

cated, mimeographed or other written treatise, report or statistical data by an expert not present as a witness, if and to the extent it is endorsed as reliable to an expert witness present at the hearing, shall be competent evidence on any subject material to fixing any price under this article.

All provisions of all price-fixing orders of the commission shall be presumed to be valid, and the burden of proving any invalidity of any provisions thereof shall be upon the person asserting the same. Any determination by the commission, or a court to which an appeal has been taken, that the wholesale or retail prices provided are invalid shall not prevent the enforcement of prices to producers, but any determination that prices to producers are unreasonable shall require the redetermination by the commission of wholesale and retail prices as well as prices to producers.

Whenever an order of the commission fixing prices is remitted to the commission with directions to reform the findings or order in accordance with the opinion of the court, and no further appeal is taken by the commission, the commission shall make such reformation within thirty days from the entry of the order of the court remitting the price fixing order to the commission.

APPROVED—The 15th day of December, A. D. 1965.

WILLIAM W. SCRANTON

No. 425

AN ACT

HB 2021

Amending the act of April 28, 1937 (P. L. 417), entitled "An act relating to milk and the products thereof; creating a Milk Control Commission; establishing its jurisdiction, powers and duties; regulating the production, transportation, manufacturing, processing, storage, distribution, delivery and sale of milk and certain products thereof; providing for the licensing of milk dealers and the payment of fees therefor; requiring milk dealers to file bonds to secure payment for milk to producers and certain milk dealers; authorizing the holding of hearings and the issuance of subpoenas by the commission; conferring jurisdiction upon courts to punish contempts and to prohibit violations of this act and of rules, regulations and orders of the commission; authorizing the commission to adopt rules, regulations and orders, and to enter into interstate and Federal compacts; requiring persons who weigh, measure, sample or test milk to procure permits or certificates, to take examinations, to pay fees therefor, to furnish certain notices, records and statements, and to use certain methods of weighing, measuring, sampling and testing; authorizing the commission to examine the business, papers and premises of milk dealers and producers, requiring the keeping of records and the filing of reports by milk dealers, and permitting, with limitations, the use of information obtained thereby; authorizing the commission to fix prices for milk and certain milk products subject to the approval of the Governor, and conferring certain powers upon the Governor with respect thereto; providing for appeals to the courts from decisions of the commission, and

for the burden of proof upon such appeals; prescribing penalties, fines and imprisonment for violations of this act and rules, regulations and orders of the commission; defining perjury; defining remedies; repealing legislation supplied and superseded by this act, and saving rights, duties and proceedings thereunder; and making appropriations," further defining a "milk dealer" or "handler" for the purposes of the act, and further providing for the regulation of cooperatives.

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

Section 1. Sections 103, 807 and 809, act of April 28, 1937 (P. L. 417), known as the "Milk Control Law," amended July 24, 1941 (P. L. 443), are amended to read:

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

"Books and records" or "books or records" shall include all pertinent books, ledgers, journals, records, papers, memoranda, correspondence, vouchers, bills, receipts, cancelled checks, accounts, exhibits, photographs and other documents.

"Commission" means the State agency created by this act, to be known as the "Milk Control Commission."

"Consumer" means any person, natural, corporate, statutory or governmental, other than a milk dealer or handler who purchases milk for consumption or use by himself or others.

"Cooperative" means a cooperative agricultural association or corporation of producers organized under the laws of this Commonwealth or of any other state and engaged in making collective sales or in the marketing of milk for producers under contract with it. A cooperative shall not be deemed a milk dealer or handler, but shall be deemed a producer, except as otherwise provided herein.

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

"Licensee" means a licensed milk dealer or handler.

"Market" includes any county, city, borough, incorporated town, or township in the Commonwealth, or any two or more such counties, cities, boroughs, incorporated towns, or townships, or any portions thereof, or any other land within the territorial limits of the Commonwealth designated by the commission as a marketing area.

"Milk" includes fluid milk and cream, fresh, sour or storage, skimmed milk, flavored milk or milk drink, buttermilk, ice cream mix, and condensed or concentrated whole or skimmed milk, except when contained

in hermetically sealed cans.

“Milk dealer” or “handler” means any person, including any store or subdealer or subhandler, as hereinafter defined, who purchases or receives or handles on consignment or otherwise milk within the Commonwealth, for sale, shipment, storage, processing or manufacture, within or without the Commonwealth, whether on behalf of himself or others, or both. A producer who delivers milk to a milk dealer or handler only shall not be deemed a milk dealer or handler. If a cooperative distributes or makes available on consignment or otherwise milk within this Commonwealth to stores, as defined in this act, or to consumers, as defined in this act, or to other milk dealers or handlers, as defined in this act, or acts as an agent for its members, it shall be deemed to be a milk dealer or handler as to that part of its business, and shall be governed by the provisions of this act applicable thereto. Such cooperative shall be governed by the applicable provisions of this act as to the prices at which it sells, markets, or bargains to sell or make available on consignment or otherwise milk within this Commonwealth to milk dealers, handlers and others.

“Person” includes an individual, corporation, association, partnership, limited partnership, or other unincorporated enterprise owned or conducted by or on behalf of two or more individuals or other persons.

“Price” includes the amount paid or to be paid and the proceeds returned or to be returned, whether the transaction be one of purchase, sale, consignment, sale or return, accounting, or otherwise.

“Producer” means a person producing milk.

“Store” includes a grocery store, hotel, restaurant, soda fountain, dairy products store, or any similar mercantile establishment which sells or distributes milk.

“Subdealer” or “subhandler” means any milk dealer or handler handling milk within the Commonwealth, who sells or delivers all such milk to consumers or stores in the same containers as those in which he purchased or acquired it from other milk dealers or handlers.

Any reference in this act to quantity of milk shall be construed to include its whole milk equivalent.

Article or section headings shall not be construed to affect in any manner the scope or meaning of any article or section of this act.

The singular shall be construed to include the plural. The masculine shall be construed to include the feminine and the neuter, and conversely, the neuter shall be construed to include the masculine and the feminine.

Section 807. Violations.—After the commission shall have fixed prices to be charged or paid for milk, whether by class, grade, use or otherwise, it shall be unlawful for a milk dealer or handler or producer or directors or officers of a cooperative association or corporation, knowingly or unknowingly, or any other person knowingly, by himself or through another, to sell or deliver, or make available on consignment or otherwise, or buy or receive, or handle on consignment or otherwise, or offer to sell or deliver or make available on consignment or otherwise, or buy or receive or handle on consignment or otherwise, or advertise for sale, delivery, purchase or receipt, or hold one's self out as willing to sell, deliver, buy or receive milk at any price below the minimum price or above the maximum price applicable to the particular transaction.

No method or device shall be lawful whereby milk is bought or received or handled on consignment or otherwise, or sold or handled or delivered or made available on consignment or otherwise, or offered to be bought or received or handled on consignment or otherwise, or sold or handled or delivered or made available on consignment or otherwise, at a price less than the minimum price applicable to the particular transaction, whether by any discount, premium, rebate, free service, trading stamps, advertising allowance, or extension of credit, or by a combined price for such milk, together with another commodity or a service which is less, or is represented to be less, than the aggregate of the price of the milk and the price or value of such commodity or service when bought or received or handled on consignment or otherwise, sold or delivered or made available on consignment or otherwise, or offered for sale, delivery, purchase, handling or receiving separately or otherwise.

It shall be unlawful for any milk dealer or handler or directors or officers of a cooperative association or corporation, to store, manufacture, process, sell or handle or deliver or make available on consignment or otherwise, any milk for which he has paid, or agreed to pay, a price lower than that fixed by the commission for milk of that class or grade.

It shall be unlawful for a milk dealer or handler or directors or officers of a cooperative association or corporation, knowingly or unknowingly, or any other person knowingly, by himself or through another, to store, manufacture, process, sell or deliver, or make available on consignment or otherwise, or buy or receive or handle on consignment or otherwise, or offer to sell or deliver or make available on consignment or otherwise, or buy or receive or handle on consignment or otherwise, milk at a price computed upon false or erroneous weight, butterfat test, grade or clas-

sification; or at a price from which have been made deductions not authorized by law or in excess of any deductions so authorized, whether such illegal deductions be in the form of excessive transportation charges or otherwise.

The act of a director, officer, agent or other person acting for or employed by a milk dealer or directors or officers of a cooperative association or corporation shall be deemed the act of such milk dealer or cooperative association or corporation.

Section 809. Cooperatives.—It is hereby declared to be the legislative intent that no provision of this act shall prevent, and no provision contained herein shall be deemed or construed to prevent, any cooperative agricultural association or corporation organized under the laws of this Commonwealth, or a similar association or corporation organized under the laws of this or any other state, and engaged in making collective sales or in the marketing of milk for the producers thereof, from blending the net proceeds of its sales or consignments or deliveries in all its markets or of its sales or deliveries within any particular market in various classes and whether in fluid form or as manufactured products, both within and without the Commonwealth, and paying its producers such blended price, with such deductions and differentials as may be authorized under contract between such association or corporation, and its producers, and with prior written approval of the commission, or from making collective sales of the milk of its members and other producers represented by it, or from making such sales or deliveries at a blended price based upon sales or deliveries thereof in the various classes, and whether in fluid form or as manufactured products, both within and without the Commonwealth, which price is to be paid either directly to the producers or to the cooperative agricultural association or corporation. Nothing herein contained shall prevent any milk dealer or handler from contracting for his milk with such cooperative agricultural association or corporation, upon such basis; but all such contracts shall be upon the basis of the prices fixed by the commission, with the result that the net price received for milk by such cooperative association or corporation shall be commensurate with such prices. No director or officer of a cooperative association or corporation shall offer, nor shall milk dealers or handlers, or agents thereof, [shall] receive from any producer or from such cooperative association or corporation, directly or indirectly, any discounts, rebates, free service, or compensation through rentals, extension of credit, or otherwise for the purpose, or with the effect, of reducing

the net cost to the dealer or handler for milk purchased or received by or through such cooperative association or corporation.

No provision of this act shall be deemed or construed to affect the contracts of such cooperative agricultural association or corporation with its producers, except as hereinafter specifically provided, nor to affect or abridge the rights and powers of such an association or any of its operations: Provided, however, That the powers of subpoena, entry, and inspection, vested in the commission under this act, shall apply for the purpose of examining and auditing books and records of any such cooperative agricultural association or corporation, at reasonable intervals, for the purpose of administering this act. This section shall not, however, be construed to exempt such association or corporation from the jurisdiction of the commission over the prices at which it may sell milk to milk dealers or handlers, stores or consumers.

[Any cooperative agricultural association or corporation organized after the effective date of this act, or within ninety (90) days prior to the effective date hereof, or which, if organized over ninety (90) days prior to the effective date of this act, was not marketing milk for producers upon the effective date of this act, or ninety (90) consecutive days prior thereto, shall not be entitled to avail itself of the benefits of this section if it pays or distributes to its producers a price which is more than one and one-half per centum ($1\frac{1}{2}\%$) lower than the prices prescribed by the commission, unless such association or corporation shall furnish reasonable proof to the commission that such one and one-half per centum ($1\frac{1}{2}\%$) is insufficient to pay such lawful expenses and charges for its operations and maintenance as may be authorized under the contracts between the association or corporation and its producers.]

Every cooperative agricultural association or corporation operating under the provisions of this section shall file with the commission a copy of its certificate of incorporation and by-laws, and a copy of each form of contract employed in its relations with producers, within sixty (60) days after the effective date of this act.

APPROVED—The 15th day of December, A. D. 1965.

WILLIAM W. SCRANTON

No. 426

AN ACT

HB 2045

Amending the act of April 12, 1951 (P. L. 90), entitled "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture,