

No. 1980-104

AN ACT

SB 1287

Requiring prompt payment to milk producers, providing for the establishment of a Milk Producers' Security Fund and a Cooperative Security Fund, providing for a procedure to process claims against the Milk Producers' Security Fund and Cooperative Security Fund, providing for alternative methods of security on behalf of milk producers, and providing for certain prohibitions and penalties.

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

Section 1. Short title.

This act shall be known and may be cited as the "Milk Producers' and Cooperative Security Funds Act."

Section 2. Declaration of policy.

It is hereby declared that the dairy industry is a paramount agricultural industry of this Commonwealth and that the normal processes of producing and marketing milk is an enterprise of vast economic importance to the Commonwealth and of vital importance to the

consuming public which ought to be safeguarded and protected in the public interest. The General Assembly finds that the marketing of milk requires dairy farmers and cooperatives to receive prompt payment from dealers and handlers. It has been, and continues to be, the policy of this Commonwealth to protect producers and cooperatives against loss of payment for milk because of defaults by purchasers. The public interest requires the establishment of a Milk Producers' Security Fund and a Cooperative Security Fund as well as other alternative forms of security.

Section 3. Scope of coverage.

(a) For purposes of this act, a cooperative corporation or association of producers shall be deemed to be a producer and not a dealer with respect to the milk of its producer members or of its producer-patrons under specific nonmember marketing agreements, or of other qualified cooperatives under annual contract with such cooperative provided that such contract is on file with and approved by the Milk Marketing Board. It shall be deemed to be a dealer with respect to milk purchased or received from producers other than those specified above.

(b) It shall be unlawful for a milk dealer or handler to purchase, acquire or receive on consignment or otherwise milk from producers unless said milk dealer or handler shall be in good standing with regard to payments to the security fund pursuant to sections 6 and 7, or shall have on file with the Milk Marketing Board an alternative form of security pursuant to sections 9, 10 and 11.

(c) It shall be unlawful for a cooperative, corporation or association of producers to purchase, acquire, receive on consignment or handle milk from producers and/or members unless said cooperative shall be in good standing with regard to payments to the Cooperative Security Fund pursuant to sections 6 and 15 or has opted out under the provisions of section 6(c).

Section 4. Definitions.

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

"Blend price." The actual price due or paid to producers after computation of the licensed dealer's or handler's producer obligation pursuant to the applicable rules, regulations or orders of the Milk Marketing Board.

"Board." The Milk Marketing Board.

"Cooperative." A cooperative agricultural association or corporation of producers organized under the Laws of this Commonwealth or of any other state, which qualifies as such under the provisions of the Federal Capper-Volstead Act, 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” or “to handle.” 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.

“Milk.” 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.” 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 the act of April 28, 1937 (P.L.417, No.105), known as the “Milk Marketing Law,” or to consumers, as defined in the Milk Marketing Law, 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 the Milk Marketing Law applicable thereto. Such cooperative shall be governed by the applicable provisions of the Milk Marketing Law 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.

“Pay period.” The dates and terms of payment as required under section 5 and under rules, regulations and orders of the Milk Marketing Board promulgated pursuant to section 5.

“Producer.” A person producing milk.

Section 5. Prompt payment of milk.

All milk dealers shall pay for milk purchased or received from producers with final payments to be made no later than the fiftieth day from which the milk was received or purchased. The board may, in its sole discretion after a public hearing, shorten the time period in which final payments for milk are made. It is the specific intent of the General Assembly that final milk payments be made in as short a time period as possible from the date milk was received or purchased. Therefore, the board is empowered to hold public hearings as often as possible to consider the time period for final milk payments and to shorten the time period whenever appropriate.

Section 6. Payments to security funds.

(a) Any milk dealer, except a cooperative, who has not filed a bond or other alternative security pursuant to sections 9, 10 and 11, and who buys, receives or otherwise handles milk received from producers, shall pay monthly to the board one cent per hundredweight on all such milk purchased, received or handled. Such payments shall

be deposited in the Milk Producers' Security Fund established by section 7.

(b) All cooperatives or associations of producers, who buy, sell, receive or otherwise handle milk received from producers and/or members, shall pay to the board one cent per hundredweight on all such milk purchased, received or handled. Such payments shall be deposited in the Cooperative Security Fund established by section 15. The board shall apportion all payments from cooperatives into:

(1) the Milk Producers' Security Fund when milk is from producers who are nonmembers and the cooperative is deemed to be a dealer or handler; and

(2) the Cooperative Security Fund when milk is from members or other qualified cooperatives under annual contract with such cooperative provided that such contract is on file with and approved by the board.

(c) Any cooperative or association of producers may choose to opt out of the provisions of subsection (b)(2) in one of the following methods:

(1) an affirmative vote by a majority of the members of the board of directors of the cooperative or association of producers; or

(2) an affirmative vote for a resolution of intent to opt out of the Cooperative Security Fund by a majority of the voting delegates at an annual or special meeting.

(d) Prior to a cooperative or association of producers invoking the provisions of either subsection (c)(1) or (c)(2) hereof, there shall be mailed to each member of such cooperative or association of producers notice of said action. The notice shall contain, inter alia, the following:

(1) the time, place and date of the meeting;

(2) which provision under section 6 is to be invoked;

(3) the purpose of the meeting; and

(4) a brief explanation as to the purposes and intent of this act.

The notice shall be mailed at least 30 days prior to the scheduled meeting. The board shall through regulation determine the form and procedure for the notice provisions under this section.

(e) Any cooperative or association of producers may within six months from the date that this act becomes law notify the board of a vote under subsection (c)(1) or hold a special or annual meeting under subsection (c)(2). After this initial six-month period has expired, any cooperative or association of producers may invoke the provisions of subsection (c)(1) or (c)(2) only one time in any 12-month period.

Section 7. Milk Producers' Security Fund.

(a) The board shall transmit all moneys received by it from milk dealers pursuant to section 6(a) to a trust company designated by the board as fiscal agent, which fiscal agent shall establish a fund to be designated as a Milk Producers' Security Fund. The funds so received and deposited shall not be deemed to be Commonwealth funds. The

fiscal agent shall be empowered to place such funds in interest bearing accounts to the maximum extent possible and consistent with the purposes of this act. All earned interest shall accrue to the fund. The expense of administering the provisions of the security fund and of administering section 6 shall be paid from the fund by the fiscal agent at the direction of the board. Such payments shall not exceed 1 1/4% of the total fund or \$50,000 per annum, whichever is greater. The board shall make an annual report of the receipts to and disbursements from the fund, including the cost of administration of the fund, which report shall be made available to each milk dealer who has made payments into the current fund and to any other person having an interest in the fund.

(b) After the security fund shall have equaled \$4,000,000 or shall consist of such greater or lesser amount which in the opinion of the board is sufficient to protect the interests of producers and which bears a rational relationship to the scope of the debt covered by such fund, the board shall administer the fund in the manner prescribed herein.

(c) At the inception of the Milk Producers' Security Fund, each milk dealer who elects to make payments to such fund shall, while maintaining its existing bond or other form of security, be required to pay to such fund on a date designated by the board one cent per hundredweight of the milk purchased, received or handled from the producers during the three months immediately preceding such date. After the establishment of the Milk Producers' Security Fund, any milk dealer who first elects to make payments to such fund shall make a similar advance payment: Provided, however, That the advance payment shall be computed for no more than three months preceding such date. A milk dealer who has elected to participate in the fund and has made the initial deposit as herein required, may apply to the board for termination of an existing bond or return of existing security filed with the board which the board is empowered to release at such time as the security fund reaches a level the board considers adequate to secure milk producers.

Section 8. Claims against Milk Producers' Security Fund.

(a) If the board has reason to believe that a licensed milk dealer who is participating in the Milk Producers' Security Fund has defaulted in making payments for milk to producers, the board shall give reasonable notice to the producers believed to be affected to file verified claims and may fix a reasonable time within which such claims must be filed.

(b) No claims against the Milk Producers' Security Fund shall be allowed for sales of milk to dealers not licensed by the board. No claims shall be allowed for deliveries of milk by a producer in excess of 75% of the blend price amount owed for a period of no more than ten days longer than the applicable pay period as established under section 5. The board may, after a public hearing, increase the

percentage amount paid on claims, if the board declares that the Milk Producers' Security Fund has sufficient assets in accordance with generally accepted actuarial principles.

(c) The board shall examine the claims so filed, determine after hearing upon reasonable notice to the claimant and to the defaulting dealer the amount, due upon such claims and certify the amount due each claimant. The certification of the amount due shall be filed with the fiscal agent and interested parties within 45 days after the claimants have filed verified claims.

(d) The board's determination certifying the amount due each claimant shall be final unless the defaulting milk dealer or the claimant shall institute an appeal to the Commonwealth Court within 15 days from the date of personal service of a copy of the written determination upon the milk dealer and producer affected thereby. If after the expiration of the 15-day period, the board's determination has not been stayed by the Commonwealth Court in a proceeding instituted to review it, the board shall direct the fiscal agent to pay the claimants from the moneys available in the Milk Producers' Security Fund.

(e) If any claim is paid from the security fund, the defaulting dealer shall be liable to the board for repayment to the fund of the amount of claims so paid. If the defaulting dealer has not paid the board within 15 days after personal service upon him of the board's certification of payment of a claim from the fund for which the dealer has been found liable to the claimant, the board shall have the power, in its discretion, to sue on behalf of the fund. Suit may be brought in the name of the Commonwealth upon the relation of the board, in such manner as debts are now by law recoverable.

Section 9. Surety bonds.

(a) Each milk dealer who purchases, receives or otherwise handled milk received from producers may execute and file with the board a corporate surety bond or collateral bond in lieu of participation in the security fund. The bond shall be on a form prescribed by the board conditioned for the payment by the milk dealer or handler of all amounts due under this act and the order of the board, for milk purchased or otherwise acquired from producers by the milk dealer or handler during the license year, which payments shall be made within the time limits specified in this act and/or the regulations of the board, and shall be upon such other terms and conditions as the board may prescribe.

(b) A corporate surety bond shall be executed to the Commonwealth by the milk dealer as principal, and by a corporate surety company. The board shall have no power to reject any corporate surety bond which is so executed by a corporate surety company authorized to do business in this Commonwealth as surety, so long as the amount of the bond is equal to or less than the amount the surety company is authorized to execute on a single bond without obtaining

collateral security from the principal. The board may reject any bond which exceeds such amount. A collateral bond shall be executed to the Commonwealth by the milk dealer as principal, shall set forth the collateral posted with such bond, and shall have attached thereto the collateral properly assigned and transferred to the Commonwealth of Pennsylvania. The collateral posted with such bond shall be cash in an amount equal to the amount of the bond; or, such bond shall be secured by an actual deposit with the board of a bank, bank and trust company or national bank within the Commonwealth of money to the full amount of the bond, or securities to the amount of the bond consisting of interest bearing obligations of the United States Government.

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

(d) Except as otherwise herein provided, the bond shall be in a sum equal to the value of the highest aggregate amount of milk owed by the dealer or handler to producers during the preceding 12 months, and the amount owed in the same period to the United States Department of Agriculture equalization or producer settlement fund.

(e) Milk purchased, acquired or received by a milk dealer or handler from producers outside the Commonwealth and sold or distributed by such dealers or handlers as fluid milk within the Commonwealth, shall be included in computing the amount of such dealer's or handler's bond, except where such dealer or handler has filed a bond or other security for the protection of such producers with the state wherein the milk is purchased, acquired or received.

(f) A milk dealer or handler purchasing or acquiring or receiving or intending to purchase or receive milk from producers, but not engaged during the preceding 12 months, shall file a bond in a sum to be fixed by the board in accordance with the handler's anticipated purchases from producers and his obligation to a producer settlement or equalization fund. The board shall review the operations of the dealer or handler each two months and such bond shall be modified or phased out by the board at such time as the board is satisfied that the producers are adequately secured.

Section 10. Alternative methods of security.

Each milk dealer buying milk from producers may in lieu of participation in the Milk Producers' Security Fund or in lieu of filing a surety bond provide an equal amount of protection for the producers from whom he purchases or receives milk, in one or more of the following forms:

(1) cash deposited with a bank or trust company and held under an escrow agreement with the board whereby it is solely for the protection of producers until such time as the board finds that it is no longer needed for that purpose;

(2) negotiable bonds of the United States;

(3) a letter or letters of credit for the account of the milk dealer authorizing the board to draw on a bank or trust company or banks or trust companies located within and authorized to do business in the Commonwealth of Pennsylvania; and

(4) the assignment of the current "cash surrender value" of life insurance policies issued to the milk dealer, or in case the milk dealer is a partnership or corporation, such policy or policies issued to its partners or officers.

Section 11. Additional bond or alternative security.

Whenever the board shall determine that the value of milk purchased or received from producers by a dealer who is not participating in the Milk Producers' Security Fund has increased, or that such increase may reasonably be anticipated, so that the total amount of security does not comply with the formula set forth in section 9, as applied to any consecutive two-month period during the current year, the board shall require such additional surety bond or securities in lieu thereof as will afford producers the protection intended by this act. A dealer shall report to the board any increase or anticipated increase in the value of milk purchased or received from producers. Failure to report any increase or anticipated increase as provided above shall be a violation of this act. Any dealer committing such a violation shall be subject to suspension or revocation of his milk dealer's license or penalties provided by section 19.

Section 12. Claims against bond or alternative security.

(a) Claims by producers against a dealer who had filed a bond or alternative security shall be processed by the board in the same manner as is provided in section 8 with respect to claims against the Milk Producers' Security Fund and such claims shall be subject to the same limitations. The board's determination certifying the amount due claimants shall be subject to judicial review in the same manner and subject to the same limitations. In the case of a dealer who has filed alternative security, the board shall proceed to obtain from such security the funds with which to pay the claims. In the case of a dealer who has filed a surety bond, the board may bring an action on the bond, and for the purposes of such action its determination certifying the amounts due shall be presumptive evidence of the facts therein stated. If recovery upon the bond or alternative security is not sufficient to pay all claims, the amount recovered shall be divided pro rata among claimants.

(b) In the case of a dealer who has filed a collateral bond, the board shall proceed to obtain from the collateral the funds with which to pay the claims. The board shall have the power, in its discretion, to

sue on the bond on behalf of producers. Suit may be brought in the name of the Commonwealth upon relation of the board in such manner as debts are now by law recoverable.

Section 13. Time for providing security.

(a) Surety bonds or securities for the license year shall be filed with the board not later than the fifteenth day of the month before the beginning of each license year. A milk dealer who elects to participate in the security fund in lieu of filing a surety bond or alternative security, shall notify the board not later than two months prior to the date on which such change is to be made, and shall make the initial payment as required by section 7(c) not later than one month before such change is to be made.

(b) If any milk dealer who purchases or receives milk from producers has not filed a surety bond or securities in lieu thereof, and has not been relieved from filing such surety bond or securities by participation in the Milk Producers' Security Fund, by the fifteenth day of the month prior to the beginning of the license year, the board shall notify such producers that such milk dealer has not filed any security or made other provisions for assuring payments for milk purchases, for the license year commencing the first day of the next month.

Section 14. Notice of failure to provide security.

(a) Whenever a milk dealer fails to pay into the Milk Producers' Security Fund or to file the surety bond or securities as provided pursuant to this act within the time or times fixed by this act or the board's demand for additional security, the board shall publish in a newspaper or newspapers having circulation in the area or areas in which the producers whose milk is sold or delivered to such milk dealer reside, a notice stating that:

- (1) it made such demand or request of said milk dealer;
- (2) the milk dealer has failed to comply;
- (3) the board does not have on file such surety bond or securities as demanded, or that it has not paid moneys due the Milk Producers' Security Fund as required by him; and

(4) adequate security to protect such producer may not be available to them as provided in this act.

In addition to such published notice to producers, the board shall send by certified mail a copy of such notice to each producer delivering milk to such milk dealer as the board may be able to determine from records available to the board and such notice shall be addressed to such producer's last known place of residence and/or business.

(b) Whenever a cooperative or association of producers fails to pay into the Cooperative Security Fund as provided pursuant to this act within the time or times fixed by this act, the board shall send by certified mail a notice to each member of the cooperative stating that:

- (1) the board made such demand or request of said cooperative;

- (2) the cooperative has failed to comply;
- (3) it has not paid moneys due the Cooperative Security Fund as required by the board; and
- (4) adequate security to protect the members may not be available to them as provided in this act.

Section 15. Cooperative Security Fund.

(a) The board shall transmit all moneys received from cooperatives pursuant to section 6(b) to a trust company designated by it as fiscal agent, which fiscal agent shall establish a fund to be known as the Cooperative Security Fund. The funds so received and deposited shall not be deemed to be Commonwealth funds. The fiscal agent shall be empowered to place such funds in interest bearing accounts to the maximum extent possible consistent with the purposes of this act. The expenses of administering the fund and of administering section 6 shall be paid from the fund by the fiscal agent at the discretion of the board. Such payments shall not exceed 1 1/4% of the total fund or \$50,000 per annum, whichever is greater. The board shall make an annual report of the receipts to and disbursements from the fund, including the cost of administration of the fund, which report shall be made available to each member of a cooperative who has made payments into the current fund and to any other person having an interest in the fund.

(b) After the security fund shall have equaled \$2,000,000 or shall consist of such greater or lesser amount which in the opinion of the board is sufficient to protect the interests of the members of the cooperative participating in the fund and which bears a rational relationship to the scope of the debt covered by such fund, the board shall administer the fund in the manner prescribed herein.

Section 16. Withdrawals from Cooperative Security Fund.

The members and producers of a participating cooperative may apply to the board for the withdrawal of funds in the Cooperative Security Fund after the cooperative has been adjudicated bankrupt in any Federal Bankruptcy Court in the United States, in an amount not to exceed 90% of the cooperative's unpaid milk money of the member or producer. An application for withdrawal under this section shall be in a form and manner prescribed by the board. A final determination of the board of an application under this section shall be subject to review in a proceeding brought in the Commonwealth Court within 30 days from the date of service by mail of the determination upon the member and/or producer.

Section 17. Adjustment for Federal support program.

Any milk dealer who makes payment to the Milk Producers' Security Fund and any cooperative required to make payments to the Cooperative Security Fund shall be eligible to receive rebates or credits pursuant to regulations promulgated by the board with respect to the milk equivalent value of butter, cheese and non-fat dry milk manufactured by such dealer or cooperative and sold to the Commodity Credit Corporation of the United States.

Section 18. Title to milk.

Title to milk shall be deemed to have transferred from the seller, producer or agent of same to the buyer, dealer or handler at the point of shipment of the milk. Nothing in this section shall be construed as to supersede any Federal or Pennsylvania Milk Marketing Board order requiring the costs of shipment of milk to be F.O.B. the place of destination. This section shall apply only and be limited to the administration of this act. It shall have no effect on any provision of the act of April 28, 1937 (P.L.417, No.105), known as the "Milk Marketing Law."

Section 19. Prohibitions and violations.

(a) It shall be unlawful for a milk dealer or a participating cooperative to purchase or receive milk from producers or from other dealers or cooperatives for resale or manufacture unless such dealer or cooperative makes prompt payment of any assessment due to the board pursuant to section 6, or where applicable, has filed a bond or other alternative security pursuant to sections 9, 10 and 11. It shall also be unlawful for a milk dealer or cooperative to sell milk to another milk dealer or cooperative, if it has been notified by the board that the buying dealer or cooperative has failed to make payment to a producer, within the time period prescribed under section 5, to the Milk Producers' Security Fund, to the Cooperative Security Fund or to the producer settlement fund, or if such buying dealer or cooperative has exceeded the credit period as provided pursuant to section 5 and the sale was not made upon the basis of cash on delivery, or said buying dealer has failed to provide a bond or other alternative security as provided pursuant to sections 9, 10 and 11.

(b) A violation of this act shall subject a milk dealer or a participating cooperative to a penalty of \$50 for each day that it is late in making payment into the security fund of the assessment required by this act, for each day it sells milk to a milk dealer after being notified by the board of the milk dealer's failure to provide security as provided herein, or for each day a milk dealer or participating cooperative who has failed to make payments for milk purchased as provided pursuant to section 5. Any person who buys or sells in violation of the credit period provided in section 5 shall be liable for suspension or revocation of his milk dealer's license in pursuance of the Milk Marketing Law, or the board may accept from the licensee an offer in compromise a penalty at the rate of \$50 for each day of violation.

(c) In addition to the prohibitions and penalties under this section, the board may, in its sole discretion, commence a proceeding in the Commonwealth Court to seek temporary and/or permanent injunctive relief against a milk dealer or a participating cooperative to cease its operations until it has complied with the requirements under this act.

Section 20. Rules and regulations.

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

Section 21. Notice of election to participate in security fund.

All milk dealers electing to participate in the security fund as provided by sections 6 and 7 shall file written notice of their intention to do so and pay to the board their payment pursuant to section 7(c) on or before the forty-fifth day following the effective date of sections 6 and 7.

Section 22. Repealer.

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

Section 23. Effective dates.

This act shall take effect as follows:

- (1) Section 19 shall take effect immediately.
- (2) Section 22 shall take effect in 180 days.
- (3) The remainder of the act shall take effect in 90 days.

APPROVED—The 10th day of July, A. D. 1980.

DICK THORNBURGH