

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, ITKIN, DeLUCA, STEIGHNER, BURD, DIETZ AND LIVENGOOD, MARCH 13, 1984

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MAY 15, 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. 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, each licensee shall
5 notify all of his producers by first-class mail of the financial
6 basis on which the producer security is based.

7 Section 6. Cooperative licensing requirements.

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

17 Section 7. Security bonds.

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

29 (b) A corporate surety bond shall be executed to the
30 Commonwealth by the milk dealer as principal and by a corporate

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

23 (c) The bond shall be in a sum equal to a minimum of 30% of
24 the highest aggregate amount owed by the dealer to producers for
25 a 40-day period during the preceding 12 months. Such bond may
26 exceed the 30% minimum and be equal to the full amount of the
27 money owed, at the discretion of the dealer.

28 (d) Milk purchased, acquired or received by a milk dealer or
29 handler from producers outside this Commonwealth and sold or
30 distributed by the dealer or handler as fluid milk within this

1 Commonwealth shall be included in computing the amount of the
2 dealer's or handler's bond, except where the dealer or handler
3 has filed a bond or other security for the protection of the
4 producers with the state wherein the milk is purchased, acquired
5 or received.

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 section 9 7, in lieu of filing a bond equivalent <—
12 to 75% or more of the greatest amount owed in a 40-day period,
13 he shall notify the board not later than two months prior to the
14 date on which such change is to be made, and shall make the
15 initial payment as required under section 9 not later than one
16 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 40-day pay
5 period, payment to the security fund shall not be required.

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

10 (d) At the time a dealer discontinues purchasing milk from
11 producers, after all the producers are paid in full, the moneys,
12 including interest and minus the administrative fee, as provided
13 for in subsection (e), shall be returned to the dealer.

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

17 Section 10. New licensees.

18 A milk dealer or handler purchasing or acquiring or receiving
19 or intending to purchase or receive milk from producers, but not
20 so engaged during the preceding 12 months, shall file a bond in
21 a sum to be fixed by the board in accordance with the handler's
22 anticipated purchases from producers and the handler's
23 obligation to a producer settlement or equalization fund, but
24 not less than the total amount expected to be owed during the
25 full 40-day pay period. The board shall review the operations of
26 the dealer or handler every two months and the bond shall be
27 modified by the board at the time the board is satisfied that
28 the producers are adequately secured. At the end of six months
29 of operation, upon approval by the board, the new dealer or
30 handler may file the amount of the bond and pay into the

1 security fund as required in sections 7 and 9.

2 Section 11. 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 or payments to the
7 security fund and, where it is practical from an operating
8 standpoint, the licensee to file an agreement providing for the
9 complete control over all processed or manufactured milk and
10 dairy products by a trustee to be selected at least annually by
11 the involved producers. Such trustee shall make and file a
12 trustee's fidelity bond and contracts signed by the operator and
13 the purchasers of the dairy products requiring that payment for
14 such products sold be made to him as trustee. Such trustee shall
15 maintain a separate bank account for that purpose and shall at
16 least twice annually render a true and correct account of his
17 dealings to the board and to the producers. Producers shall have
18 a first lien on assets of trusteeship to assure payment in case
19 of default.

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

23 Section 12. Procedure for disbursing proceeds.

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

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

1 appealed to the Commonwealth Court.

2 (c) In the event the moneys available from the bond and
3 security fund are not sufficient to pay producers 75% of the 40-
4 day purchases, the moneys available shall be divided pro rata
5 among producers.

6 Section 13. Prohibitions and violations.

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

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

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

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

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

1 require a trustee to be selected under the provisions of this
2 act or shall have the right to revoke the license of said
3 dealer.

4 Section 14. Rules and regulations.

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

8 Section 15. Penalties.

9 A violation of this act shall subject a milk dealer or a
10 participating cooperative to a penalty of \$50 for each day that
11 it is late in making payment into the security fund of the
12 assessment required by this act, for each day it sells milk to a
13 milk dealer after being notified by the board of the milk
14 dealer's failure to provide security as provided herein or for
15 each day a milk dealer or participating cooperative who has
16 failed to make payments for milk purchased as provided pursuant
17 to section 5. Any person who buys or sells in violation of the
18 credit period provided in section 5 shall be liable for
19 suspension or revocation of his milk dealer's license in
20 pursuance of the act of April 28, 1937 (P.L.417, No.105), known
21 as the Milk Marketing Law, or the board may accept from the
22 licensee an offer in compromise, a penalty at the rate of \$50
23 for each day of violation.

24 Section 16. Repeals.

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

27 Section 17. Effective date.

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