



HOUSE BILL No. 5879

May 9, 1996, Introduced by Reps. Green, Horton, Kukuk, Goschka, Rhead, Hill, Lowe, Gernaat, Gnodtke, Jellema, Llewellyn, Middleton, Cropsey, Baade, Geiger and Alley and referred to the Committee on Agriculture and Forestry.

A bill to amend sections 1, 3a, 3b, 3c, 3e, 3j, 3k, and 6 of Act No. 222 of the Public Acts of 1913, entitled as amended "Manufacturing milk act," as amended by Act No. 134 of the Public Acts of 1993, being sections 288.101, 288.103a, 288.103b, 288.103c, 288.103e, 288.103j, 288.103k, and 288.106 of the Michigan Compiled Laws; to add section 3l; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 3a, 3b, 3c, 3e, 3j, 3k, and 6 of Act
2 No. 222 of the Public Acts of 1913, as amended by Act No. 134 of
3 the Public Acts of 1993, being sections 288.101, 288.103a,
4 288.103b, 288.103c, 288.103e, 288.103j, 288.103k, and 288.106 of
5 the Michigan Compiled Laws, are amended and section 3l is added
6 to read as follows:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "manufacturing milk act".

3 (2) As used in this act:

4 (a) "Adulteration" means the commingling of a liquid or dry
5 product with another in a manner not approved by the department.

6 (b) "Cream" means the fresh and clean substance containing
7 at least 18% milk fat that rises to the surface of standing milk
8 ~~—~~ or that is separated from standing milk by centrifugal
9 force.

10 (c) "Dairy plant" means a milk plant, transfer or receiving
11 station, creamery, cheese plant, or other plant receiving dairy
12 products or processing dairy products into manufactured dairy
13 products.

14 (d) "Dairy product" means milk or cream.

15 (e) "Department" means the department of agriculture.

16 (f) "Dry milk product" means a product resulting from the
17 drying of milk or a milk product.

18 (g) "Dryer" means equipment that dries milk or a milk
19 product.

20 (h) "Milk" means either of the following:

21 (i) The fresh, clean, lacteal secretion obtained by the com-
22 plete milking of 1 or more healthy cows, properly fed and kept,
23 excluding a lacteal secretion obtained within 15 days before and
24 5 days after calving, that contains not less than 8.25% of milk
25 solids not fat, and not less than 3.25% of milk fat.

26 (ii) The lacteal secretion, practically free from colostrum,
27 obtained by the complete milking of 1 or more healthy goats.

1 (i) "Milk product" or "manufactured dairy product" means
2 butter, dry skim milk, dry cream, CHEESE, milk casein, ice cream,
3 malted or milk sugar, infant formula manufactured with dairy
4 ingredients, or other form of processed dairy product.

5 (j) "Person" means an individual, partnership, LIMITED
6 LIABILITY COMPANY, cooperative, association, or corporation.

7 (K) "PRODUCER" MEANS A PERSON WHO OWNS OR OPERATES A DAIRY
8 FARM IN THIS STATE AND SELLS AND DISTRIBUTES MILK PRODUCED ON
9 THAT FARM. PRODUCER INCLUDES A PERSON WHO MARKETS MILK ON BEHALF
10 OF ANOTHER PRODUCER AND, PURSUANT TO A WRITTEN AGENCY CONTRACT,
11 MARKETS, RECEIVES AND COLLECTS PAYMENT FOR, AND PAYS FOR THE
12 OTHER PRODUCER'S MILK. PRODUCER DOES NOT INCLUDE A PERSON WHO
13 DOES ANY OF THE FOLLOWING ON BEHALF OF ANOTHER PRODUCER:

14 (i) BUYS OR TAKES TITLE TO THE OTHER PRODUCER'S MILK.

15 (ii) PASTEURIZES OR PACKAGES THAT PRODUCER'S MILK.

16 (iii) MANUFACTURES ANY FOOD OR DAIRY PRODUCT FROM THE OTHER
17 PRODUCER'S MILK.

18 (L) ~~(K)~~ "Sterilization" means the complete destruction of
19 living organisms by 1 of the following methods:

20 (i) Heating a container and its contents to a temperature
21 between 212 degrees Fahrenheit to 280 degrees Fahrenheit for a
22 period of time established by the department.

23 (ii) Creating a continuous product flow above a temperature
24 of 280 degrees Fahrenheit for a period of time established by the
25 department.

1 (iii) Employing a process described in subdivision (i) or
2 (ii), and following packaging of the sterilized product, applying
3 a heat treatment approved by the department.

4 (M) "VERIFIED FINANCIAL STATEMENT" MEANS A FINANCIAL STATE-
5 MENT THAT CONTAINS A NOTARIZED STATEMENT, SIGNED AND SWORN TO BY
6 THE DAIRY PLANT OPERATOR ATTESTING THAT THE FINANCIAL STATEMENT
7 IS CORRECT.

8 Sec. 3a. (1) Before operating a dairy plant, a person,
9 owning or intending to operate a dairy plant ~~that is not~~
10 ~~licensed by the department under other laws regulating dairy~~
11 ~~plants~~ shall APPLY FOR AND obtain a license from the director of
12 the department. ~~of agriculture. The person shall complete an~~
13 ~~application form furnished by the director that requires the~~
14 ~~person to identify the ownership and location of the dairy plant~~
15 ~~and provide other information required by the director. The~~
16 ~~director may issue a temporary license.~~ AN APPLICANT FOR AN INI-
17 TIAL LICENSE AS A DAIRY PLANT THAT PRODUCES MANUFACTURED DAIRY
18 PRODUCTS SHALL PROVIDE TO THE DEPARTMENT A LIST OF PRODUCERS WITH
19 WHOM THE DAIRY PLANT INTENDS TO DO BUSINESS EXCEPT THAT NOT LATER
20 THAN 90 DAYS AFTER BECOMING LICENSED FOR THE FIRST TIME, THAT
21 LICENSEE SHALL SEND AN UPDATED LIST TO THE DEPARTMENT. AS A CON-
22 DITION TO RENEWAL OF A LICENSE AS A DAIRY PLANT THAT PRODUCES
23 MANUFACTURED DAIRY PRODUCTS, THE LICENSEE SHALL PROVIDE TO THE
24 DEPARTMENT A COMPLETE LIST OF PRODUCERS WITH WHOM THE DAIRY PLANT
25 IS DOING BUSINESS. THIS LIST REQUIRED UNDER THIS SUBSECTION
26 SHALL INCLUDE THE NAME, MAILING ADDRESS, AND DEPARTMENT PRODUCER

1 PERMIT NUMBER OF THE PRODUCERS. THE APPLICATION SHALL CONTAIN
2 THE FOLLOWING INFORMATION:

3 (A) THE DAIRY PLANT'S CORRECT LEGAL NAME AND ANY NAME BY
4 WHICH THE DAIRY PLANT IS DOING BUSINESS. IF THE DAIRY PLANT IS A
5 PERSON NOT AN INDIVIDUAL, THE NAME OF EACH OFFICER, DIRECTOR, OR
6 PARTNER AND ANY MEMBER OR OWNER WHO HAS A CONTROLLING INTEREST IN
7 THE DAIRY PLANT.

8 (B) THE LOCATION OF THE DAIRY PLANT TO WHICH THE STATEMENT
9 PERTAINS AND THE NAME OF THE RESPONSIBLE PERSON WHO MAY BE CON-
10 TACTED AT THAT LOCATION.

11 (C) THE GREATER OF EITHER THE VALUE OF THE GREATEST MILK
12 RECEIPTS THE DAIRY PLANT HAS RECEIVED WITHIN A CONSECUTIVE 30-DAY
13 PERIOD DURING THAT DAIRY PLANT'S MOST RECENT FISCAL YEAR OR THE
14 VALUE OF THE GREATEST MILK RECEIPTS THE DAIRY PLANT IS ANTICI-
15 PATED TO RECEIVE DURING A 30-DAY PERIOD WITHIN THE LICENSING
16 PERIOD.

17 (D) THE NUMBER AND IDENTITY OF PRODUCERS FROM WHOM THE DAIRY
18 PLANT RECEIVES MILK.

19 (E) THE NAME OF THE FINANCIAL INSTITUTION THROUGH WHICH MILK
20 CHECKS ARE ISSUED TO PRODUCERS.

21 (2) At the time of application, the ~~person~~ APPLICANT shall
22 pay to the ~~director~~ DEPARTMENT an annual license fee of \$50.00
23 for each DAIRY plant the ~~person~~ APPLICANT operates or intends
24 to operate. ~~and within~~ WITHIN 130 days after the close of the
25 ~~person's~~ DAIRY PLANT'S fiscal year, THE DAIRY PLANT SHALL APPLY
26 FOR RENEWAL OF THE LICENSE AND pay a renewal fee of \$50.00 for
27 each plant ~~the person~~ IT operates.

1 (3) THE DEPARTMENT MAY ISSUE A TEMPORARY LICENSE WITH A
2 DURATION OF UP TO 30 DAYS IF THE DEPARTMENT DETERMINES THAT ISSU-
3 ANCE OF THE LICENSE WILL NOT BE DETRIMENTAL TO THE PROTECTION OF
4 THE PUBLIC HEALTH, SAFETY, OR WELFARE OR WILL NOT CAUSE AN IMMI-
5 NENT THREAT OF FINANCIAL LOSS TO PRODUCERS. THE TEMPORARY
6 LICENSE MAY BE EXTENDED UP TO 30 ADDITIONAL DAYS.

7 Sec. 3b. Upon receipt of an application under section 3a
8 for an unlicensed dairy plant or for a dairy plant previously
9 denied a license under this act, the department shall investigate
10 the sanitary conditions of the DAIRY plant or place of business.
11 The director shall not issue a license under this act upon deter-
12 mining that the sanitary conditions of the applicant's DAIRY
13 plant or place of business do not comply with this act ~~—~~ AND
14 rules and regulations promulgated under this act. ~~—, or a law~~
15 ~~that regulates the dairy business. The director may revoke a~~
16 ~~license issued under this act upon determining after a hearing~~
17 ~~that the licensee has violated this act, a rule or regulation~~
18 ~~promulgated under this act, or a law that regulates the dairy~~
19 ~~business. A person whose license has been revoked or refused~~
20 ~~shall immediately discontinue operation of the business for which~~
21 ~~the license was issued or applied for, and that person is not~~
22 ~~eligible for a license until the director determines that the~~
23 ~~violation has been remedied.~~

24 Sec. 3c. (1) ~~Before~~ EXCEPT AS OTHERWISE PROVIDED FOR IN
25 SUBSECTION (6), BEFORE SUSPENDING, revoking, OR DENYING a
26 license, the department shall provide the affected licensee with
27 a written notice that identifies all of the following:

1 (a) The intent to SUSPEND, revoke, OR DENY.

2 (b) The grounds upon which the intended SUSPENSION,
3 revocation, OR DENIAL is based.

4 (c) The time and place of hearing.

5 (2) The department shall personally serve or ~~mail~~ SEND by
6 certified mail to the licensee the notice OF SUSPENSION, REVOCA-
7 TION, OR DENIAL at least 10 days before the date set for the
8 hearing. The hearing shall be conducted in a manner prescribed
9 by the administrative procedures act of 1969, Act No. 306 of the
10 Public Acts of 1969, being sections 24.201 to 24.328 of the
11 Michigan Compiled Laws.

12 (3) THE DIRECTOR OF THE DEPARTMENT SHALL REVOKE OR SUSPEND A
13 LICENSE ISSUED UNDER THIS ACT UPON DETERMINING THAT THE LICENSEE
14 HAS DONE 1 OR MORE OF THE FOLLOWING:

15 (A) FAILED TO PROVIDE INFORMATION REQUIRED TO BE SUPPLIED TO
16 THE DEPARTMENT UNDER THIS ACT OR INFORMATION REQUESTED BY THE
17 DEPARTMENT UNDER SECTION 3J(2)(A).

18 (B) FAILED TO PROVIDE A SECURITY DEVICE IN THE AMOUNT AND
19 MANNER REQUESTED BY THE DEPARTMENT UNDER SECTION 3J(13).

20 (C) KNOWINGLY PROVIDED MATERIALLY FALSE OR FRAUDULENT INFOR-
21 MATION OR MADE A MATERIAL MISREPRESENTATION ON AN APPLICATION.

22 (D) KNOWINGLY PROVIDED MATERIALLY FALSE OR FRAUDULENT INFOR-
23 MATION OR MADE A MATERIAL MISREPRESENTATION IN RESPONSE TO A
24 REQUEST FOR INFORMATION BY THE DEPARTMENT.

25 (E) FAILED TO PAY A PRODUCER IN THE MANNER PROVIDED FOR IN
26 SECTION 3E(1).

1 (F) KNOWINGLY POSSESSED, SOLD, OFFERED FOR SALE, OR
2 PURCHASED ANY MILK OR CREAM FOR USE IN A HUMAN FOOD PRODUCT THAT
3 HAS BEEN CONDEMNED UNDER THIS ACT.

4 (G) VIOLATED THIS ACT OR A RULE PROMULGATED UNDER THIS ACT.

5 (4) A PERSON WHOSE LICENSE HAS BEEN SUSPENDED, REVOKED, OR
6 DENIED SHALL IMMEDIATELY DISCONTINUE OPERATION OF THE BUSINESS
7 FOR WHICH THE LICENSE WAS ISSUED.

8 (5) A PERSON WHOSE LICENSE HAS BEEN SUSPENDED OR REVOKED IS
9 NOT ELIGIBLE FOR A LICENSE UNTIL THE DEPARTMENT DETERMINES THAT
10 THE VIOLATION HAS BEEN REMEDIED.

11 (6) THE DEPARTMENT MAY SUMMARILY SUSPEND THE LICENSE OF A
12 LICENSEE IF THE DEPARTMENT DETERMINES THAT SUCH A SUSPENSION IS
13 NECESSARY TO PROTECT THE HEALTH, SAFETY, OR WELFARE OF THE PUBLIC
14 OR TO PREVENT IMMINENT THREAT OF FINANCIAL LOSS TO PRODUCERS.
15 THE DEPARTMENT SHALL INCORPORATE THIS DETERMINATION IN ITS ORDER
16 OF SUMMARY SUSPENSION. SUMMARY SUSPENSION MAY BE ORDERED EFFEC-
17 TIVE ON THE DATE SPECIFIED IN THE ORDER OR UPON SERVICE UPON THE
18 LICENSEE OF THAT CERTIFIED ORDER, WHICHEVER IS LATER, AND IS
19 EFFECTIVE DURING THE PROCEEDINGS. THE PROCEEDINGS SHALL BE
20 PROMPTLY COMMENCED AND DETERMINED.

21 Sec. 3e. (1) ~~Each~~ A person purchasing milk for resale or
22 manufacture into another product shall pay the milk's producer
23 ~~and, on a monthly or more frequent basis, shall tender payment~~
24 ~~on or before the fifteenth day of the month for milk received~~
25 ~~prior to the first day of that month. The director shall revoke~~
26 ~~or refuse a license required by this act for a violation of this~~
27 ~~section.~~ AN ADVANCE PAYMENT ON OR BEFORE THE LAST DAY OF EACH

1 MONTH FOR MILK RECEIVED DURING THE FIRST 15 DAYS OF THE MONTH AND
 2 A FINAL PAYMENT ON OR BEFORE THE FIFTEENTH DAY AFTER THE END OF
 3 THE MONTH FOR MILK RECEIVED DURING THE PRECEDING MONTH.

4 (2) A LICENSEE SHALL NOT ISSUE A CHECK TO THE PRODUCER
 5 UNLESS THE NAME OF THE LICENSEE IS NOTED ON THE CHECK.

6 Sec. 3j. (1) ~~If 1 of the following security devices is~~
 7 ~~filed with the director of the department, the department shall~~
 8 ~~issue to~~ AS A CONDITION TO LICENSURE, a dairy plant that
 9 produces manufactured dairy products ~~a license authorized under~~
 10 ~~this act, and shall revoke or deny a license if the licensee or~~
 11 ~~license applicant fails to~~ SHALL provide 1 of the ~~following~~
 12 security devices ~~upon the department's request.~~ DESCRIBED IN
 13 SUBSECTION (2).

14 (2) THE DEPARTMENT MAY ACCEPT THE FOLLOWING SECURITY
 15 DEVICES:

16 (a) ~~Beginning April 27, 1982, a~~ A current ~~certified,~~
 17 audited financial statement prepared by a certified public
 18 accountant ~~,~~ ACCORDING TO GENERALLY ACCEPTED ACCOUNTING
 19 PRINCIPLES and new year end ~~certified audits~~ AUDITED FINANCIAL
 20 STATEMENT within 120 days of the licensee's FISCAL year end that
 21 verify the licensee's ability to meet the ratio of ~~1:2:1~~ 1.2:1
 22 for minimum liquidity requirements of current assets to current
 23 liabilities. THE DEPARTMENT MAY REQUIRE A DAIRY PLANT THAT
 24 PRODUCES MANUFACTURED DAIRY PRODUCTS TO FILE A SUPPLEMENTARY OR
 25 INTERIM FINANCIAL STATEMENT OR PROVIDE ADDITIONAL INFORMATION AT
 26 ANY TIME PERTAINING TO THE FINANCIAL STATEMENTS FILED UNDER
 27 SUBSECTION (2)(A) OR TO SPECIFIC INFORMATION REQUESTS MADE BY THE

1 DEPARTMENT. THE DEPARTMENT SHALL DETERMINE WHETHER THE STATEMENT
2 SHALL BE AUDITED OR VERIFIED. IN DETERMINING WHETHER THE DAIRY
3 PLANT HAS MET THE FINANCIAL STANDARDS DESCRIBED IN THIS SUBSEC-
4 TION IN AN AUDITED OR VERIFIED FINANCIAL STATEMENT, THE DEPART-
5 MENT SHALL EXCLUDE ALL INTANGIBLE ASSETS AND ASSETS THE DEPART-
6 MENT DETERMINES TO BE OF DOUBTFUL VALUE AND MAY ALSO EXCLUDE NON-
7 TRADE NOTES; ACCOUNTS RECEIVABLE FROM OFFICERS, DIRECTORS,
8 EMPLOYEES, PARTNERS, OR STOCKHOLDERS OR FROM MEMBERS OF THEIR
9 FAMILIES; AND NOTES AND ACCOUNTS RECEIVABLE FROM PARENT ORGANIZA-
10 TIONS, SUBSIDIARIES, OR AFFILIATES IF THE DEPARTMENT DETERMINES
11 THEM TO BE OF DOUBTFUL VALUE. AN APPLICANT FOR A LICENSE THAT
12 HAS NOT BEEN IN THE BUSINESS OF RECEIVING MILK DURING THE PRECED-
13 ING 12 MONTHS SHALL ONLY PROVIDE A SECURITY DEVICE OTHER THAN AN
14 AUDITED FINANCIAL STATEMENT FOR AT LEAST THE INITIAL 12 MONTHS OF
15 LICENSED OPERATION. AT THE END OF THE INITIAL 12-MONTH PERIOD,
16 THE DEPARTMENT MAY ALLOW THE DAIRY PLANT TO UTILIZE AN AUDITED
17 FINANCIAL STATEMENT AS A SECURITY DEVICE IF THE STATEMENT MEETS
18 MINIMUM LIQUIDITY REQUIREMENTS OF SUBSECTION (2)(A) AND IF THE
19 DAIRY PLANT IS OTHERWISE IN COMPLIANCE WITH THIS ACT. IN ADDI-
20 TION TO THE AUDITED YEAR END FINANCIAL STATEMENT, THE DAIRY PLANT
21 SHALL FILE A VERIFIED QUARTERLY FINANCIAL STATEMENT WHICH SHALL
22 INCLUDE, BUT NOT BE LIMITED TO, A BALANCE SHEET, INCOME STATE-
23 MENT, AND ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT. THE
24 DAIRY PLANT SHALL FILE THE VERIFIED QUARTERLY STATEMENT WITHIN 60
25 DAYS AFTER THE END OF THE FISCAL QUARTER TO WHICH THE STATEMENT
26 PERTAINS. THE AUDITED YEAR END FINANCIAL STATEMENT SHALL CONTAIN
27 A BALANCE SHEET, INCOME STATEMENT, EQUITY STATEMENT, STATEMENT OF

1 CASH FLOW, NOTES TO THE STATEMENTS, AND ANY OTHER INFORMATION
2 REQUIRED BY THE DEPARTMENT. THE DEPARTMENT MAY EXTEND THE DATE
3 FOR FILING THE AUDITED YEAR END FINANCIAL STATEMENT BY UP TO 30
4 DAYS ONLY UPON THE WRITTEN REQUEST OF THE DAIRY PLANT OR THE
5 DAIRY PLANT'S ACCOUNTANT PREPARING THE STATEMENT IF THE REQUEST
6 IS MADE NOT LESS THAN 10 DAYS BEFORE THE DEADLINE FOR THE FILING
7 OF THE STATEMENT. THE REQUEST SHALL STATE THE REASON FOR THE
8 DELAY.

9 (b) Any of the following IN AN AMOUNT DETERMINED BY THE
10 DEPARTMENT TO BE THE GREATER OF THE VALUE OF THE GREATEST MILK
11 RECEIPTS THAT THE DAIRY PLANT HAS RECEIVED WITHIN A CONSECUTIVE
12 30-DAY PERIOD DURING THAT DAIRY PLANT'S MOST RECENT FISCAL YEAR
13 OR THE VALUE OF THE GREATEST MILK RECEIPTS THAT THE DAIRY PLANT
14 IS ANTICIPATED TO RECEIVE DURING A CONSECUTIVE 30-DAY PERIOD
15 WITHIN THE LICENSING PERIOD for the benefit of producers who may
16 be damaged by a default in payment:

17 (i) A COMMERCIAL SURETY bond SUBJECT TO CANCELLATION ONLY
18 AFTER WRITTEN NOTICE TO THE DEPARTMENT AND MADE PAYABLE TO THE
19 DEPARTMENT. THE COMMERCIAL SURETY BOND SHALL BE issued by a
20 surety company authorized to do business in this state and condi-
21 tioned upon the faithful and proper discharge of the duty to pay
22 a producer, when payment is due, for milk received by the dairy
23 plant.

24 ~~(ii) Cash, in an amount not to exceed the value of the~~
25 ~~greatest milk receipts the dairy plant received within a consecu-~~
26 ~~tive 30 day period during that dairy plant's most recent fiscal~~
27 ~~year, or the greatest milk receipts that the dairy plant is~~

1 ~~anticipated to receive during a 30 day period within the~~
2 ~~licensing period, whichever is greater.~~

3 (ii) A CERTIFICATE OF DEPOSIT OR MONEY MARKET CERTIFICATE
4 THAT IS ISSUED OR ENDORSED TO THE DEPARTMENT AND THAT CANNOT BE
5 CANCELED OR REDEEMED WITHOUT THE WRITTEN AUTHORIZATION OF THE
6 DEPARTMENT. THE CERTIFICATE SHALL BE FROM A FINANCIAL INSTITU-
7 TION AUTHORIZED TO DO BUSINESS IN THIS STATE WHOSE DEPOSITS ARE
8 INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

9 (iii) STOCKS, BONDS, OR SECURITIES ACCEPTABLE TO THE DEPART-
10 MENT THAT ARE ISSUED OR ENDORSED TO THE DEPARTMENT AND READILY
11 CONVERTIBLE TO CASH BY THE DEPARTMENT AND SUBJECT TO REDEMPTION
12 OR SALE ONLY UPON WRITTEN PERMISSION OF THE DEPARTMENT.

13 (iv) AN IRREVOCABLE LETTER OF CREDIT PROVIDING FOR AUTOMATIC
14 ANNUAL RENEWAL FILED AS SECURITY WITH THE DEPARTMENT ISSUED BY A
15 FINANCIAL INSTITUTION ACCEPTABLE TO THE DEPARTMENT AND LICENSED
16 TO DO BUSINESS IN THIS STATE. THE DEPARTMENT MAY REQUEST INFOR-
17 MATION FROM THE FINANCIAL INSTITUTIONS BUREAU OF THE DEPARTMENT
18 OF CONSUMER AND INDUSTRY SERVICES REGARDING THE FINANCIAL VIABIL-
19 ITY OF THE FINANCIAL INSTITUTION.

20 (v) LIFE INSURANCE POLICIES ACCEPTABLE TO THE DEPARTMENT
21 THAT ARE ISSUED OR ENDORSED TO THE DEPARTMENT SO THAT THE INSURER
22 CANNOT MAKE ANY PAYMENT TO THE POLICY BENEFICIARIES UNLESS THE
23 INSURER FIRST PAYS THE EQUIVALENT OF THE CASH SURRENDER VALUE TO
24 THE DEPARTMENT AND SO THAT THE CASH SURRENDER VALUE IS PAID TO
25 THE DEPARTMENT UPON CANCELLATION OR SURRENDER OF THE POLICY.

26 (vi) ~~(iii)~~ Other security acceptable to the department. →
27 ~~including, but not limited to, an irrevocable letter of credit,~~

1 ~~less any amount the dairy plant owes the producer payable to the~~
2 ~~department.~~

3 (c) An agreement in which the dairy plant prepays for its
4 milk supply by providing cash payments before or at the time of
5 delivery OF DAIRY PRODUCTS.

6 (3) A DAIRY PLANT THAT PRODUCES MANUFACTURED DAIRY PRODUCTS
7 SHALL NOT CANCEL OR MODIFY A SECURITY DEVICE UNLESS WRITTEN
8 NOTICE IS GIVEN TO THE DEPARTMENT BY THE DAIRY PLANT AT LEAST 90
9 DAYS BEFORE THE DATE OF CANCELLATION OR MODIFICATION. THE DAIRY
10 PLANT SHALL SEND THE NOTICE OF CANCELLATION OR MODIFICATION TO
11 THE DEPARTMENT BY CERTIFIED MAIL.

12 (4) ~~(2)~~ Upon issuing, renewing, or ~~altering~~ MODIFYING a
13 license ~~the director of~~ the department, IN THE MANNER PROVIDED
14 FOR IN SECTION 31, shall notify each ~~dairy product~~ producer
15 delivering dairy products to the licensed dairy plant of the
16 ~~financial~~ TYPE OF SECURITY DEVICE USED FOR THE BENEFIT OF PRO-
17 DUCERS AND THE basis upon which the license was issued, renewed,
18 or ~~altered~~ MODIFIED. The notice shall ~~state the type and~~
19 ~~amount of security provided pursuant to this~~ CONFORM TO section
20 31. ~~A security device shall not be canceled or modified unless~~
21 ~~written notice is given to the department at least 90 days before~~
22 ~~the date of cancellation. Notice of cancellation shall be sent~~
23 ~~to the department by certified mail.~~

24 (5) ~~(3)~~ A dairy plant that produces manufactured dairy
25 products shall ~~not receive~~ NOTIFY THE DEPARTMENT AT LEAST 30
26 DAYS BEFORE RECEIVING dairy products that will increase the
27 amount due and accrued from the dairy plant to an amount greater

1 than the amount represented as a basis for the issuance of the
2 license. ~~, without first notifying the department.~~

3 (6) ~~(4)~~ This section does not apply to the sale of dairy
4 products or manufactured dairy products in interstate commerce to
5 an out of state purchaser not licensed ~~pursuant to~~ UNDER this
6 act. The protection provided by this section is available to a
7 producer in another state selling dairy products to a licensee in
8 this state.

9 (7) ~~(5) Financial~~ EXCEPT AS OTHERWISE PROVIDED FOR IN
10 SUBSECTION (13), FINANCIAL and product information filed by a
11 dairy plant that produces manufactured dairy products is not
12 subject to disclosure under the freedom of information act, Act
13 No. 442 of the Public Acts of 1976, ~~as amended,~~ being sections
14 15.231 to 15.246 of the Michigan Compiled Laws.

15 (8) ~~(6)~~ Upon receipt of a written request, the department
16 shall provide ~~an individual dairy product~~ A producer ~~or an~~
17 ~~agent of the producer~~ a copy of the ~~certified~~ MOST RECENT
18 audited financial statement of the dairy plant that produces the
19 dairy products of that producer.

20 (9) ~~(7) An individual dairy product~~ A producer ~~or an~~
21 ~~agent of the producer~~ may file a written complaint with the
22 department requesting an INDEPENDENT audit ~~of~~ REGARDING the
23 ability of ~~the dairy plant~~ A DAIRY PLANT THAT FILES AN AUDITED
24 FINANCIAL STATEMENT AS A SECURITY DEVICE AND that produces the
25 dairy products of the individual producer to meet the minimum
26 liquidity requirements ~~pursuant to~~ DESCRIBED IN subsection
27 ~~((1)) (a)~~ (2)(A). The complaint shall be accompanied by a

1 certified check in the amount of \$100.00 and a signed document
 2 guaranteeing full payment for ~~an~~ THE audit if required under
 3 subsection ~~(8)~~ (10). Upon receipt of the complaint and check,
 4 the department shall notify the ~~appropriate~~ dairy plant and
 5 ~~present to~~ ADVISE the dairy plant OF the choice of either
 6 having an independent audit conducted ~~—~~ or OF voluntarily
 7 ~~changing~~ MODIFYING the security ~~arrangement~~ DEVICE to either
 8 of the alternatives provided for in subsection ~~(+)(b)~~ (2)(B) or
 9 (c).

10 (10) ~~(8)~~ A dairy plant that requests an independent audit
 11 under subsection ~~(7)~~ (9) shall bear the cost of that audit if
 12 THE DEPARTMENT DETERMINES THAT the INDEPENDENT audit establishes
 13 ~~to the department's satisfaction~~ the dairy plant's inability to
 14 meet minimum liquidity requirements described in subsection
 15 ~~(+)(a)~~ (2)(A). The complainant shall bear the cost of the
 16 audit if THE DEPARTMENT DETERMINES THAT the audit establishes ~~to~~
 17 ~~the department's satisfaction~~ that the dairy plant meets the
 18 minimum liquidity requirements described in subsection ~~(+)(a)~~
 19 (2)(A).

20 (11) ~~(9)~~ If the dairy plant fails to meet the minimum
 21 liquidity requirements described in subsection ~~(+)(a)~~ (2)(A),
 22 the department shall return to the complainant the fee described
 23 in subsection ~~(7)~~ (10) and suspend or revoke the dairy plant's
 24 license in ~~compliance with the administrative procedures act of~~
 25 ~~1969, Act No. 306 of the Public Acts of 1969, being~~
 26 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws~~ THE
 27 MANNER PROVIDED FOR IN SECTION 3C. The department may reinstate

1 a suspended license ~~or~~ or reissue a revoked license ~~or~~ if the
2 dairy plant ~~complies with~~ PROVIDES THE DEPARTMENT WITH A SECUR-
3 ITY DEVICE DESCRIBED IN subsection ~~(1)(b)~~ (2)(B) or (c). If
4 the department determines that the dairy plant meets the minimum
5 liquidity requirements described in subsection ~~(1)(a)~~ (2)(A),
6 the \$100.00 FEE shall be forfeited to the dairy plant.

7 (12) ~~(10)~~ A ~~licensee~~ DAIRY PLANT THAT PRODUCES MANUFAC-
8 TURED DAIRY PRODUCTS may request a change in its security
9 ~~arrangement~~ DEVICE at any time. THE DEPARTMENT SHALL ALLOW THE
10 CHANGE IN THE DAIRY PLANT'S SECURITY DEVICE if all requirements
11 for the new security ~~arrangement~~ DEVICE have been met and all
12 producers doing business with the licensee have been duly
13 notified.

14 (13) THE DEPARTMENT MAY REQUIRE A DAIRY PLANT TO PROVIDE A
15 CHANGE OR INCREASE IN A SECURITY DEVICE IF THE DEPARTMENT HAS
16 REASON TO BELIEVE AFTER REVIEWING RELEVANT FINANCIAL INFORMATION
17 THAT THE DAIRY PLANT NO LONGER MEETS THE MINIMUM LIQUIDITY
18 REQUIREMENTS OF THIS ACT, THAT THE DAIRY PLANT CAN NO LONGER MAKE
19 PAYMENTS IN THE MANNER PROVIDED FOR IN SECTION 3E(1), OR THAT THE
20 VALUE OF THE DAIRY PLANT'S SECURITY DEVICE FALLS BELOW THE
21 REQUIREMENTS OF THIS SUBSECTION DUE TO DEPRECIATION IN THE VALUE
22 OF THE SECURITY, AN INCREASE IN THE MAXIMUM LIABILITY TO PRODUC-
23 ERS, OR THE CANCELLATION OR CHANGE OF THE SECURITY DEVICE. THE
24 DEPARTMENT SHALL SEND WRITTEN NOTICE BY CERTIFIED MAIL TO THE
25 DAIRY PLANT STATING THE REASONS FOR THE DEMAND FOR CHANGE OR
26 INCREASE IN A SECURITY DEVICE AND SETTING THE DATE FOR PROVIDING
27 THE CHANGED OR INCREASED SECURITY DEVICE.

1 (14) THE DEPARTMENT SHALL NOTIFY ALL PRODUCERS AND PRODUCER
2 AGENTS SHIPPING DAIRY PRODUCTS TO A DAIRY PLANT THAT PRODUCES
3 MANUFACTURED DAIRY PRODUCTS OF THE DECISION TO REQUIRE THE DAIRY
4 PLANT TO MODIFY OR CHANGE A SECURITY DEVICE. THE NOTICE REQUIRED
5 UNDER THIS SUBSECTION SHALL BE PROVIDED WITHIN 5 DAYS AFTER THE
6 DEPARTMENT'S ISSUANCE OF THE ORDER TO REQUIRE ANOTHER SECURITY
7 DEVICE.

8 Sec. 3k. (1) A person injured by the breach of an obliga-
9 tion secured ~~pursuant to~~ BY A SECURITY DEVICE DESCRIBED IN sec-
10 tion 3j, INCLUDING A PRODUCER, A PRODUCER AGENT, AND A PERSON
11 REPRESENTING A COMMODITY CHECKOFF PROGRAM, may file with the
12 department a verified proof of claim or other evidence of
13 default. Upon receipt of a verified proof of claim or other evi-
14 dence of default, the department may issue an order requiring
15 each interested creditor to file a verified proof of claim before
16 a certain date, or be barred from participating in any recovery
17 made by the department. The department shall provide notice of
18 the entry of an order by posting a copy of the order on the
19 premises described in the license ~~—~~ and by publication in
20 accordance with the Michigan court rules that govern service of
21 process by publication. Publication shall be completed at least
22 30 days before the the final date for the filing of claims. The
23 department shall ~~make the necessary~~ audit ~~—~~ THE LICENSEE and
24 issue an order allowing or disallowing each claim presented.
25 Within 30 days of that order, the department shall send to the
26 principal and surety by certified mail, notice of allowance or
27 disallowance and request for the payment. The department may

1 demand, collect, and receive from the licensee or from the surety
2 or sureties of the licensee, the amount determined to be neces-
3 sary to satisfy the claims WITH INTEREST AT THE JUDGMENT RATE
4 COMPUTED FROM THE DATE OF LOSS. The department may request that
5 the department of attorney general commence an action for that
6 purpose in the court of ~~appropriate~~ COMPETENT jurisdiction. IF
7 THE ATTORNEY GENERAL PREVAILS IN WHOLE OR IN PART, THE COURT
8 SHALL AWARD INTEREST FROM THE DATE OF LOSS AT THE JUDGMENT RATE.
9 Upon receipt of money paid in partial or complete satisfaction of
10 a claim as provided in this section, the department shall make
11 distribution to the claimant in accordance with the order allow-
12 ing the claim, in full or proportionally, as the case may be.

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

15 SEC. 34. THE DEPARTMENT SHALL PROVIDE NOTICE TO PRODUCERS
16 ANY TIME A LICENSE IS ISSUED, RENEWED, OR MODIFIED. THE NOTICE
17 SENT BY THE DEPARTMENT SHALL SUBSTANTIALLY CONFORM TO THE
18 FOLLOWING:

19 "MICHIGAN LAW REQUIRES DAIRY PLANT LICENSEES TO DEMONSTRATE
20 A REASONABLE DEGREE OF FINANCIAL RESPONSIBILITY TO THE MICHIGAN
21 DEPARTMENT OF AGRICULTURE. THIS LAW IS DESIGNED TO PROVIDE REA-
22 SONABLE ASSURANCE THAT PRODUCERS WILL BE PAID FOR THEIR MILK;
23 HOWEVER, IT DOES NOT GUARANTEE THAT PRODUCERS WILL BE PAID. EACH
24 PRODUCER HAS SOME RESPONSIBILITY FOR DETERMINING THE CREDIT WOR-
25 THINESS OF THE DAIRY PLANT TO WHICH THE PRODUCER IS SELLING
26 MILK. A DAIRY PLANT LICENSEE MAY QUALIFY FOR A LICENSE BY DOING
27 1 OF THE FOLLOWING:

1 (A) FILING FINANCIAL STATEMENTS AUDITED BY A CERTIFIED
2 PUBLIC ACCOUNTANT WITH THE DEPARTMENT DEMONSTRATING THAT THE
3 DAIRY PLANT MEETS CERTAIN MINIMUM LIQUIDITY REQUIREMENTS.

4 (B) FILING SECURITY WITH THE DEPARTMENT IN AN AMOUNT DETER-
5 MINED BY THE DEPARTMENT TO BE THE GREATER OF THE FOLLOWING:

6 (1) THE VALUE OF THE GREATEST MILK RECEIPTS THAT THE DAIRY
7 PLANT RECEIVED WITHIN A CONSECUTIVE 30-DAY PERIOD DURING THAT
8 DAIRY PLANT'S MOST RECENT FISCAL YEAR.

9 (2) THE GREATEST MILK RECEIPTS THAT THE DAIRY PLANT IS
10 ANTICIPATED TO RECEIVE DURING A 30-DAY PERIOD WITHIN THE LICENS-
11 ING PERIOD.

12 (C) _____, (NAME OF DAIRY PLANT LICENSEE) IS
13 CURRENTLY LICENSED ON THE BASIS OF ITS AUDITED FINANCIAL STATE-
14 MENT MEETING THE MINIMUM FINANCIAL REQUIREMENT OF A CURRENT RATIO
15 OF AT LEAST 1.2 TO 1 CURRENT ASSETS TO CURRENT LIABILITIES. THE
16 LICENSEE'S MOST RECENT YEAR-END FINANCIAL STATEMENT AUDITED BY
17 THE FIRM OF _____ (AUDITOR'S NAME) MEETS THE FOLLOWING MINI-
18 MUM FINANCIAL STANDARDS, OR _____ (NAME OF DAIRY PLANT
19 LICENSEE) HAS FILED SECURITY WITH THE DEPARTMENT TO SECURE PAY-
20 MENT TO PRODUCERS. THE MAXIMUM AMOUNT OF SECURITY IS THE AMOUNT
21 DETERMINED TO BE THE GREATER OF THE FOLLOWING:

22 (1) THE VALUE OF THE GREATEST MILK RECEIPTS THAT THE DAIRY
23 PLANT RECEIVED WITHIN A CONSECUTIVE 30-DAY PERIOD DURING THAT
24 DAIRY PLANT'S MOST RECENT FISCAL YEAR.

25 (2) THE GREATEST MILK RECEIPTS THAT THE DAIRY PLANT IS
26 ANTICIPATED TO RECEIVE WITHIN A 30-DAY PERIOD WITHIN THE
27 LICENSING PERIOD, WHICHEVER IS GREATER.

THE SECURITY FILED IS IN THE FOLLOWING FORM OR FORMS:

 _____"

Sec. 6. (1) Subject to subsection (4), a person who directly, through an agent, or as the agent of another person ~~violates this act or R 285.407.1 to 285.407.6 of the Michigan administrative code,~~ DOES 1 OR BOTH OF THE FOLLOWING is guilty of a misdemeanor, punishable by a fine of not less than \$50.00 or more than \$500.00, or imprisonment for not more than 90 days, or both: —

(A) VIOLATES THIS ACT OR R 285.407.1 TO R 285.407.6 OF THE MICHIGAN ADMINISTRATIVE CODE.

(B) PROVIDES MATERIALLY FALSE OR FRAUDULENT INFORMATION ON AN APPLICATION OR IN RESPONSE TO A REQUEST FROM THE DEPARTMENT.

(2) In addition to the remedies provided by this act AND NOTWITHSTANDING THE EXISTENCE OF AN ADEQUATE REMEDY AT LAW, the department may apply to ~~the circuit court for, and the~~ A court ~~has~~ OF COMPETENT jurisdiction ~~upon hearing and for cause shown, to grant~~ FOR a temporary or permanent injunction restraining a person from violating this act or a rule promulgated under this act. ~~, despite the existence of an adequate remedy at law.~~

(3) The director of the department shall impose upon a producer who violates this act by selling or offering for sale milk which has a positive reaction to a drug residue test performed pursuant to section 2b the following ~~civil~~ ADMINISTRATIVE fines:

1 (a) First positive test for a drug residue within a 12-month
2 period: \$50.00.

3 (b) Second positive test for a drug residue within a
4 12-month period: \$200.00.

5 (c) Third positive test for a drug residue within a 12-month
6 period: \$500.00.

7 (4) ~~The provisions of subsection (1) apply~~ SUBSECTION (1)
8 APPLIES to a producer who violates this act by selling or offer-
9 ing for sale milk that has a positive reaction to a drug residue
10 test performed pursuant to section 2b only under the following
11 circumstances:

12 (a) The producer fails to pay the civil fine required by
13 subsection (3) within 10 days of the notification of the
14 violation.

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

17 (5) A person subject to a ~~civil~~ ADMINISTRATIVE fine
18 imposed under subsection (3) shall pay the fine to the department
19 within 10 days after notification of the violation. The depart-
20 ment shall deposit the ~~civil~~ ADMINISTRATIVE fines under this
21 section into the manufactured milk act fund created in section
22 6a.

23 Section 2. Sections 14 and 16 of Act No. 222 of the Public
24 Acts of 1913, being sections 288.114 and 288.116 of the Michigan
25 Compiled Laws, are repealed.