
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1969 Session of
1984

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 AND ITKIN, MARCH 14, 1984

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
MARCH 14, 1984

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. A cooperative
21 corporation or association of producers shall be deemed to be a
22 dealer with respect to milk purchased or received from producers
23 other than those specified above.

24 (b) It shall be unlawful for a milk dealer or handler to
25 purchase, acquire or receive on consignment or otherwise milk
26 from producers unless the milk dealer or handler shall be in
27 good standing with regard to requirements of this act.

28 (c) Pursuant to the purposes of this act, any member of the
29 board or any designated employee thereof shall have the power,
30 at all reasonable hours, to inspect, photograph, photostat, mark

1 or stamp for identification, audit and copy all books, papers,
2 records or documents of all licensees for the purpose of
3 ascertaining facts to enable the board to administer this act.
4 The information obtained shall be for the confidential use of
5 the board and the various administrative departments, boards and
6 commissions of the State government, and shall not be disclosed
7 to any person except as may be required in the enforcement of
8 the law or by order of the court. Failure to comply with such
9 rights of inspection as noted above may result in revocation of
10 the license of the dealer or handler at which time no producer
11 shall legally ship milk to the dealer or handler.

12 Section 4. Definitions.

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

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

21 "Board." The Milk Marketing Board.

22 "Cooperative." A cooperative agricultural association or
23 corporation of producers organized under the laws of this
24 Commonwealth or of any other state, which qualifies as such
25 under the provisions of the Federal Capper-Volstead Act, and
26 engaged in making collective sales or in the marketing of milk
27 for its own members. A cooperative shall not be deemed a milk
28 dealer or handler but shall be deemed a producer, except as
29 provided in section 3(a).

30 "Handle" or "to handle." The doing of any one or several or

1 all of the following acts: to buy, sell, barter, acquire, store,
2 process, consign, receive, transport or control as owner, buyer,
3 seller, consignee, consignor, bailee, bailor, broker or factor.

4 "Milk." Fluid milk and cream, fresh, sour or storage,
5 skimmed milk, flavored milk or milk drink, buttermilk, ice cream
6 mix and condensed or concentrated whole or skimmed milk, except
7 when contained in hermetically sealed cans.

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

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

17 "Producer." A person producing milk.
18 Section 5. Prompt payment of milk.

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

30 (b) On or before July 1 of each year all licensees and the

1 Milk Marketing Board shall notify all producers by certified
2 mail of the financial basis on which the producer security is
3 based.

4 Section 6. Financial statement.

5 A cooperative which is deemed to be a dealer or handler under
6 the provisions of section 3(a) shall, in regard to milk
7 purchased or received from producers other than its own members,
8 be required to be licensed as a dealer with respect to milk so
9 received or purchased, and shall be required to the extent of
10 such milk purchased, received or handled to comply with the
11 provisions of this act regarding the filing of bonds and
12 contributions to a security fund for the protection of nonmember
13 producers.

14 Section 7. Security bonds.

15 (a) Each milk dealer, as required by this act, shall file
16 with the board a corporate surety bond or collateral bond. The
17 bond shall be on a form prescribed by the board conditioned for
18 the payment by the milk dealer or handler of all amounts due
19 under this act and all other applicable Federal laws in addition
20 to the orders of the board for milk purchased or otherwise
21 acquired from producers by the milk dealer or handler during the
22 license year, which payments shall be made within the time
23 limits specified in this act or the regulations of the board and
24 shall be upon such other terms and conditions as the board may
25 prescribe.

26 (b) A corporate surety bond shall be executed to the
27 Commonwealth by the milk dealer as principal and by a corporate
28 surety company authorized and regulated by the Commonwealth. The
29 board shall have no power to reject any corporate surety bond
30 which is so executed by a corporate surety company authorized to

1 do business in this Commonwealth as surety, so long as the
2 amount of the bond is equal to or less than the amount the
3 surety company is authorized to execute on a single bond without
4 obtaining collateral security from the principal. The board may
5 reject any bond which exceeds that amount. A collateral bond
6 shall be executed to the Commonwealth by the milk dealer as
7 principal, shall set forth the collateral posted with the bond
8 and shall have attached thereto the collateral properly assigned
9 and transferred to this Commonwealth. The collateral posted with
10 the bond shall be cash in an equal amount of the bond or the
11 bond shall be secured by an actual deposit with a bank, bank and
12 trust company or national bank within the Commonwealth of money
13 to the full amount of the bond or securities to the amount of
14 the bond consisting of interest-bearing obligations of the
15 Federal Government.

16 (c) A milk dealer who on the effective date of this act has
17 on file with the board a collateral bond, the collateral for
18 which is an irrevocable letter or letters of credit for the
19 account of the milk dealer authorizing the board to draw on a
20 bank or a trust company or banks or trust companies located
21 within, and authorized to do business in this Commonwealth to
22 the amount of the bond, may continue to file the security with
23 the dealer's collateral bond.

24 (d) The bond shall be in a sum equal to a minimum of 30% of
25 the highest aggregate amount owed by the dealer to producers for
26 a 40-day period during the preceding 12 months or 30% of the
27 greatest amount if payments are made for a shorter pay period.
28 Such bond may exceed the 30% minimum and be equal to the full
29 amount of the money owed, at the discretion of the dealer.

30 (e) Milk purchased, acquired or received by a milk dealer or

1 handler from producers outside this Commonwealth and sold or
2 distributed by the dealers or handlers as fluid milk within this
3 Commonwealth shall be included in computing the amount of the
4 dealer's or handler's bond, except where the dealer or handler
5 has filed a bond or other security for the protection of the
6 producers with the state wherein the milk is purchased, acquired
7 or received.

8 Section 8. New licensees.

9 (a) A milk dealer or handler purchasing or acquiring or
10 receiving or intending to purchase or receive milk from
11 producers, but not so engaged during the preceding 12 months,
12 shall file a bond in a sum to be fixed by the board in
13 accordance with the handler's anticipated purchases from
14 producers and the handler's obligation to a producer settlement
15 or equalization fund but not less than the total amount expected
16 to be owed during the planned pay period. The board shall review
17 the operations of the dealer or handler every two months and the
18 bond shall be modified by the board at the time the board is
19 satisfied that the producers are adequately secured. At the end
20 of six months of operation, upon approval by the board, the new
21 dealer or handler may file the amount of the bond and pay into
22 the security fund as required in this section and section 9.

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

1 required under section 9 not later than one month before such
2 change is to be made.

3 Section 9. Security fund.

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

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

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

26 (d) At the time a dealer discontinues purchasing milk from
27 producers, the moneys, including interest and minus a small
28 administrative fee, shall be returned to the dealer.

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

1 the total fund.

2 Section 10. Trusteeship.

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

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

22 Section 11. Procedure for disbursing proceeds.

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

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

1 (c) In the event the moneys available from the bond and
2 security fund are not sufficient to pay producers in full, the
3 moneys available shall be divided pro rata among producers.

4 Section 12. Prohibitions and violations.

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

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

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

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

21 (e) If any dealer who purchases or receives milk from
22 producers has not filed a surety bond or securities in lieu
23 thereof, in accordance with this act by the 15th day of the
24 month prior to the beginning of the license year, the board
25 shall notify such producers by certified mail that such milk
26 dealer has not filed any security or made other provisions for
27 assuring payments for milk purchased, for the license year
28 commencing the 1st day of the next month. The board then may
29 require a trustee to be selected under the provisions of this
30 act or shall have the right to revoke the license of said

1 dealer.

2 Section 13. Rules and regulations.

3 The board, after due notice and public hearing, may
4 promulgate rules and regulations to carry out the provisions and
5 intent of this act.

6 Section 14. Repeals.

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

9 Sections 501, 502, 503, 504, 505, 506, 507, 508, 509, 510,
10 511 and 512 of the act of April 28, 1937 (P.L.417, No.105),
11 known as the Milk Marketing Law, are repealed.

12 Section 15. Effective date.

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