section must be in a form and manner prescribed by the department
3 in consultation with human milk banks and human milk banking
4 companies. The department or the department of licensing and
5 regulatory affairs may request that a human milk bank or human milk
6 banking company disclose the quantity of human milk that was
7 accepted or rejected each year.

8 Sec. 13. (1) The director has free access at reasonable hours
9 to any hospital, human milk bank, or human milk banking company for
10 the purpose of evaluating the hospital, human milk bank, or human
11 milk banking company to determine if this act or rules promulgated
12 under this act are being violated. The director may secure samples
13 of any human milk, after paying or offering to pay for the samples,
14 to determine if this act or rules promulgated under this act are
15 being violated.

16 (2) In accordance with the health insurance portability and
17 accountability act of 1996, Public Law 104-191, the director may
18 examine the records of the hospital, human milk bank, or human milk
19 banking company, to obtain pertinent information about the human
20 milk, supplies, and equipment purchased, received, or used by, or
21 individuals employed by, the hospital, human milk bank, or human
22 milk banking company, or location.

23 (3) The director may take photographs or copy records as part
24 of an evaluation. If a hospital, human milk bank, or human milk
25 banking company identifies by written document or mark that a
26 certain area or record contains visible trade secrets, the director
27 shall identify any photographs of that area or copies of that
28 record as being confidential and diligently protect the
29 confidentiality. Information and records obtained under this

1 subsection are not subject to disclosure under the freedom of
2 information act, 1976 PA 442, MCL 15.231 to 15.246.

3 Sec. 15. (1) If necessary for the enforcement of this act, the
4 director may seize without formal warrant any human milk found to
5 be distributed, held for distribution, or exposed for sale in
6 violation of this act or rules promulgated under this act.

7 (2) If the director finds or has probable cause to believe
8 that human milk is adulterated or so misbranded as to be dangerous
9 to public health or fraudulent, within the meaning of this act, the
10 director shall seize the human milk and affix to the human milk a
11 tag or other appropriate marking giving notice that the human milk
12 is, or is suspected of being, adulterated or misbranded and has
13 been seized. The human milk tagged or marked as adulterated or
14 misbranded and seized under subsection (1) or this subsection must
15 not be disposed of, by sale or otherwise, until permission for
16 removal of the tag or disposal of the human milk is authorized by
17 the director or a court in accordance with subsection (3).

18 (3) If human milk seized under subsection (1) or (2) is
19 determined by the director to be adulterated or misbranded, the
20 director shall file a petition in the circuit court in whose
21 jurisdiction the human milk is seized for a complaint for
22 condemnation of the human milk. Seized human milk must be stored by
23 the department safely and at appropriate temperatures during the
24 period of investigation. Seized human milk may be destroyed at the
25 expense of the claimant of the human milk, under the supervision of
26 the director, and the court may order the payment of the costs,
27 fees, storage, and other proper expenses by the claimant of the
28 human milk or the claimant's agents. If the court finds that
29 adulteration or misbranding can be corrected by proper labeling or

1 processing of the human milk, after entry of the order; payment of
2 the costs, fees, and expenses; and execution of a good and
3 sufficient bond conditioned that the human milk be labeled or
4 processed properly, the court may direct the human milk to be
5 delivered to the claimant for labeling or processing under the
6 director's supervision. The claimant shall pay the expense of the
7 supervision. The human milk must be returned to the claimant of the
8 human milk on the representation to the court by the director that
9 the human milk is no longer in violation of this act and that the
10 expenses of supervision have been paid. If the director determines
11 that the human milk seized is not adulterated or misbranded, the
12 director shall remove the tag or other marking. If, within the
13 course of the investigation, previously unadulterated human milk
14 becomes adulterated, the state shall pay the commercial value of
15 the loss to the individual, hospital, human milk bank, or human
16 milk banking company from which the human milk was seized.

17 Sec. 17. This act does not apply to individual-to-individual
18 human milk sharing groups or individuals feeding their own
19 children.

20 Sec. 19. The department may promulgate rules to implement this
21 act in accordance with the administrative procedures act of 1969,
22 1969 PA 306, MCL 24.201 to 24.328.

23 Enacting section 1. This act takes effect January 1, 2026.

24 Enacting section 2. This act does not take effect unless
25 Senate Bill No. 1055 of the 102nd Legislature is enacted into law.
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