
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 828

Session of
1979

INTRODUCED BY SIRIANNI, WENGER, W. W. FOSTER, HONAMAN, WEIDNER,
YAHNER, ZELLER, COLE, CALTAGIRONE, MADIGAN, M. H. GEORGE,
STUBAN, BROWN AND GRIECO, MARCH 26, 1979

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
MARCH 26, 1979

AN ACT

1 Providing for the termination of contracts for the handling of
2 milk, and providing for enforcement, penalties and remedies.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Definitions.

6 As used in this act, the following words and phrases shall
7 have, unless the contexts clearly indicate otherwise, the
8 meanings given to them in this section:

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

13 "Milk." Includes fluid milk and cream, fresh, sour or
14 storage, skimmed milk, flavored milk or milk drink, buttermilk,
15 ice cream mix, and condensed or concentrated whole or skimmed
16 milk, except when contained in hermetically sealed cans.

17 "Milk dealer" or "handler." Any person, including any store

1 or subdealer or subhandler, as hereinafter defined, who
2 purchases or receives or handles on consignment or otherwise
3 milk within the Commonwealth, for sale, shipment, storage,
4 processing or manufacture, within or without the Commonwealth,
5 whether on behalf of himself or others, or both. A producer who
6 delivers milk to a milk dealer or handler only shall not be
7 deemed a milk dealer or handler. If a cooperative distributes or
8 makes available on consignment or otherwise milk within this
9 Commonwealth to stores, as defined in this act, or to consumers,
10 as defined in this act, or to other milk dealers or handlers, as
11 defined in this act, or acts as an agent for its members, it
12 shall be deemed to be a milk dealer or handler as to that part
13 of its business, and shall be governed by the provisions of this
14 act applicable thereto. Such cooperative shall be governed by
15 the applicable provisions of this act as to the prices at which
16 it sells, markets, or bargains to sell or make available on
17 consignment or otherwise milk within this Commonwealth to milk
18 dealers, handlers and others.

19 "Producer." A person producing milk.

20 "Store." Includes a grocery store, hotel, restaurant, soda
21 fountain, dairy products store, or any similar mercantile
22 establishment which sells or distributes milk.

23 "Subdealer" or "subhandler." Any milk dealer or handler
24 handling milk within the Commonwealth, who sells or delivers all
25 such milk to consumers or stores in the same containers as those
26 in which he purchased or acquired it from other milk dealers or
27 handlers.

28 Section 2. Termination of contracts or agreements.

29 (a) Notice.--Except as provided in subsection (b) relating
30 to the termination of contracts or purchasing agreements for

1 insufficient poundage, no milk dealer or handler shall terminate
2 his contract or purchasing agreement with a milk producer and no
3 producer shall terminate his contract or sales agreement with a
4 dealer or handler except by giving such producer or dealer at
5 least a 60-day written notice prior to termination. The dealer
6 shall specify in such notice the reasons for termination and
7 shall pay in full the producer whose contract has been
8 terminated by the 20th of the second following month.

9 (b) Insufficient poundage.--No dealer or handler shall for a
10 period of 90 days, terminate his contract or purchasing
11 agreement with a producer for insufficient poundage where such
12 producer has, in response to the notice required by subsection
13 (a) given adequate assurance to the dealer or handler that he
14 will increase production to meet the requirements of the dealer
15 or handler. At the expiration of the 90-day period following the
16 giving of such assurance the dealer or handler may terminate the
17 contract or purchasing agreement if his poundage requirements
18 remain unsatisfied.

19 Section 3. Powers and duties of Milk Marketing Board.

20 The Milk Marketing Board shall have the power, and it shall
21 be its duty, to enforce this act.

22 Section 4. Penalties and remedies.

23 (a) Summary offenses.--Except as otherwise specially
24 provided in this act, any person violating any provision of this
25 act, or any rule, regulation or order of the Milk Marketing
26 Board lawfully made, shall for the first and second offense,
27 upon conviction thereof in a summary proceeding, be sentenced to
28 pay the costs of prosecution and a fine of not less than \$25 nor
29 more than \$300, and, in default thereof, to undergo imprisonment
30 of not less than five days nor more than 30 days. In determining

1 whether an offense is a first or second offense, no offense
2 committed more than five years before the date of the offense
3 being prosecuted shall be considered as a prior offense.

4 (b) Misdemeanors.--For a third or subsequent offense
5 committed within a five year period, any person violating any
6 provision of this act, or any rule, regulation or order of the
7 Milk Marketing Board lawfully made, shall be guilty of a
8 misdemeanor and shall, upon conviction thereof, be sentenced to
9 pay a fine of not less than \$500 nor more than \$1,000, or to
10 undergo imprisonment not exceeding one year, or both, in the
11 discretion of the court.

12 (c) Actions to enforce compliance.--The Milk Marketing Board
13 or any person, marketing committee, union or association,
14 composed of persons affected by the orders, rules or regulations
15 of the Milk Marketing Board, may institute such action at law or
16 in equity as may appear necessary to enforce compliance with any
17 provision of this act, or to enforce compliance with any rule,
18 regulation or order of the Milk Marketing Board made pursuant to
19 the provisions of this act.

20 (d) Application for injunction; remedies.--In addition to
21 any other remedy at law or in equity or under this act, the Milk
22 Marketing Board may apply to the Commonwealth Court for relief
23 by injunction, or to the court of common pleas in the county
24 wherein the defendant resides or has his principal place of
25 business, to enforce compliance with or restrain violations of
26 any provision of this act or any rule, regulation or order of
27 the Milk Marketing Board made pursuant thereto. The Commonwealth
28 Court is hereby clothed with jurisdiction to hear and determine
29 all such actions by the Milk Marketing Board, regardless of
30 where they may arise in the Commonwealth. The Milk Marketing

1 Board, shall not be required to file any bond in any action
2 under this act. The penalties and remedies prescribed in this
3 act shall be deemed concurrent or contemporaneous, and the
4 existence or exercise of any one remedy herein shall not prevent
5 the Milk Marketing Board from exercising any other remedy
6 hereunder.

7 (e) Proceedings before the Milk Marketing Board.--

8 Appropriate proceedings against any milk dealer violating this
9 act or the rules, regulations or orders of the Milk Marketing
10 Board, may be instituted before the Milk Marketing Board by any
11 producer to whom the lawful price of milk has not been paid or
12 to whom such price has not been fully paid, and such proceedings
13 may also be instituted upon the Milk Marketing Board's own
14 motion.

15 (f) Perjury.--Any person who shall willfully and corruptly
16 make a false oath or affirmation before the Milk Marketing Board
17 at any investigation or hearing, or in any report or statement
18 authorized or required by this act, shall be guilty of perjury,
19 and, on conviction, be subject to the penalties prescribed by
20 law for willfully and corruptly making false oath or
21 affirmation.

22 Section 5. Effective date.

23 This act shall take effect in 60 days.