

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2512

Session of
2004

INTRODUCED BY HERSHEY, DALEY, BAKER, BOYD, ARMSTRONG, BASTIAN, BUNT, CAPPELLI, CAUSER, CLYMER, CORRIGAN, DENLINGER, DeWEESE, EGOLF, FORCIER, GEIST, GEORGE, GILLESPIE, GINGRICH, HARPER, HARRIS, HERMAN, HESS, HICKERNELL, KOTIK, LEH, MAITLAND, MAJOR, McILHATTAN, MILLARD, R. MILLER, O'NEILL, PICKETT, REICHLEY, SAYLOR, SCAVELLO, SCHRODER, SCRIMENTI, SEMMEL, SHANER, B. SMITH, SOLOBAY, STERN, R. STEVENSON, E. Z. TAYLOR, TIGUE, TRUE, WILT, YOUNGBLOOD AND ZUG, APRIL 13, 2004

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 12, 2004

AN ACT

1 Amending the act of July 6, 1984 (P.L.652, No.136), entitled "An
2 act requiring prompt payment to milk producers; providing for
3 the establishment of a security fund; providing for a
4 procedure to process claims against the security fund;
5 providing for alternative methods of security on behalf of
6 milk producers; and providing for certain prohibitions,
7 repeals and penalties," further providing for definitions;
8 providing for passage of title to milk; further providing for
9 security bonds, for bonds, for the security fund and for new
10 licenses; providing for review of security; and further
11 providing for trusteeship, for prohibitions and violations
12 and for penalties.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 4 of the act of July 6, 1984 (P.L.652,
16 No.136), known as the Milk Producers' Security Act, is amended
17 to read:

18 Section 4. Definitions.

19 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Blend price." The actual price due or paid to producers
4 after computation of the licensed dealer's or handler's producer
5 obligation pursuant to the applicable rules, regulations or
6 orders of the board or applicable orders established by the
7 United States Department of Agriculture.

8 "Board." The Milk Marketing Board.

9 "Cooperative." A cooperative agricultural association or
10 corporation of producers organized under the laws of this
11 Commonwealth or of any other state, which qualifies as such
12 under the provisions of the Federal Capper-Volstead Act, and
13 engaged in making collective sales or in the marketing of milk
14 for its own members. A cooperative shall not be deemed a milk
15 dealer or handler but shall be deemed a producer, except as
16 provided in section 3(a).

17 "Handle" or "to handle." The doing of any one or several or
18 all of the following acts: to buy, sell, barter, acquire, store,
19 process, consign, receive, transport or control as owner, buyer,
20 seller, consignee, consignor, bailee, bailor, broker or factor.

21 "Handler." A milk dealer.

22 "Milk." Fluid milk sold to a dealer from a producer.

23 "Milk [dealer" or "handler."] dealer." Any person who
24 purchases or receives or handles on consignment or otherwise
25 milk within the Commonwealth, for sale, shipment, storage,
26 processing or manufacture, within or without the Commonwealth,
27 whether on behalf of the person or others, or both. This
28 definition shall not include cooperatives as provided for in
29 section 3(a). The term includes a vested milk dealer.

30 "Pay period." The dates and terms of payment as required

1 under section 5 and under rules, regulations and orders of the
2 board promulgated pursuant to section 5.

3 "Producer." A person producing milk.

4 "Vested milk dealer." A handler or milk dealer that, on the
5 effective date of this definition, is participating in the
6 security fund under section 9.

7 Section 2. The act is amended by adding a section to read:
8 Section 4.1. Title to milk.

9 (a) The scope of this section is as follows:

10 (1) This section shall apply only to the administration
11 of this act.

12 (2) This section shall have no effect on any provision
13 of the act of April 28, 1937 (P.L.417, No.105), known as the
14 Milk Marketing Law.

15 (3) This section shall not supersede an order of a
16 Federal administrative agency or of the board which requires
17 the cost of shipment of milk to be free on board the place of
18 destination.

19 (b) Notwithstanding 13 Pa.C.S. § 2401(2)(ii) (relating to
20 passing of title; reservation for security; limited application
21 of section), title to milk shall be transferred from the
22 producer to the milk dealer at the point of shipment of the
23 milk.

24 Section 3. Sections 7, 8, 9 and 10 of the act are amended to
25 read:

26 Section 7. Security bonds.

27 (a) Each milk dealer, as required by this act, shall file
28 with the board a corporate surety bond or collateral bond. The
29 bond shall be on a form prescribed by the board conditioned for
30 the payment by the milk dealer or handler of all amounts due

1 under this act and all other applicable Federal laws in addition
2 to the orders of the board for milk purchased or otherwise
3 acquired from producers by the milk dealer or handler during the
4 license year, which payments shall be made within the time
5 limits specified in this act or the regulations of the board and
6 shall be upon such other terms and conditions as the board may
7 prescribe.

8 (b) A corporate surety bond shall be executed to the
9 Commonwealth by the milk dealer as principal and by a corporate
10 surety company authorized and regulated by the Commonwealth as
11 surety. The board shall have no power to reject any corporate
12 surety bond which is so executed by a corporate surety company
13 authorized to do business in this Commonwealth as surety, so
14 long as the amount of the bond is equal to or less than the
15 amount the surety company is authorized by the Pennsylvania
16 Insurance Commissioner to execute on a single bond without
17 obtaining collateral security from the principal. The board may
18 reject any bond which exceeds that amount. A collateral bond
19 shall be executed to the Commonwealth by the milk dealer as
20 principal, shall set forth the collateral posted with the bond
21 and shall have attached thereto the collateral properly assigned
22 and transferred to this Commonwealth. The collateral posted with
23 the bond shall be cash in an equal amount of the bond or the
24 bond shall be secured by an actual deposit with a bank, bank and
25 trust company or national bank within the Commonwealth of money
26 to the full amount of the bond or securities to the amount of
27 the bond consisting of interest-bearing obligations of the
28 Federal Government or an irrevocable letter or letters of credit
29 for the account of the milk dealer authorizing the board to draw
30 on a bank or a trust company or banks or trust companies located

1 within and authorized to do business in this Commonwealth.

2 (c) The bond shall be filed in accordance with the
3 following:

4 (1) Except as set forth in paragraph (2), a milk dealer
5 shall file with the board a bond equal to a minimum of 75% of
6 the highest aggregate amount owed by the milk dealer to all
7 producers for a 40-day period during the preceding 12 months.

8 (2) A vested milk dealer shall file with the board a
9 bond in a sum equal to a minimum of 30% of the highest
10 aggregate amount owed by the vested milk dealer to all
11 producers for a 40-day period during the preceding 12 months.
12 [Such bond may exceed the 30% minimum and be equal to the
13 full amount of the money owed, at the discretion of the
14 dealer.]

15 (3) A MILK DEALER LICENSED ON THE EFFECTIVE DATE OF THIS <—
16 PARAGRAPH, OTHER THAN A VESTED MILK DEALER, MAY PETITION THE
17 BOARD TO FILE A BOND IN AN AMOUNT LESS THAN THAT REQUIRED BY
18 PARAGRAPH (1) AND TO PARTICIPATE IN THE SECURITY FUND AS A
19 VESTED MILK DEALER UNDER SECTION 9. THE BOARD SHALL ACT UPON
20 THE PETITION NO LESS THAN 60 DAYS FROM THE DATE OF FILING THE
21 PETITION. WHEN CONSIDERING THE PETITION, THE BOARD SHALL
22 REQUIRE THAT THE MILK DEALER PROVIDE ADEQUATE REASON AND
23 DOCUMENTATION FOR THE REQUEST AND MAY HEAR TESTIMONY FROM ALL
24 INTERESTED PERSONS POTENTIALLY AFFECTED BY THE REQUEST. THE
25 BOARD MAY IMPOSE TERMS AND CONDITIONS AS IT DEEMS
26 APPROPRIATE, INCLUDING HIGHER PER HUNDREDWEIGHT CONTRIBUTIONS
27 TO THE SECURITY FUND, MORE FREQUENT PAYMENTS TO PRODUCERS AND
28 THE FILING OF A BOND GREATER THAN 30% OF THE HIGHEST
29 AGGREGATE AMOUNT OWED TO PRODUCERS FOR A 40-DAY PERIOD DURING
30 THE PRECEDING 12 MONTHS, TO ENSURE THE LEVEL OF PROTECTION

1 FOR PRODUCERS CONTEMPLATED BY THIS ACT.

2 (4) A MILK DEALER FILING A PETITION UNDER PARAGRAPH (3)
3 MAY REQUEST THAT THE BOARD ENTER AN ORDER REQUIRING THAT
4 CONFIDENTIAL FINANCIAL INFORMATION ONLY BE DISCLOSED TO THE
5 BOARD. SUCH CONFIDENTIAL FINANCIAL INFORMATION SHALL BE
6 DEEMED TO HAVE BEEN PROVIDED TO THE BOARD PURSUANT TO SECTION
7 310 OF THE ACT OF APRIL 28, 1937 (P.L.417, NO.105), KNOWN AS
8 THE MILK MARKETING LAW.

9 (d) Milk purchased, acquired or received by a milk dealer or
10 handler from producers outside this Commonwealth and sold or
11 distributed by the dealer or handler as fluid milk within this
12 Commonwealth shall be included in computing the amount of the
13 dealer's or handler's bond, except where the dealer or handler
14 has filed a bond or other security for the protection of the
15 producers with the state wherein the milk is purchased, acquired
16 or received.

17 (e) The obligation of a surety on a bond is a separate and
18 distinct obligation independent of any obligation incurred by
19 the debtor.

20 Section 8. Bonds.

21 Surety bonds or securities for the license year shall be
22 filed with the board on an annual basis not later than the 15th
23 of the month before the beginning of such license year. [Where a
24 dealer elects to participate under the minimum bond requirement
25 as outlined in section 7, in lieu of filing a bond equivalent to
26 75% or more of the greatest amount owed in a 40-day period, he
27 shall notify the board not later than two months prior to the
28 date on which such change is to be made, and shall make the
29 initial payment as required under section 9 not later than one
30 month before such change is to be made.]

1 Section 9. Security fund.

2 (a) Each vested milk dealer shall, in addition to a bond,
3 when less than 75% of the maximum amount owed, also be required
4 to pay monthly 2c / per hundredweight to the board on all milk
5 purchased from producers during the prior month. The board shall
6 maintain the moneys received in an interest-bearing account and
7 the moneys, including interest, shall be credited to the account
8 of each individual paying vested milk dealer. In the event a
9 vested milk dealer defaults in payment to producers, the moneys
10 submitted by the defaulting vested milk dealer, including
11 interest, shall be made available to the producers shipping to
12 the defaulting vested milk dealer.

13 (b) At the time the value of the bond and the security fund
14 moneys credited to each vested milk dealer shall equal the total
15 amount owed for the above mentioned 40-day payment period, the
16 payments to the fund shall cease or may, with the approval of
17 the board, be used to decrease the value of the bond at the end
18 of the license year. Should the vested milk dealer agree to post
19 a bond for a minimum of 75% of the highest aggregate amount owed
20 for the 40-day pay period, payment to the security fund shall
21 not be required.

22 (c) Nothing shall prevent any vested milk dealer from
23 increasing the vested milk dealer's bond beyond the 30% nor
24 increasing the amount paid into the security fund credited to
25 the vested milk dealer to provide additional protection for the
26 vested milk dealer's producers.

27 (d) At the time a vested milk dealer discontinues purchasing
28 milk from producers, after all the producers are paid in full,
29 the moneys, including interest and minus the administrative fee,
30 as provided for in subsection (e), shall be returned to the

1 vested milk dealer.

2 (e) The board may impose an administrative fee on the
3 security fund moneys on an annual basis at not more than .5% of
4 the total fund.

5 (f) Any security fund established and maintained under this
6 section shall be considered a security trust fund for the
7 exclusive benefit of producers supplying milk to the vested milk
8 dealer paying into the fund. No claims of the Commonwealth or
9 any other person may be made against the fund until all amounts
10 due to producers for supplying milk to the vested milk dealer
11 have been paid. Amounts paid into the security trust fund shall
12 be considered an expense to the vested milk dealer necessary for
13 maintaining [the dealer's] a license and shall not be considered
14 an asset of the vested milk dealer.

15 Section 10. New licensees.

16 (a) Except as set forth in subsection (b), the following
17 apply:

18 (1) A milk dealer or handler purchasing or acquiring or
19 receiving or intending to purchase or receive milk from
20 producers, but not so engaged during the preceding 12 months,
21 shall file a bond in a sum to be fixed by the board in
22 accordance with the handler's anticipated purchases from
23 producers and the handler's obligation to a producer
24 settlement or equalization fund, but not less than the total
25 amount expected to be owed during the full 40-day pay period.

26 (2) The board shall review the operations of the milk
27 dealer or handler every two months and the bond shall be
28 modified by the board at the time the board is satisfied that
29 the producers are adequately secured.

30 (3) At the end of six months of operation, upon approval

1 by the board, the [new] milk dealer or handler [may file the
2 amount of the bond and pay into the security fund as required
3 in sections 7 and 9.] shall file a bond in a sum equal to a
4 minimum of 75% of the highest aggregate amount owed or
5 expected to be owed by the milk dealer or handler to all
6 producers for a 40-day period.

7 (b) Subsection (a) does not apply to a vested milk dealer.

8 Section 4. The act is amended by adding a section to read:

9 Section 10.1. Review of security.

10 (a) If the board determines that the financial condition of
11 a milk dealer that purchases milk from a producer is not
12 adequate to reasonably assure prompt payment to producers, the
13 board may require that milk dealer to furnish additional
14 security to afford producers the protection intended by this
15 act.

16 (b) If the board determines that the value of milk purchased
17 or received from a producer by a milk dealer has increased or
18 may reasonably be anticipated to increase so that the amount of
19 security furnished by the milk dealer does not comply with
20 section 7, as applied to any consecutive two-month period during
21 the current year, the board may require that milk dealer to
22 furnish additional security to afford producers the protection
23 intended by this act.

24 Section 5. Section 11 of the act is amended to read:

25 [Section 11. Trusteeship.

26 (a) In such cases where it appears that the financial
27 condition of the applicant for a license or the licensee is not
28 adequate to reasonably assure payment to producers, the board
29 may require in lieu of other security or payments to the
30 security fund and, where it is practical from an operating

1 standpoint, the licensee to file an agreement providing for the
2 complete control over all processed or manufactured milk and
3 dairy products by a trustee to be selected at least annually by
4 the involved producers. Such trustee shall make and file a
5 trustee's fidelity bond and contracts signed by the operator and
6 the purchasers of the dairy products requiring that payment for
7 such products sold be made to him as trustee. Such trustee shall
8 maintain a separate bank account for that purpose and shall at
9 least twice annually render a true and correct account of his
10 dealings to the board and to the producers. Producers shall have
11 a first lien on assets of trusteeship to assure payment in case
12 of default.

13 (b) The operation of the trustee arrangement, requirements
14 dealing with payments, reports and other operations shall be
15 handled according to regulations established by the board.]

16 Section 6. Section 13 of the act, repealed in part December
17 21, 1984 (P.L.1278, No.243), is amended to read:

18 Section 13. Prohibitions and violations.

19 (a) No milk dealers license shall be issued to any person or
20 organization not in compliance with the provisions of this act.

21 (b) It shall be unlawful for a milk dealer to purchase or
22 receive milk from producers unless the milk dealer has complied
23 with the provisions of this act.

24 (c) In addition to other penalties provided by law, the
25 board may commence a proceeding in court to seek temporary or
26 injunctive relief against any person violating the provisions of
27 this act.

28 (d) Producers who do not receive payments from licensees in
29 accordance with provisions of this act shall immediately notify
30 the board or its representatives. [At no time shall the holder

1 or provider of the bond or security, nor the trustee be
2 responsible for payments to producers beyond the 40-day pay
3 period when payments are in default after the producer has been
4 notified by certified mail.]

5 (e) If any dealer who purchases or receives milk from
6 producers has not filed a surety bond or securities in lieu
7 thereof, in accordance with this act by the 15th day of the
8 month prior to the beginning of the license year, the board
9 shall notify such producers by certified mail that such milk
10 dealer has not filed any security or made other provisions for
11 assuring payments for milk purchased, for the license year
12 commencing the first day of the next month. The board [then may
13 require a trustee to be selected under the provisions of this
14 act or] shall have the right to revoke the license of said
15 dealer.

16 (f) Each milk dealer shall report to the board any increase
17 or anticipated increase in the value of milk purchased or
18 received from producers.

19 Section 7. Section 15 of the act is amended to read:
20 Section 15. Penalties.

21 A violation of this act shall subject a milk dealer or a
22 participating cooperative to a penalty of [\$50] \$150 for each
23 day that it is late in making payment into the security fund of
24 the assessment required by this act, for each day it sells milk
25 to a milk dealer after being notified by the board of the milk
26 dealer's failure to provide security as provided herein or for
27 each day a milk dealer or participating cooperative has failed
28 to make payments for milk purchased as provided pursuant to
29 section 5. Any person who buys or sells in violation of the
30 credit period provided in section 5 shall be liable for

1 suspension or revocation of his milk dealer's license in
2 pursuance of the act of April 28, 1937 (P.L.417, No.105), known
3 as the Milk Marketing Law, or the board may accept from the
4 licensee an offer in compromise, a penalty at the rate of [\$50]
5 \$150 for each day of violation. A milk dealer that violates
6 section 13(f) shall be liable for suspension or revocation of
7 the milk dealer's license pursuant to the Milk Marketing Law.

8 Section 8. This act shall take effect in 60 days.