

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 1969** Session of  
1984

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INTRODUCED BY MORRIS, GRIECO, MADIGAN, BALDWIN, LLOYD, BROUJOS, SHOWERS, PHILLIPS, W. W. FOSTER, BOWSER, WASS, RUDY, STUBAN, CALTAGIRONE, DeVERTER, COLE, FARGO, COY, HALUSKA, HONAMAN, LUCYK, JOHNSON, SALOOM, SEVENTY, BATTISTO, ROBBINS, KUKOVICH, J. L. WRIGHT, SIRIANNI, PISTELLA, PRATT, PETRARCA, CLYMER, LESCOVITZ, FISCHER, SPENCER, GODSHALL, G. M. SNYDER, HERMAN, WACHOB, DORR, AFFLERBACH, PRESTON, D. R. WRIGHT, MERRY, SEMMEL, SCHEETZ, D. W. SNYDER, ITKIN, DeLUCA, STEIGHNER AND BURD, MARCH 13, 1984

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AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 30, 1984

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## AN ACT

1 Requiring prompt payment to milk producers; providing for the  
2 establishment of a security fund; providing for a procedure  
3 to process claims against the security fund; providing for  
4 alternative methods of security on behalf of milk producers;  
5 and providing for certain prohibitions, repeals and  
6 penalties.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Milk  
11 Producers' Security Act.

12 Section 2. Declaration of policy.

13 It is hereby declared that the dairy industry is a paramount  
14 agricultural industry of this Commonwealth and that the normal  
15 processes of producing and marketing milk are enterprises of  
16 vast economic importance to the Commonwealth and of vital

1 importance to the consuming public which ought to be safeguarded  
2 and protected in the public interest. The General Assembly finds  
3 that the marketing of milk requires dairy farmers and  
4 cooperatives to receive prompt payment from dealers and  
5 handlers. It has been, and continues to be, the policy of this  
6 Commonwealth to protect producers and cooperatives against loss  
7 of payment for milk because of defaults by purchasers. The  
8 public interest requires the establishment of an act to provide  
9 security for dairy farmers and cooperatives.

10 Section 3. Scope of coverage.

11 (a) For purposes of this act, a cooperative corporation or  
12 association of producers shall be deemed to be a producer and  
13 not a dealer with respect to the milk of its producer members or  
14 of its producer patrons under specific nonmember marketing  
15 agreements, or of other qualified (Capper-Volstead) cooperatives  
16 under agreement with such cooperative provided that written  
17 documentation concerning such transactions is on file with and  
18 approved by the Milk Marketing Board, together with a written  
19 waiver signed by the seller cooperative of any claim against the  
20 board or purchaser cooperative under this act. ALL MEMBERS OF <—  
21 THE SELLER COOPERATIVE SHALL BE NOTIFIED BY MAIL OF SUCH WAIVER.  
22 A cooperative corporation or association of producers shall be  
23 deemed to be a dealer with respect to milk purchased or received  
24 from producers other than those specified above.

25 (b) It shall be unlawful for a milk dealer or handler to  
26 purchase, acquire or receive on consignment or otherwise milk  
27 from producers unless the milk dealer or handler shall be in  
28 good standing with regard to requirements of this act. THE MILK <—  
29 MARKETING BOARD, AT ITS DISCRETION, MAY REQUIRE LICENSED DEALERS  
30 OR HANDLERS TO PURCHASE, ACQUIRE OR RECEIVE MILK FROM PRODUCERS

1 ON A CASH-ON-DELIVERY BASIS.

2 (c) Pursuant to the purposes of this act, any member of the  
3 board or any designated employee thereof shall have the power,  
4 at all reasonable hours, to inspect, photograph, photostat, mark  
5 or stamp for identification, audit and copy all books, papers,  
6 records or documents of all licensees for the purpose of  
7 ascertaining facts to enable the board to administer this act.  
8 The information obtained shall be for the confidential use of  
9 the board and the various administrative departments, boards and  
10 commissions of the State government, and shall not be disclosed  
11 to any person except as may be required in the enforcement of  
12 the law or by order of the court. Failure to comply with such  
13 rights of inspection as noted above may result in revocation of  
14 the license of the dealer or handler at which time no producer  
15 shall legally ship milk to the dealer or handler.

16 Section 4. Definitions.

17 The following words and phrases when used in this act shall  
18 have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

20 "Blend price." The actual price due or paid to producers  
21 after computation of the licensed dealer's or handler's producer  
22 obligation pursuant to the applicable rules, regulations or  
23 orders of the board or applicable orders established by the  
24 United States Department of Agriculture.

25 "Board." The Milk Marketing Board.

26 "Cooperative." A cooperative agricultural association or  
27 corporation of producers organized under the laws of this  
28 Commonwealth or of any other state, which qualifies as such  
29 under the provisions of the Federal Capper-Volstead Act, and  
30 engaged in making collective sales or in the marketing of milk

1 for its own members. A cooperative shall not be deemed a milk  
2 dealer or handler but shall be deemed a producer, except as  
3 provided in section 3(a).

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

8 "Milk." Fluid milk and cream, fresh, sour or storage,  
9 skimmed milk, flavored milk or milk drink, buttermilk, ice cream  
10 mix and condensed or concentrated whole or skimmed milk, except  
11 when contained in hermetically sealed cans.

12 "Milk dealer" or "handler." Any person who purchases or  
13 receives or handles on consignment or otherwise milk within the  
14 Commonwealth, for sale, shipment, storage, processing or  
15 manufacture, within or without the Commonwealth, whether on  
16 behalf of the person or others, or both. This definition shall  
17 not include cooperatives as provided for in section 3(a).

18 "Pay period." The dates and terms of payment as required  
19 under section 5 and under rules, regulations and orders of the  
20 board promulgated pursuant to section 5.

21 "Producer." A person producing milk.  
22 Section 5. Prompt payment of milk.

23 (a) All milk dealers shall pay for milk purchased or  
24 received from producers with final payments to be made no later  
25 than the fiftieth day from which the milk was received or  
26 purchased. The board may, in its sole discretion after a public  
27 hearing, shorten the time period in which final payments for  
28 milk are made. It is the specific intent of the General Assembly  
29 that final milk payments be made in as short a time period as  
30 practical from the date milk was received or purchased.

1 Therefore, the board is empowered to hold public hearings to  
2 consider the time period for final milk payments and to shorten  
3 the time period whenever appropriate.

4 ~~(b) On or before July 1 of each year all licensees and the~~ <—  
5 ~~Milk Marketing Board shall notify all producers by certified~~  
6 ~~mail of the financial basis on which the producer security is~~  
7 ~~based.~~

8 (B) ON OR BEFORE JULY 1 OF EACH YEAR, EACH LICENSEE SHALL <—  
9 NOTIFY ALL OF HIS PRODUCERS BY FIRST-CLASS MAIL OF THE FINANCIAL  
10 BASIS ON WHICH THE PRODUCER SECURITY IS BASED.

11 Section 6. ~~Financial statement.~~ COOPERATIVE LICENSING <—  
12 REQUIREMENTS.

13 A cooperative which is deemed to be a dealer or handler under  
14 the provisions of section 3(a) shall, in regard to milk  
15 purchased or received from producers other than its own members,  
16 be required to be licensed as a dealer with respect to milk so  
17 received or purchased, and shall be required to the extent of  
18 such milk purchased, received or handled to comply with the  
19 provisions of this act regarding the filing of bonds and  
20 contributions to a security fund for the protection of nonmember  
21 producers.

22 Section 7. Security bonds.

23 (a) Each milk dealer, as required by this act, shall file  
24 with the board a corporate surety bond or collateral bond. The  
25 bond shall be on a form prescribed by the board conditioned for  
26 the payment by the milk dealer or handler of all amounts due  
27 under this act and all other applicable Federal laws in addition  
28 to the orders of the board for milk purchased or otherwise  
29 acquired from producers by the milk dealer or handler during the  
30 license year, which payments shall be made within the time

1 limits specified in this act or the regulations of the board and  
2 shall be upon such other terms and conditions as the board may  
3 prescribe.

4 (b) A corporate surety bond shall be executed to the  
5 Commonwealth by the milk dealer as principal and by a corporate  
6 surety company authorized and regulated by the Commonwealth AS ←  
7 SURETY. The board shall have no power to reject any corporate  
8 surety bond which is so executed by a corporate surety company  
9 authorized to do business in this Commonwealth as surety, so  
10 long as the amount of the bond is equal to or less than the  
11 amount the surety company is authorized BY THE PENNSYLVANIA ←  
12 INSURANCE COMMISSIONER to execute on a single bond without  
13 obtaining collateral security from the principal. The board may  
14 reject any bond which exceeds that amount. A collateral bond  
15 shall be executed to the Commonwealth by the milk dealer as  
16 principal, shall set forth the collateral posted with the bond  
17 and shall have attached thereto the collateral properly assigned  
18 and transferred to this Commonwealth. The collateral posted with  
19 the bond shall be cash in an equal amount of the bond or the  
20 bond shall be secured by an actual deposit with a bank, bank and  
21 trust company or national bank within the Commonwealth of money  
22 to the full amount of the bond or securities to the amount of  
23 the bond consisting of interest-bearing obligations of the  
24 Federal Government OR AN IRREVOCABLE LETTER OR LETTERS OF CREDIT ←  
25 FOR THE ACCOUNT OF THE MILK DEALER AUTHORIZING THE BOARD TO DRAW  
26 ON A BANK OR A TRUST COMPANY OR BANKS OR TRUST COMPANIES LOCATED  
27 WITHIN AND AUTHORIZED TO DO BUSINESS IN THIS COMMONWEALTH.

28 ~~(c) A milk dealer who on the effective date of this act has ←~~  
29 ~~on file with the board a collateral bond, the collateral for~~  
30 ~~which is an irrevocable letter or letters of credit for the~~

1 ~~account of the milk dealer authorizing the board to draw on a~~  
2 ~~bank or a trust company or banks or trust companies located~~  
3 ~~within, and authorized to do business in this Commonwealth to~~  
4 ~~the amount of the bond, may continue to file the security with~~  
5 ~~the dealer's collateral bond.~~

6 ~~(d)~~ (C) The bond shall be in a sum equal to a minimum of 30% <—  
7 of the highest aggregate amount owed by the dealer to producers  
8 for a 40-day period during the preceding 12 months. ~~or 30% of~~ <—  
9 ~~the greatest amount if payments are made for a shorter pay~~  
10 ~~period.~~ Such bond may exceed the 30% minimum and be equal to the  
11 full amount of the money owed, at the discretion of the dealer.

12 ~~(e)~~ (D) Milk purchased, acquired or received by a milk <—  
13 dealer or handler from producers outside this Commonwealth and  
14 sold or distributed by the ~~dealers or handlers~~ DEALER OR HANDLER <—  
15 as fluid milk within this Commonwealth shall be included in  
16 computing the amount of the dealer's or handler's bond, except  
17 where the dealer or handler has filed a bond or other security  
18 for the protection of the producers with the state wherein the  
19 milk is purchased, acquired or received.

20 ~~Section 8. New licensees.~~ <—

21 ~~(a) A milk dealer or handler purchasing or acquiring or~~  
22 ~~receiving or intending to purchase or receive milk from~~  
23 ~~producers, but not so engaged during the preceding 12 months,~~  
24 ~~shall file a bond in a sum to be fixed by the board in~~  
25 ~~accordance with the handler's anticipated purchases from~~  
26 ~~producers and the handler's obligation to a producer settlement~~  
27 ~~or equalization fund but not less than the total amount expected~~  
28 ~~to be owed during the planned pay period. The board shall review~~  
29 ~~the operations of the dealer or handler every two months and the~~  
30 ~~bond shall be modified by the board at the time the board is~~

1 ~~satisfied that the producers are adequately secured. At the end~~  
2 ~~of six months of operation, upon approval by the board, the new~~  
3 ~~dealer or handler may file the amount of the bond and pay into~~  
4 ~~the security fund as required in this section and section 9.~~

5 ~~(b) Surety bonds or securities for the license year shall be~~

6 SECTION 8. BONDS. <—

7 SURETY BONDS OR SECURITIES FOR THE LICENSE YEAR SHALL BE  
8 filed with the board on an annual basis not later than the 15th  
9 of the month before the beginning of such license year. Where a  
10 dealer elects to participate under the minimum bond requirement  
11 as outlined in ~~this section~~ SECTION 9, in lieu of filing a bond <—  
12 equivalent to 75% or more of the greatest amount owed IN A 40- <—  
13 DAY PERIOD, he shall notify the board not later than two months  
14 prior to the date on which such change is to be made, and shall  
15 make the initial payment as required under section 9 not later  
16 than one month before such change is to be made.

17 Section 9. Security fund.

18 (a) Each milk dealer shall in addition to a bond, when less  
19 than 75% of the maximum amount owed also be required to pay  
20 monthly 2¢ per hundredweight to the board on all milk purchased  
21 from producers during the prior month. The board shall maintain  
22 the moneys received in an interest-bearing account and the  
23 moneys, including interest, shall be credited to the account of  
24 each individual paying dealer. In the event a dealer defaults in  
25 payment to producers, the moneys submitted by the defaulting  
26 dealer, including interest, shall be made available to the  
27 producers shipping to the defaulting dealer.

28 (b) At the time the value of the bond and the security fund  
29 moneys credited to each dealer shall equal the total amount owed  
30 for the above mentioned 40-DAY payment period, the payments to <—

1 the fund shall cease or may, WITH THE APPROVAL OF THE BOARD, be <—  
2 used to decrease the value of the bond at the end of the license  
3 year. Should the dealer agree to post a bond for a minimum of  
4 75% of the highest aggregate amount owed for the ~~pay period he~~ <—  
5 ~~selects,~~ 40-DAY PAY PERIOD, payment to the security fund shall <—  
6 not be required.

7 (c) Nothing shall prevent any dealer from increasing the  
8 dealer's bond beyond the 30% nor increasing the amount paid into  
9 the security fund credited to the dealer to provide additional  
10 protection for the dealer's producers.

11 (d) At the time a dealer discontinues purchasing milk from  
12 producers, AFTER ALL THE PRODUCERS ARE PAID IN FULL, the moneys, <—  
13 including interest and minus ~~a small~~ THE administrative fee, AS <—  
14 PROVIDED FOR IN SUBSECTION (E), shall be returned to the dealer.

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

18 SECTION 10. NEW LICENSEES. <—

19 A MILK DEALER OR HANDLER PURCHASING OR ACQUIRING OR RECEIVING  
20 OR INTENDING TO PURCHASE OR RECEIVE MILK FROM PRODUCERS, BUT NOT  
21 SO ENGAGED DURING THE PRECEDING 12 MONTHS, SHALL FILE A BOND IN  
22 A SUM TO BE FIXED BY THE BOARD IN ACCORDANCE WITH THE HANDLER'S  
23 ANTICIPATED PURCHASES FROM PRODUCERS AND THE HANDLER'S  
24 OBLIGATION TO A PRODUCER SETTLEMENT OR EQUALIZATION FUND, BUT  
25 NOT LESS THAN THE TOTAL AMOUNT EXPECTED TO BE OWED DURING THE  
26 FULL 40-DAY PAY PERIOD. THE BOARD SHALL REVIEW THE OPERATIONS OF  
27 THE 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. AT THE END OF SIX MONTHS  
30 OF OPERATION, UPON APPROVAL BY THE BOARD, THE NEW DEALER OR

1 HANDLER MAY FILE THE AMOUNT OF THE BOND AND PAY INTO THE  
2 SECURITY FUND AS REQUIRED IN SECTIONS 7 AND 9.

3 Section ~~10~~ 11. Trusteeship. <—

4 (a) In such cases where it appears that the financial  
5 condition of the applicant for a license or the licensee is not  
6 adequate to reasonably assure payment to producers, the board  
7 may require in lieu of other security OR PAYMENTS TO THE <—  
8 SECURITY FUND AND, where it is practical from an operating  
9 standpoint, the licensee to file an agreement providing for the  
10 complete control over all processed or manufactured milk and  
11 dairy products by a trustee to be selected at least annually by  
12 the involved producers. Such trustee shall make and file a  
13 trustee's FIDELITY bond and contracts signed by the operator and <—  
14 the purchasers of the dairy products requiring that payment for  
15 such products sold be made to him as trustee. Such trustee shall  
16 maintain a separate bank account for that purpose and shall at  
17 least TWICE annually render a true and correct account of his <—  
18 dealings to the board and to the producers. Producers shall have  
19 a first lien on assets of trusteeship to assure payment in case  
20 of default.

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

24 Section ~~11~~ 12. Procedure for disbursing proceeds. <—

25 (a) The board or an affected producer shall have the power  
26 to sue on the bond and security fund on behalf of producers.

27 (b) The board shall, after hearing with notice to all  
28 interested parties, issue findings of fact and an order setting  
29 forth the amounts due producers. The findings and order shall be  
30 conclusive evidence for collecting from the bond and security

1 fund for payments to producers. The board's order may be  
2 appealed to the Commonwealth Court.

3 (c) In the event the moneys available from the bond and  
4 security fund are not sufficient to pay producers ~~in full~~ 75% OF ←  
5 THE 40-DAY PURCHASES, the moneys available shall be divided pro  
6 rata among producers.

7 Section ~~12~~ 13. Prohibitions and violations. ←

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

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

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

17 (d) Producers who do not receive payments from licensees in  
18 accordance with provisions of this act shall immediately notify  
19 the board or its representatives. At no time shall the holder or  
20 provider of the bond or security, nor the trustee be responsible  
21 for payments to producers beyond the ~~established~~ 40-DAY pay ←  
22 period when payments are in default after the producer has been  
23 notified by certified mail.

24 (e) If any dealer who purchases or receives milk from  
25 producers has not filed a surety bond or securities in lieu  
26 thereof, in accordance with this act by the 15th day of the  
27 month prior to the beginning of the license year, the board  
28 shall notify such producers by certified mail that such milk  
29 dealer has not filed any security or made other provisions for  
30 assuring payments for milk purchased, for the license year

1 commencing the 1st day of the next month. The board then may  
2 require a trustee to be selected under the provisions of this  
3 act or shall have the right to revoke the license of said  
4 dealer.

5 Section ~~13~~ 14. Rules and regulations. <—

6 The board, after due notice and public hearing, may  
7 promulgate rules and regulations to carry out the provisions and  
8 intent of this act.

9 SECTION 15. PENALTIES. <—

10 A VIOLATION OF THIS ACT SHALL SUBJECT A MILK DEALER OR A  
11 PARTICIPATING COOPERATIVE TO A PENALTY OF \$50 FOR EACH DAY THAT  
12 IT IS LATE IN MAKING PAYMENT INTO THE SECURITY FUND OF THE  
13 ASSESSMENT REQUIRED BY THIS ACT, FOR EACH DAY IT SELLS MILK TO A  
14 MILK DEALER AFTER BEING NOTIFIED BY THE BOARD OF THE MILK  
15 DEALER'S FAILURE TO PROVIDE SECURITY AS PROVIDED HEREIN OR FOR  
16 EACH DAY A MILK DEALER OR PARTICIPATING COOPERATIVE WHO HAS  
17 FAILED TO MAKE PAYMENTS FOR MILK PURCHASED AS PROVIDED PURSUANT  
18 TO SECTION 5. ANY PERSON WHO BUYS OR SELLS IN VIOLATION OF THE  
19 CREDIT PERIOD PROVIDED IN SECTION 5 SHALL BE LIABLE FOR  
20 SUSPENSION OR REVOCATION OF HIS MILK DEALER'S LICENSE IN  
21 PURSUANCE OF THE ACT OF APRIL 28, 1937 (P.L.417, NO.105), KNOWN  
22 AS THE MILK MARKETING LAW, OR THE BOARD MAY ACCEPT FROM THE  
23 LICENSEE AN OFFER IN COMPROMISE, A PENALTY AT THE RATE OF \$50  
24 FOR EACH DAY OF VIOLATION.

25 Section ~~14~~ 16. Repeals. <—

26 Act of July 10, 1980 (P.L.481, No.104), known as the Milk  
27 Producers' and Cooperative Security Funds Act, is repealed.

28 ~~Sections 501, 502, 503, 504, 505, 506, 507, 508, 509, 510,~~ <—  
29 ~~511 and 512 of the act of April 28, 1937 (P.L.417, No.105),~~  
30 ~~known as the Milk Marketing Law, are repealed.~~

1 Section ~~15~~ 17. Effective date.

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2 This act shall take effect on July 1, 1984 or, if enacted  
3 subsequent to that date, then immediately.