

No. 1984-136

AN ACT

HB 1969

Requiring prompt payment to milk producers; providing for the establishment of a security fund; providing for a procedure to process claims against the security fund; providing for alternative methods of security on behalf of milk producers; and providing for certain prohibitions, repeals and penalties.

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' Security 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 are enterprises 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 an act to provide security for dairy farmers and cooperatives.

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 (Capper-Volstead) cooperatives under agreement with such cooperative provided that written documentation concerning such transactions is on file with and approved by the Milk Marketing Board, together with a written waiver signed by the seller cooperative of any claim against the board or purchaser cooperative under this act. All members of the seller cooperative shall be notified by mail of such waiver. A cooperative corporation or association of producers 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 the milk dealer or handler shall be in good standing with regard to requirements of this act. The Milk Marketing Board, at its discretion, may require licensed dealers or handlers to purchase, acquire or receive milk from producers on a cash-on-delivery basis.

(c) Pursuant to the purposes of this act, any member of the board or any designated employee thereof shall have the power, at all reasonable hours, to inspect, photograph, photostat, mark or stamp for identification, audit and copy all books, papers, records or documents of all licensees for the purpose of ascertaining facts to enable the board to administer this act. The information obtained shall be for the confidential use of the board and the various administrative departments, boards and commissions of the State government, and shall not be disclosed to any person except as may be required in the enforcement of the law or by order of the court. Failure to comply with such rights of inspection as noted above may result in revocation of the license of the dealer or handler at which time no producer shall legally ship milk to the dealer or handler.

Section 4. Definitions.

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

“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 board or applicable orders established by the United States Department of Agriculture.

“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 its own members. A cooperative shall not be deemed a milk dealer or handler but shall be deemed a producer, except as provided in section 3(a).

“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 or control as owner, buyer, seller, consignee, consignor, bailee, bailor, broker or factor.

“Milk.” Fluid milk sold to a dealer from a producer.

“Milk dealer” or “handler.” Any person 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 the person or others, or both. This definition shall not include cooperatives as provided for in section 3(a).

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

“Producer.” A person producing milk.

Section 5. Prompt payment of milk.

(a) All milk dealers shall pay for milk purchased or received from producers with final payments to be made no later than the 50th 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 practical from the date milk was received or purchased. Therefore, the board is empowered to hold public hearings to consider the time period for final milk payments and to shorten the time period whenever appropriate.

(b) On or before July 1 of each year, each licensee shall notify all of his producers by first class mail of the financial basis on which the producer security is based.

Section 6. Cooperative licensing requirements.

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

Section 7. Security bonds.

(a) Each milk dealer, as required by this act, shall file with the board a corporate surety bond or collateral bond. 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 all other applicable Federal laws in addition to the orders 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 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 authorized and regulated by the Commonwealth as surety. 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 by the Pennsylvania Insurance Commissioner to execute on a single bond without obtaining collateral security from the principal. The board may reject any bond which exceeds that amount. A collateral bond shall be executed to the Commonwealth by the milk dealer as principal, shall set forth the collateral posted with the bond and shall have attached thereto the collateral properly assigned and transferred to this Commonwealth. The collateral posted with the bond shall be cash in an equal amount of the bond or the bond shall be secured by an actual deposit with 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 Federal Government or 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 this Commonwealth.

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

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

(e) The obligation of a surety on a bond is a separate and distinct obligation independent of any obligation incurred by the debtor.

Section 8. Bonds.

Surety bonds or securities for the license year shall be filed with the board on an annual basis not later than the 15th of the month before the beginning of such license year. Where a dealer elects to participate under the minimum bond requirement as outlined in section 7, in lieu of filing a bond equivalent to 75% or more of the greatest amount owed in a 40-day period, he 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 under section 9 not later than one month before such change is to be made.

Section 9. Security fund.

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

(b) At the time the value of the bond and the security fund moneys credited to each dealer shall equal the total amount owed for the above mentioned 40-day payment period, the payments to the fund shall cease or may, with the approval of the board, be used to decrease the value of the bond at the end of the license year. Should the dealer agree to post a bond for a minimum of 75% of the highest aggregate amount owed for the 40-day pay period, payment to the security fund shall not be required.

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

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

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

(f) Any security fund established and maintained under this section shall be considered a security trust fund for the exclusive benefit of producers supplying milk to the dealer paying into the fund. No claims of the Commonwealth or any other person may be made against the fund until all amounts due to producers for supplying milk to the dealer have been paid. Amounts paid into the security trust fund shall be considered an expense to the dealer necessary for maintaining the dealer's license and shall not be considered an asset of the dealer.

Section 10. New licensees.

A milk dealer or handler purchasing or acquiring or receiving or intending to purchase or receive milk from producers, but not so 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 the handler's obligation to a producer settlement or equalization fund, but not less than the total amount expected to be owed during the full 40-day pay period. The board shall review the operations of the dealer or handler every two months and the bond shall be modified by the board at the time the board is satisfied that the producers are adequately secured. At the end of six months of operation, upon approval by the board, the new dealer or handler may file the amount of the bond and pay into the security fund as required in sections 7 and 9.

Section 11. Trusteeship.

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

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

Section 12. Procedure for disbursing proceeds.

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

(b) The board shall, after hearing with notice to all interested parties, issue findings of fact and an order setting forth the amounts due producers. The findings and order shall be conclusive evidence for collecting from the

bond and security fund for payments to producers. The board's order may be appealed to the Commonwealth Court.

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

Section 13. Prohibitions and violations.

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

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

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

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

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

(f) A person convicted of a felony five years or less before applying for a milk dealer's license or for reinstatement or renewal of a milk dealer's license shall be ineligible for obtaining such license in this Commonwealth.

Section 14. 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 15. Penalties.

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 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 act of April 28, 1937 (P.L.417, No.105), known as 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.

Section 16. Repeals.

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

Section 17. Effective date.

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

APPROVED—The 6th day of July, A. D. 1984.

DICK THORNBURGH