

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2210 Session of
2012

INTRODUCED BY LAWRENCE, DENLINGER, BEAR, BOYD, V. BROWN,
CALTAGIRONE, CLYMER, COHEN, D. COSTA, COX, CREIGHTON, CUTLER,
AUMENT, DeWEESE, EVERETT, GODSHALL, HARRIS, HICKERNELL,
HORNAMAN, KAUFFMAN, KOTIK, MAJOR, METCALFE, MURT, PYLE,
QUINN, RAPP, ROCK, ROSS, SONNEY, VULAKOVICH, WATSON AND
WHITE, APRIL 16, 2012

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, APRIL
16, 2012

AN ACT

1 Amending the act of April 28, 1937 (P.L.417, No.105), entitled,
2 as amended, "An act relating to milk and the products
3 thereof; creating a Milk Marketing Board; establishing its
4 jurisdiction, powers and duties; regulating the production,
5 transportation, manufacturing, processing, storage,
6 distribution, delivery and sale of milk and certain products
7 thereof; providing for the licensing of milk dealers and the
8 payment of fees therefor; requiring milk dealers to file
9 bonds to secure payment for milk to producers and certain
10 milk dealers; authorizing the holding of hearings and the
11 issuance of subpoenas by the board; conferring jurisdiction
12 upon courts to punish contempts and to prohibit violations of
13 this act and of rules, regulations and orders of the board;
14 authorizing the board to adopt rules, regulations and orders,
15 and to enter into interstate and Federal compacts; requiring
16 persons who weigh, measure, sample or test milk to procure
17 permits or certificates, to take examinations, to pay fees
18 therefor, to furnish certain notices, records and statements,
19 and to use certain methods of weighing, measuring, sampling
20 and testing; authorizing the board to examine the business,
21 papers and premises of milk dealers and producers, requiring
22 the keeping of records and the filing of reports by milk
23 dealers, and permitting, with limitations, the use of
24 information obtained thereby; authorizing the board to fix
25 prices for milk and certain milk products subject to the
26 approval of the Governor, and conferring certain powers upon
27 the Governor with respect thereto; providing for appeals to
28 the courts from decisions of the board, and for the burden of
29 proof upon such appeals; prescribing penalties, fines and

1 imprisonment for violations of this act and rules,
2 regulations and orders of the board; defining perjury;
3 defining remedies; repealing legislation supplied and
4 superseded by this act, and saving rights, duties and
5 proceedings thereunder; and making appropriations," further
6 providing for definitions and construction; providing for
7 milk distributors; further providing for records, for reports
8 and for prices to producers; providing for title to milk; and
9 establishing the Producer Settlement Fund.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 103 of the act of April 28, 1937
13 (P.L.417, No.105), known as the Milk Marketing Law, amended
14 December 21, 1984 (P.L.1278, No.243), is amended by adding
15 definitions to read:

16 Section 103. Definitions; Construction.--The following terms
17 shall be construed in this act to have the following meanings,
18 except in those instances where the context clearly indicates
19 otherwise:

20 * * *

21 "Milk distributor" means a person that purchases or receives
22 for resale milk from sources outside this Commonwealth and
23 handles the milk within this Commonwealth for further sale in
24 the same containers as those in which it was purchased.

25 * * *

26 "Qualified producer" means any of the following:

27 (1) A producer in this Commonwealth whose milk is purchased
28 or processed as fluid or manufactured products.

29 (2) An out-of-State producer whose milk is:

30 (i) delivered to a plant in this Commonwealth to be
31 processed as a Class I product; or

32 (ii) sold at wholesale or retail in a transaction that is
33 subject to minimum pricing under this act.

34 The term does not include a producer selling milk that is exempt

1 under section 402 or a cooperative.

2 * * *

3 Section 2. The act is amended by adding an article to read:

4 ARTICLE IV-A

5 MILK DISTRIBUTORS

6 Section 401-A. Milk distributors required to be licensed.

7 (a) Requirement.--A person shall not operate as a milk
8 distributor in this Commonwealth unless the person holds a milk
9 distributor's license issued by the board.

10 (b) Original.--A license application shall be completed and
11 filed by the milk distributor:

12 (1) within 30 days after the effective date of this
13 section; or

14 (2) prior to engaging in business.

15 (c) Renewal.--A license shall be renewed annually by June
16 30. A renewal application shall be filed by June 15.

17 (d) Form.--The board shall prescribe forms for applications
18 under subsections (b) and (c).

19 Section 402-A. Refusal, suspension or revocation of license.

20 (a) Scope.--This section applies if the board makes a
21 determination, after a hearing as set forth in section 405, that
22 an applicant or a licensee has not complied with this act or a
23 regulation and order under this act.

24 (b) Authority.--If subsection (a) applies, the board may:

25 (1) Decline to grant a license to an applicant.

26 (2) Decline to renew a license of a licensee.

27 (3) Suspend or revoke a license.

28 Section 3. Section 701 of the act, amended December 21, 1984
29 (P.L.1278, No.243), is amended to read:

30 Section 701. Records.--Milk dealers and milk distributors

subject to license by the board shall keep within the
Commonwealth the following records:

(1) A record of the quantity of all milk received or
produced, detailed as to location and as to names and addresses
of producers or milk dealers or milk distributors from whom
received, with butterfat or appropriate milk component tests,
weights; prices paid, and deductions or charges made.

(2) A record of the quantity of all milk sold, detailed as
to grade, use, location, market outlet, and size and type of
container, with prices and amounts received therefor, and the
butterfat or appropriate milk component tests thereof.

(3) A record of the quantities of all milk transported,
shipped, or hauled, including the distances and the amounts paid
for the movement of such milk, in all cases where the dealer
pays on his own account or on the account of producers for the
movement thereof.

(4) A record of the quantity of each milk product
manufactured, the quantity of milk used in the manufacture of
each product, and the quantity and value of milk products sold.

(4.1) The price or cost of containers used, by size and
type.

(5) A record of wastage or loss of milk or butterfat.

(6) A record of the spread or handling expense and profit or
loss, represented by the difference between the price paid and
the price received for all milk and milk products.

(7) A record of all other transactions affecting the assets,
liabilities, or net worth of the dealer or milk distributor.

(8) Such other records and information as the board may deem
necessary for the proper enforcement of this act.

The records herein required shall be kept in the possession

1 of the milk dealer for a period not less than two years, unless
2 the board otherwise provides.

3 Section 4. Section 702 of the act, amended July 31, 1968
4 (P.L.963, No.294), is amended to read:

5 Section 702. Reports.--Each milk dealer and milk distributor
6 shall, from time to time, as required by rule, regulation or
7 order of the board, make and file a verified report, on forms
8 prescribed by the board, of all matters on account of which a
9 record is required to be kept, together with such other
10 information or facts as may be pertinent and material within the
11 scope of the purposes and intent of this act. Such report shall
12 cover a period specified in the order, and shall be filed within
13 a time fixed by the board.

14 Section 5. Section 803 of the act, amended December 21, 1984
15 (P.L.1278, No.243), is amended to read:

16 Section 803. Prices to Producers.--(a) The board shall fix,
17 by official order, the minimum prices or a formula for the
18 setting of minimum prices to be paid by milk dealers or handlers
19 to producers for milk or milk components sold or delivered or
20 made available on consignment or otherwise by producers to
21 dealers or handlers: Provided, however, That the fixing of
22 prices to be paid by milk dealers or handlers to producers for
23 milk or milk components to be used solely in manufacturing shall
24 be discretionary with the board.

25 (b) Prices to producers fixed by the board under this
26 section in excess of the Federal order price shall be paid by
27 milk dealers or handlers or milk distributors into the Producer
28 Settlement Fund.

29 Section 6. The act is amended by adding sections to read:

30 Section 803.1. Title to Milk.--(a) The scope of this

1 section is as follows:

2 (1) This section shall apply only to the administration of
3 this act.

4 (2) This section shall not supersede an order of a Federal
5 administrative agency or of the board that requires the cost of
6 shipment of milk to be free-on-board at the place of destination
7 and is not intended to mandate changes in existing customs and
8 practices with respect to allocation of the costs and risks of
9 delivering milk from the farm to plant of first receipt.

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

15 Section 1104.1. Producer Settlement Fund.--(a) The Producer
16 Settlement Fund is established in the State Treasury as a
17 restricted account. The fund shall consist of money deposited
18 under section 803(b) as prescribed by the board.

19 (b) All money in the fund and the interest accruing thereon
20 are appropriated to the board on a continuing basis to carry out
21 the provisions of this section. The board may use up to the
22 lesser of two percent (2%) or two hundred thousand dollars
23 (\$200,000) of the fund for costs of administration. Money in the
24 fund shall be distributed at least quarterly by the board on a
25 pro rata basis to qualified producers based on the volume of
26 milk produced and shipped by each qualified producer.

27 Section 7. This act shall take effect in 60 days.