

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

288.520 Conduct resulting in revocation, suspension, or summary suspension of license or permit; administrative action; notice to each producer; time period for licensee or permittee to regain compliance and reinstatement.

Sec. 50.

(1) The director may revoke or suspend the license or permit of a licensee or permittee issued under this act or impose an administrative fine under section 53 for failure to comply with the requirements of this act, the pasteurized milk ordinance, or a rule promulgated under this act. A license or permit shall be revoked or suspended according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall notify in writing each producer with whom a milk plant does business regarding the pendency of the administrative action not less than 5 days before the date for the formal hearing set under subsection (1).

(3) The director may revoke or suspend a license or permit issued under this act, or impose an administrative fine pursuant to section 53, upon determining that the licensee or permittee has done 1 or more of the following:

(a) Failed to provide supplementary or interim information or information required to be supplied to the department under this act or information requested by the director under article III or IV.

(b) Failed to provide a security device in the amount and manner required by the director under article IV.

(c) Knowingly provided false or fraudulent information or made a material misrepresentation on an application.

(d) Knowingly provided false or fraudulent information or made a material misrepresentation in response to a request for information by the department.

(e) Failed to pay a producer in the manner provided in section 40.

(f) Failed to agitate milk in the farm bulk milk tank before taking a sample for delivery to the milk plant or the department.

(g) Failed to take the sample for analysis in accordance with the procedures set forth in the pasteurized milk ordinance, standard methods, and this act.

(h) Picked up grade A milk the temperature of which exceeds 45 degrees Fahrenheit (7 degrees Celsius).

(i) Failed to accurately report the weight or temperature of grade A milk picked up from a farm bulk milk tank.

(j) In the case of a milk plant, failed to provide a security device described in article IV.

(k) Adulterated milk or milk products.

(l) Failed to pay a final civil or administrative fine issued under this act.

(m) Violated this act, the pasteurized milk ordinance adopted under this act, or a rule promulgated under this act.

(4) The director may summarily suspend a license or permit issued under this act upon determining that the licensee or permittee has done 1 or more of the following:

(a) Offered for sale or sold milk or milk products from diseased animals, or animals otherwise considered abnormal, that have been incorporated with milk or milk products from normal healthy animals.

(b) Offered for sale or sold milk or milk products suspected of being contaminated with any substance considered by the department to be an imminent or substantial health hazard.

(c) Offered for sale or sold milk or milk products from production, transportation, packaging, or storage facilities that have such an accumulation of trash, rubbish, dirt, insects, vermin, human or animal wastes, or spoiled milk or milk products that precludes the reasonable protection of the milk or milk products from contamination.

(d) Offered for sale or sold milk or milk products produced in equipment with a significant portion of the milk contact surfaces covered with an accumulation of residues that were left after having gone through a cleaning regimen and that are thick enough that they may be easily scraped to form a body of solids.

(e) Offered for sale or sold milk or milk products stored in a container of unapproved construction.

(f) Received or picked up milk or milk products stored in a container of unapproved construction.

(g) Offered for sale or sold milk or milk products produced from dairy animals with a majority of the milking herd with an excessive accumulation of manure on the flanks, bellies, or udders that precludes the reasonable protection of the milk from contamination during the milking process.

(h) Offered for sale or sold milk that was of inadequate volume to properly agitate after the first milking.

(i) Offered for sale or sold milk or milk products produced with excessive sediment.

(j) Interfered with inspection of milk or milk products.

(k) Maintained dead animals on the premises in a manner inconsistent with 1982 PA 239, MCL 287.651 to 287.683.

(l) Maintained a minimum of 3 of the last 5 official bacteria counts illegal.

- (m) Maintained a minimum of 3 of the last 5 official somatic cell counts illegal.
 - (n) Maintained a minimum of 3 of the last 5 official milk or milk product cooling temperatures illegal.
 - (o) Failed to provide milk or milk products free of violative drug residues based on tests approved by the food and drug administration.
 - (p) Offered for sale or sold milk or milk products that present an imminent or substantial health hazard due to improper or unknown storage temperature.
 - (q) Offered for sale or sold milk or milk products that present an imminent or substantial health hazard due to improper allergen labeling.
 - (r) Knowingly possessed, sold, offered for sale, or purchased any milk or milk product for use in a human food product that has been condemned under this act.
 - (s) Offered for sale or sold packaged milk or milk products that present an imminent or substantial health hazard due to improper pasteurization times or temperatures outside the requirements set forth in the PMO.
 - (t) Any other condition that creates an imminent threat to the public health, safety, or welfare.
- (5) When the director suspends a license or permit under subsection (4), the licensee or permittee shall be allowed a minimum of 72 hours to regain compliance and reinstatement of the license or permit prior to scheduling an administrative hearing.

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

288.521 Immediate discontinuation of operation; eligibility for reinstatement; order of summary suspension; effect of order during proceedings.

Sec. 51.

- (1) A person whose license or permit has been suspended, revoked, or denied shall immediately discontinue operation of the business for which the license or permit was issued or requested.
- (2) A person whose license or permit has been suspended or revoked is not eligible for reinstatement of the license or permit until the director determines that all violations have been corrected.
- (3) If the department has provided notice to a licensee or permittee as required by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and subsequently determines that summary suspension of the licensee's or permittee's license or permit is necessary to prevent an imminent threat of financial loss to 1 or more producers with whom the licensee or permittee does business, the director may summarily suspend the licensee's or permittee's license or permit. The director shall incorporate the determination in his or her order of summary suspension. This summary suspension may be ordered effective on the date specified in the order or the date of service upon the licensee, whichever is later, and is effective during the proceedings. The proceedings shall be promptly commenced and determined.

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

288.522 Conduct as misdemeanor; penalty.

Sec. 52.

- A person, alone or through an agent, as the agent of any other person, or as the officer or agent of any firm or corporation, who does any of the following is guilty of a misdemeanor punishable by a fine of not less than \$250.00 and not more than \$2,500.00 or imprisonment for not more than 90 days, or both:
- (a) Violates this act, the pasteurized milk ordinance adopted under this act, or a rule promulgated under this act.
 - (b) Provides false or fraudulent information on an application or in response to a request from the director.

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

288.523 Violation of act by producer; sanctions and administrative fines; procedure.

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.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008 ;-- Am. 2010, Act 41, Imd. Eff. Mar. 31, 2010

288.524 Restraining order.

Sec. 54.

In addition to the remedies otherwise provided in this act, the department may apply to circuit court to grant a temporary or permanent injunction restraining any person from violating this act or any rule promulgated pursuant to this act, irrespective of whether there exists an adequate remedy at law.

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

288.530 Packaged milk products; label requirements; advertisements.

Sec. 60.

(1) Packaged milk products shall be labeled as specified in the pasteurized milk ordinance and in the food law of 2000.

(2) Milk and milk products shall be advertised as specified in the food law of 2000.

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