

**GRADE A MILK LAW OF 2001 (EXCERPT)**  
**Act 266 of 2001**

ARTICLE IV

**288.510 Purchasing milk for resale or manufacture into another product; payment; manner; dates; issuance of check; notation.**

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

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

**History:** 2001, Act 266, Eff. Feb. 8, 2002.

**288.511 Security device as condition to issuance and maintenance of license; exemption.**

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.

**History:** 2001, Act 266, Eff. Feb. 8, 2002;—Am. 2008, Act 136, Eff. June 20, 2008.

**288.512 Milk plant not providing security device; audited or verified financial statement; requirements.**

Sec. 42. (1) A licensee or applicant for a license as a milk plant not providing a security device under section 43 or 44 shall provide an audited fiscal year end financial statement prepared by a certified public accountant according to generally accepted accounting principles and a quarterly verified financial statement that verifies the licensee's ability to meet the ratio of 1.20:1 for minimum liquidity requirements of current assets to current liabilities.

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

(3) The verified quarterly financial statement shall be filed within 60 days after the end of the fiscal quarter to which the statement pertains. The verified quarterly financial statement shall include, but not be limited to, a balance sheet, income statement, and any other information required by the department. The department may require a milk plant to file a supplementary or interim financial statement or provide additional information at any time pertaining to the financial statements filed under this subsection or to specific information requests made by the department. In determining whether the milk plant has met the minimum liquidity requirement described in this subsection in an audited or verified financial statement, the department shall exclude all intangible assets and assets the department determines to be of doubtful value and may also exclude nontrade notes; accounts receivable from officers, directors, employees, partners, or stockholders or from members of their families; and notes and accounts receivable from parent organizations, subsidiaries, or affiliates if the department determines them to be of doubtful value.

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

**History:** 2001, Act 266, Eff. Feb. 8, 2002.

**288.513 Other forms of security; terms and conditions; value.**

Sec. 43. (1) A licensee or applicant for a license as a milk plant not providing a security device under

section 42 or 44 shall provide any of the following forms of security, in a form and subject to terms and conditions considered necessary by the department, for the benefit of producers who may be damaged by a default in payment, the value of which shall be in an amount determined by the department to be the greater of the value of the greatest milk receipts that the milk plant has received within a consecutive 30-day period during that milk plant's most recent fiscal year or the value of the greatest milk receipts that the milk plant is anticipated to receive during a consecutive 30-day period within the licensing period:

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

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

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

(d) An irrevocable letter of credit filed as security on a form provided by or acceptable to the department with the department and made payable to the department issued by a financial institution acceptable to the department and licensed to do business in this state. The letter of credit shall provide for automatic renewal unless, at least 90 days before the scheduled renewal date, the issuing financial institution gives written notice received by the department that the letter of credit is not to be renewed. The irrevocable letter of credit shall provide that in the event the financial institution gives timely notice of nonrenewal as set forth in this subdivision, the department is permitted to draw on the letter of credit to cover any potential losses, whether known or unknown at the time of the draw, that have been or may be incurred on behalf of the producers. The money drawn from the letter of credit shall be held in an interest-bearing account by the department. Money in the account in excess of the total dollar amount of the approved claims after an adequate time period to discover and approve or disapprove claims shall be repaid to the bank. The excess money is to be paid to the milk plant if the bank has provided the department with a waiver of payment to the bank and has authorized payment to the dairy plant on a form approved by the department.

(e) Life insurance policies acceptable to the department that are issued or endorsed to the department that prohibit the insurer from making any payment to the policy beneficiaries unless the insurer first pays the equivalent of the cash surrender value to the department and provides that the cash surrender value is paid to the department upon cancellation or surrender of the policy.

(f) Other security acceptable to the department.

(2) The department may request information from the office of financial and insurance services of the department of consumer and industry services regarding the financial viability of the financial or insurance institution issuing any security device described in subsection (1).

**History:** 2001, Act 266, Eff. Feb. 8, 2002.

#### **288.514 Prepayment.**

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.

**History:** 2001, Act 266, Eff. Feb. 8, 2002;—Am. 2008, Act 136, Eff. June 20, 2008.

#### **288.515 Cancellation or modification of security device; milk plant as first receiving point for milk; milk sold in interstate commerce; choice of independent audit or voluntary security modification; cost of audit; payment; failure of milk plant to meet minimum liquidity requirement.**

Sec. 45. (1) A milk plant shall not cancel or modify a security device unless written notice is given to the department by the milk plant at least 90 days before the date of cancellation or modification and approval is given by the department for the cancellation or modification. The milk plant shall send the notice of cancellation or modification to the department by certified mail.

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

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

(4) Except as otherwise provided for in subsection (5), financial and product information filed by a milk plant that is a first receiving point for milk is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

(6) A producer may file a written complaint with the department requesting an independent audit regarding the ability of a milk plant that files an audited financial statement as a security device and that is the first receiving point for milk of the producer to meet the minimum liquidity requirement described in section 42. The complaint shall be accompanied by a certified check in the amount of \$100.00 and a signed document guaranteeing full payment for the audit if required under subsection (7). Upon receipt of the complaint and check, the department shall notify the milk plant and advise the milk plant of the choice of either having an independent audit conducted or of voluntarily modifying the security device to either of the alternatives provided for in section 43 or 44.

(7) A milk plant that requests an independent audit under subsection (6) shall bear the cost of that audit if the department determines that the independent audit establishes the milk plant's inability to meet the minimum liquidity requirement described in section 42. The complainant shall bear the cost of the audit if the department determines that the audit establishes that the milk plant meets the minimum liquidity requirement described in section 42.

(8) If the milk plant fails to meet the minimum liquidity requirement described in section 42, the department shall return to the complainant the fee described in subsection (6) and suspend or revoke the milk plant's license in the manner provided for in section 50 or 51. The department may reinstate a suspended license or reissue a revoked license if the milk plant provides the department with a security device described in section 43 or 44. If the department determines that the milk plant meets the minimum liquidity requirement described in section 42, the \$100.00 fee shall be forfeited to the milk plant.

**History:** 2001, Act 266, Eff. Feb. 8, 2002.

### **288.516 Change in security device; circumstances; decision by department to require modification of security device; notice to producers shipping milk.**

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

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

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

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

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

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

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

**History:** 2001, Act 266, Eff. Feb. 8, 2002.

### **288.517 Breach of secured obligation; filing verified proof of claim or evidence of default; entry of department order requiring creditors to file claims; publication of order; audit by department; order allowing or disallowing each claim; collection of amount from licensee or surety to satisfy claims; action by attorney general; award of interest; other lien, security, or priority.**

Sec. 47. (1) A person injured by the breach of an obligation secured by a security device described in section 42, 43, or 44, including, but not limited to, a producer and a person representing a commodity check-off program, may file with the department a verified proof of claim or other evidence of default. Upon

receipt of a verified proof of claim or other evidence of default, the department may issue an order requiring each interested creditor, as may be known to the department, to file a verified proof of claim before a certain date or be barred from participating in any recovery made by the department.

(2) The department shall provide notice of the entry of an order issued under subsection (1) by posting a copy of the order on the premises described in the license and by publication in accordance with the Michigan court rules that govern service of process by publication. Publication shall be completed at least 30 days before the final date for the filing of claims.

(3) The department shall make the necessary audit and issue an order allowing or disallowing each claim presented. Within 30 days of that order, the department shall send to the principal and surety, by certified mail, notice of allowance or disallowance and request for the payment. The department shall demand and may collect and receive from the licensee, or from the surety or sureties of the licensee, the amount determined to be necessary to satisfy the claims with interest at the judgment rate computed from the date of loss. The department may request that the department of attorney general commence an action for that purpose in a court of competent jurisdiction. If the attorney general prevails in whole or in part, the court shall award interest from the date of loss at the judgment rate. Upon receipt of money paid in partial or complete satisfaction of a claim as provided in this section, the department shall distribute to the claimant in accordance with the order allowing the claim, in full or proportionally.

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

**History:** 2001, Act 266, Eff. Feb. 8, 2002.

### **288.518 License issued, renewed, or modified; notice to producers delivering milk; form.**

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

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

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

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

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

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

(c) \_\_\_\_\_, (name of milk plant licensee) is currently licensed on the basis of its audited financial statement meeting the minimum liquidity requirement of a current ratio of at least 1.20 to 1 current assets to current liabilities. The licensee's most recent year-end financial statement audited by the firm of \_\_\_\_\_ (auditor's name) meets the following minimum liquidity requirement,

(or)

\_\_\_\_\_ (name of milk plant licensee) has filed security with the department to secure payment to producers. The maximum amount of security is the amount determined to be the greater of the following:

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

(2) The greatest milk receipts that the milk plant is anticipated to receive within a 30-day period within the licensing period, whichever is greater.

The security filed is in the following form or forms and in the amount of: \_\_\_\_\_

\_\_\_\_\_".

**History:** 2001, Act 266, Eff. Feb. 8, 2002.