

No. 294

AN ACT

HB 2447

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regulations and orders of the commission; defining perjury; defining remedies; repealing legislation supplied and superseded by this act, and saving rights, duties and proceedings thereunder; and making appropriations," changing the name of the Milk Control Commission to the Milk Marketing Board and the short title, revising the provisions regarding the salary of the chairman and members of the board, exemptions, license fees, the filing, kind and amount of bonds and records,¹ ² system of accounts clarifying the price-fixing provisions and deleting provisions dealing with appropriations.

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

Section 1. The title, the headings to Articles II and III, and Articles V, VII, X and XI of the Table of Contents and section 102, act of April 28, 1937 (P. L. 417), known as the "Milk Control Law," are amended to read:

AN ACT

Relating to milk and the products thereof; creating a Milk [Control Commission] Marketing Board; 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

¹ "requiring uniform reporting and record keeping," in original.

² "system of accounts," not in original.

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] board; conferring jurisdiction upon courts to punish contempts and to prohibit violations of this act and of rules, regulations and orders of the [commission] board; authorizing the [commission] board 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] board 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] board 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] board, 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] board; defining perjury; defining remedies; repealing legislation supplied and superseded by this act, and saving rights, duties and proceedings thereunder; and making appropriations.

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Section 102. Short Title.—This act shall be known, and may be cited, as the “Milk [Control] Marketing Law.”

Section 2. The definition of “commission” in section 103 of the act, amended December 15, 1965 (P. L. 1101), is 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:

* * *

[“Commission”] “Board” means the State agency created by this act, to be known as the “Milk [Control Commission.]” Marketing Board.”

* * *

Section 3. ¹The heading and Article II and section 201 of the act, the first paragraph amended February 2, 1966 (P. L. 1870), ²are amended to read:

¹“The heading and Article II and” not in original.

²“is” in original.

¹ ARTICLE II.² ORGANIZATION OF THE [COMMISSION] BOARD.

* * *

Section 201. Appointment and Terms of Members; Quorum.—There is hereby created an independent administrative [commission] board to be known as the Milk [Control Commission]. Marketing Board. The [commission] board shall consist of three members nominated and appointed by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate, for terms of six (6) years each, and until their successors shall have been appointed and qualified; except that the terms of the members first taking office shall expire May first, one thousand nine hundred thirty-nine, May first, one thousand nine hundred forty-one, and May first, one thousand nine hundred forty-three, respectively, as designated by the Governor at the time of appointment and until their successors shall have been appointed and qualified. Of the members appointed after the effective date of this amending act, one shall be appointed to represent consumer interests and shall have the responsibility for directing, coordinating and supervising the Bureau of Consumer Affairs.

The Governor shall designate one of the members of the [commission] board as chairman. The chairman shall, when present, preside at all meetings, and in his absence a member designated by the chairman shall preside.

Two members of the [commission] board shall constitute a quorum, and any action or order of the [commission] board shall require the approval of at least two members.

The Governor may remove any [commissioner] board ³ member for inefficiency, neglect of duty or misconduct in office: **Provided,** That he is given a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense upon not less than ten days' notice, and that the Governor file with the Department of State a complete statement of all charges made against such [commissioner] board member, together with a complete record of the proceedings and his findings thereon.

Section 4. Section 202 of the act, amended June 30, 1947 (P. L. 1173), is amended to read:

Section 202. Qualifications and Salaries.—Each member of the [commission] board at the time of his appointment and qualification shall be a citizen of the United States.

¹ "Article II" not in original.

² "Organization of the Commission Board." not in original.

³ underscoring supplied.

No member of the [commission] board, during his period of service as such, shall hold any other office under the laws of this Commonwealth or of the United States.

The chairman of the [commission] board shall receive a salary [of seven thousand two hundred fifty dollars (\$7,250) per annum] in an amount as provided by law. The other members of the [commission] board shall receive salaries [at the rate of six thousand seven hundred fifty dollars (\$6,750) per annum] in amounts as provided by law.

Section 5. Section 203 of the act is amended to read:

Section 203. Secretary; Administrative Code.—The [commission] board may appoint a secretary to hold office at its pleasure. The secretary, if appointed, shall have such powers and shall perform such duties, not contrary to law, as the [commission] board shall prescribe, and shall receive such compensation as the [commission] board, with the approval of the Governor, shall determine. The secretary shall have power and authority to designate, from time to time, one of the clerks appointed by the [commission] board to perform the duties of the secretary during his absence, and the clerk so appointed shall exercise, for the time so designated, the powers of the secretary of the [commission] board.

Except as otherwise specifically provided in this act, the [commission] board and its employees shall be subject to all the provisions of The Administrative Code of one thousand nine hundred twenty-nine, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws, one hundred seventy-seven), its amendments and supplements, which apply generally to independent administrative boards or commissions.

No person employed in the work of the [commission] board shall, for a period of two years after leaving the service of the [commission] board, be eligible to appear before the [commission] board representing any person interested in any proceeding pending before the [commission] board.

Section 6. Section 204 of the act, added February 2, 1966 (P. L. 1870), is amended to read:

Section 204. Bureau of Consumer Affairs.—There shall be established under the direction of the [commission] board a Bureau of Consumer Affairs. The purpose of this bureau shall be to consult with representatives of consumer groups, to disseminate information relative to activities of the [commission] board and other pertinent

data to news media and other interested parties and to make any recommendations found necessary as a result of such consultations with consumer groups and other bureau activities.

Section 7. The heading to Article III of the act is amended to read:

ARTICLE III

GENERAL POWERS OF THE [COMMISSION] BOARD

* * *

Section 8. Section 301 of the act, amended July 24, 1941 (P. L. 443), is amended to read:

Section 301. Regulation of Milk Industry.—The [commission] board is hereby declared to be the instrumentality of the Commonwealth for the purpose of administering the provisions of this act and to execute the legislative intent herein expressed, and it is hereby vested with power to supervise, investigate and regulate the entire milk industry of this Commonwealth, including the production, transportation, disposal, manufacture, processing, storage, distribution, delivery, handling, bailment, brokerage, consignment, purchase and sale of milk and milk products in this Commonwealth, and including the establishment of reasonable trade practices, systems of production control and marketing area committees in connection therewith: Provided, however, That nothing contained in this act shall be construed to alter, amend or repeal any of the laws of this Commonwealth relating to the regulation of public utilities, or to the public health or to the prevention of fraud and deception, except as herein otherwise specifically provided.

Section 9. Sections 302 and 303 of the act are amended to read:

Section 302. Specific Powers not Impairment of General Powers.—The operation and effect of any provision of this act conferring a general power upon the [commission] board shall not be impaired or qualified by the granting to the [commission] board by this act of a specific power or powers.

Section 303. Official Seal; Evidence.—The [commission] board may, for the authentication of its records, process and proceedings adopt, keep and use a common seal, of which seal judicial notice shall be taken in all courts of this Commonwealth; and any process, writ, notice or other document which the [commission] board may be authorized by law to issue, shall be deemed sufficient if signed by the chairman or secretary of the [commission] board and authenticated by such seal. All acts, proceedings, rules, regulations, orders, papers, findings, minutes and records of the [commission] board and all

reports and documents filed with the [commission] board may be proved in any court of this Commonwealth by a copy thereof, certified to by the chairman or secretary of the [commission] board with the seal of the [commission] board attached.

Section 10. Sections 304 and 305 of the act, amended July 24, 1941 (P. L. 443) are amended to read:

Section 304. Hearings; Witness Fees.—The [commission] board, any member thereof, or any special agent or examiner designated by the [commission] board, shall hold such hearings at the Capitol or elsewhere, as the [commission] board deems necessary or appropriate to carry out the provisions of this act: Provided, however, That all hearings for the fixing of prices for milk shall be held before one or more members of the [commission] board. Each witness required to attend before the [commission] board, any member thereof, or any such special agent or examiner, under the provisions of this section, shall be entitled to the fees and mileage customarily paid to witnesses in the courts of Dauphin County. All such hearings shall be governed by such rules, regulations and orders as shall be adopted and prescribed by the [commission] board.

Section 305. Subpoenas; Oaths.—In order to enable the [commission] board to carry out the provisions of this act, it shall have the power to issue subpoenas requiring the attendance and testimony of, or the production of pertinent books and papers by, milk dealers or handlers or their employes, producers or their employes, persons having business dealings with milk dealers or handlers or producers, or other persons whom the [commission] board believes to have information, books or papers of importance to it in carrying out the purposes and intent of this act. Each member of the [commission] board and such officers, employes or others employed in the work of the [commission] board designated by the chairman of the [commission] board also shall have the power to administer oaths and affirmations, to question witnesses thereunder, and to examine such books and papers. The [commission] board may issue commissions, letters rogatory, or other appropriate processes outside the Commonwealth.

Section 11. Section 306 of the act is amended to read:

Section 306. Contempt.—Any person who refuses to obey a subpoena issued hereunder, or to be sworn or affirmed, or to testify, or who is guilty of any contempt after summons to appear, may be punished as for contempt of court. For this purpose an application may be made by the [commission] board to the court of common

pleas within the territorial jurisdiction of which the offense was committed, for which purpose such court is hereby given jurisdiction.

Section 12. Sections 307 and 308 of the act, amended July 24, 1941 (P. L. 443), are amended to read:

Section 307. Adoption of Rules, Regulations and Orders.—Subject to the approval of the Governor, where such approval is hereinafter expressly required, the [commission] board shall adopt and enforce all rules, regulations and orders necessary or appropriate to carry out the provisions of this act and not inconsistent with law.

Section 308. Posting and Service of Rules, Regulations and Orders.—Every general rule, regulation or order of the [commission] board shall be posted for public inspection in the main office of the [commission] board at least six days before it shall become effective, where it shall remain conspicuously posted until twenty days after its effective date, and shall be given such further publicity, by advertisement or announcement, in a newspaper or otherwise, as the [commission] board shall deem advisable. At least three days before it shall become effective, copies of such general rule, regulation or order shall be mailed to all licensees and producers' groups and organizations affected thereby: Provided, however, That such mailing shall not be construed as a condition upon which the validity of any such rule, regulation or order depends. A certified copy of an order applying only to the particular person or persons named therein shall be served on the person or persons affected.

An order, herein required to be served, shall be (1) served in the manner now or hereafter established by law for the service of writs of summons, except that such service need not be made by the sheriff; or (2) mailed, registered and charges prepaid, (a) in the case of an individual, to his last known residence or place of business, (b) in the case of an unincorporated association or a corporation formed under the laws of this Commonwealth, to its principal office, and (c) in the case of a corporation formed under the laws of any other state, to the office of its duly authorized agent in Pennsylvania, or, if there be no duly authorized agent in Pennsylvania, to its home office in the state of incorporation or in any other state.

The posting in the main office of the [commission] board of any rule, regulation or order not herein required to be served, and the giving of such further publicity thereto as the [commission] board deems advisable, or the proper service of any rule, regulation or order required to be served, shall constitute due and sufficient notice to all persons affected by such rule, regulation or order. A rule, regulation or order of the [commission] board, when duly posted and so publicized, or when properly served, as provided in this section, shall have the force and effect of law. The [commission] board shall, upon re-

quest, mail to any person a copy of any general rule, regulation or order of the [commission] board.

The mailing, or service by mail, herein required, shall be by deposit in a United States Post Office, or in any receptacle thereof. Service by registered mail as provided in this section shall be effective notwithstanding the refusal of the addressee to accept or receive an order so served.

Section 13. Section 308.1, ¹ of the act added December 15, 1965 (P. L. 1073), is amended to read:

Section 308.1. Summary of Financial Statement.—The [commission] board shall annually prepare a summary of the financial statements of all dealers in each milk marketing area. Such summaries shall be a composite form and shall not include the names of the dairies included. Such summaries shall be made available to stores, dealers, producers' organizations and the general public.

Section 14. Section 309 of the act is amended to read:

Section 309. Certification of Rules, Regulations and Orders.—Certification by the chairman or secretary of the [commission] board, to the effect that a general rule, ² regulation or order was duly posted and publicized as provided in this act, shall be prima facie evidence of such posting and publicity.

Section 15. Section 310 of the act, amended December 15, 1965 (P. L. 1097), is amended to read:

Section 310. Entry and Inspection.—Pursuant to the purposes of this act, any member of the [commission] board, or any employe designated for the purpose, shall have access to, and may enter and inspect, at all reasonable hours, all places and equipment where milk or any product thereof is being produced, stored, bottled, processed, manufactured, sold, weighed, tested, consigned or otherwise handled. Any member of the [commission] board or any designated employe thereof also shall have power, at all reasonable hours, to inspect, photograph, photostat, mark or stamp for identification, audit, and copy all books, papers, records or documents in any place within the Commonwealth, for the purpose of ascertaining facts to enable the [commission] board to administer this act. The information obtained regarding any person by any such inspection, auditing or copying, or by reports or statements required or authorized by this act, shall be for the confidential use of the [commission] board and the various administrative departments, boards and commissions of the State government, and shall not be disclosed by any person except as may

¹ "of the act" not in original.

² "regulations" in original.

be required in the enforcement of law or by order of court; and any member or employe of the [commission] board, or other person, disclosing such information, except as herein required, shall be subject to the penalties herein provided for a violation of this act. Nothing contained in this act shall prevent the use of any information by the [commission] board in the compiling and dissemination of general statistical data.

However, any evidence, statements or other testimony offered by parties, other than [commission] board employes or agents, during official hearings before the [commission] board shall be subject to full examination and cross-examination. Consumers attending official hearings may submit questions to the chairman who shall request an answer from the [commission] board if the questions are relevant to the official hearing.

Section 16. Section 311 of the act, amended July 24, 1941 (P. L. 443) is amended to read:

Section 311. Interstate and Federal Compacts.—The [commission] board is hereby vested with authority to confer with legally constituted authorities of other states and of the United States with respect to uniform milk control within the states and as between states. The [commission] board is authorized to join with such authorities of other states and with the authorities of the United States to conduct joint investigations, to exchange information, hold joint hearings and issue joint, complementary or concurrent orders, and to enter into a compact or compacts for such uniform milk control, subject to such Federal approval as may be authorized or required by law.

Section 17. Section 402 of the act, amended November 21, 1959 (P. L. 1587) is amended to read:

Section 402. Milk Dealers or Handlers Subject to Exemption.—The [commission] board may, by official order, exempt from the license requirements provided by this act milk dealers or handlers who purchase or handle milk in a total quantity not exceeding one thousand five hundred pounds in any month, and milk dealers or handlers selling milk in any quantity only in markets of a population of one thousand, or less, for local consumption. The [commission] board may, by official order, exempt stores, or any class thereof, from the license requirements provided by this act [, and shall exempt stores selling milk, all of which has been purchased or acquired from a licensed milk dealer or handler]. However, milk dealers or handlers exempted by this section from the license requirements of this act shall continue to be subject to all the other provisions of this act relating to milk dealers or handlers: Provided, however, That in cash

sales of milk to consumers [in containers owned and provided by the consumer], if he shall have produced all the milk on the farm where sold and such milk has at no time left the producer's farm prior to its sale to the consumer and he shall have neither purchased [nor], handled or received any milk from other producers or handlers for cash sale or any other purpose and his total sales to consumers do

not exceed two gallons to any one consumer in any one day, the producer so selling milk shall be exempt from the provisions of this act.

Section 18. Sections 403 and 404 of the act, amended July 24, 1941 (P. L. 443), are amended to read:

Section 403. Applications.—An application for a license to operate as a milk dealer or handler shall be completed and filed by the dealer or handler with the [commission] board within thirty days after this act takes effect, or prior to his engaging in business, and annually thereafter, on or before ¹ [April] ² June fifteenth, by mail or otherwise, upon a form prescribed by the [commission] board.

Such application shall be accompanied by the fee required by this act, and by a bond when so required by this act, in order to be complete. The license year shall commence ¹ [May] ³ July first and shall end

¹ [April] ² June thirtieth following. The applicant shall state under oath or affirmation, upon a form prescribed by the [commission] board the following:

- (1) The nature of the business to be conducted.
- (2) The full name of the person applying for the license. If the applicant is a copartnership or association, the full name of each member shall be stated. If the applicant is a corporation, the names and addresses of all officers and directors shall be stated.
- (3) The city, borough, incorporated town or township, and the street number, if any, at which the business is to be conducted.
- (4) The financial condition of the applicant, including a comprehensive financial statement of his affairs.
- (5) Facts showing that the applicant has adequate technical personnel and adequate technical and physical facilities properly to conduct the business of receiving and handling milk, that he has complied with all rules, regulations and orders of the [commission] board filed or served as required in this act, the quantity, source and outlet of milk handled within the Commonwealth during the calendar year preceding the period for which the license is desired, and such other

¹ Brackets not in original.

² "June" not in original.

³ "July" not in original.

facts with respect to the applicant's business as may be required by the [commission] board pursuant to this act.

Section 404. Grounds for Refusal, Suspension or Revocation.—The [commission] board shall grant a license to an applicant complying with the provisions of this act and the rules, regulations and orders issued by the [commission] board pursuant thereto. The [commission] board may decline to grant a license to an applicant, or may suspend or revoke the right of a licensee or former licensee to apply for a license for a new license period, or may suspend, revoke or refuse to transfer a license already granted to a milk dealer or handler, or may prohibit a milk dealer or handler exempted from the license requirements of this act from continuing to operate as a milk dealer or handler, after determination by the [commission] board that the dealer or handler:

(1) Has rejected, without reasonable cause, any milk purchased or acquired from a producer, or has rejected, without either reasonable cause or reasonable advance notice, milk delivered or made available by or on behalf of a producer in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated: Provided, however, That in the absence of an express or implied fixing of a longer period in the contract, "reasonable advance notice" shall not be construed to mean notice of less than two weeks nor more than four weeks;

(2) Has, if a milk dealer other than a subdealer, failed to account and make payment for any milk purchased or received on consignment or otherwise from a producer or producers, or has, if a subdealer, failed to account and make payment for any milk purchased or received on consignment or otherwise from a milk dealer: Provided, however, That if it be shown that there was reasonable cause for any such failure to account and make payment, and that such accounting and payment can and will be made promptly in addition to currently accounting and paying for milk purchased or received as aforesaid, the [commission] board shall not refuse to grant or suspend, revoke or refuse to transfer a license solely for such failure to account and make payment, until a reasonable opportunity has been afforded to make such accounting and payment;

(3) Has committed any act injurious to the public health or public welfare or has committed any act injurious to trade or commerce in demoralization of the price structure of milk to such an extent as to interfere with an ample supply thereof for the inhabitants of the Commonwealth affected by this act. It is hereby declared that such demoralization is injurious to the public health, public welfare, and to trade and commerce, and that evidence thereof shall include any course of conduct on the part of the milk dealer or handler in

violation of the terms of this act or any valid rules, regulations and orders of the [commission] board.

(4) Has made a general assignment for the benefit of creditors, or has been adjudged a bankrupt, or there has been entered against him a judgment upon which an execution remains wholly or partly unsatisfied;

(5) Has been a party to a combination to fix prices contrary to law. A cooperative agricultural association 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 marketing for its members or shareholders, or any producers' or farmers' union or organization, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly; nor shall the contracts, agreements, arrangements or combinations heretofore or hereafter made by such association or corporation, or the members, officers or directors thereof, in making such collective sales and marketing, and prescribing the terms and conditions thereof, be deemed or construed to be conspiracies or to be injurious to public welfare, trade or commerce;

(6) Has continued in a course of conduct of such nature as to manifest an intention on the part of such milk dealer or handler to deceive or defraud producers or consumers;

(7) Has failed either to keep records or to furnish accurately the statements or information required by the [commission] board to be supplied to it or to producers or consumers;

(8) Has made any statement upon which the license was issued, which statement is found to have been false or misleading in any material particular;

(9) Is a partnership, association or corporation, and any individual holding any position, owning any substantial interest, or having any power of control therein, has previously been responsible, in whole or in part, for any act on account of which a license may be denied, suspended or revoked pursuant to the provisions of this act;

(10) Has violated any of the provisions of this act, or any of the rules, regulations or orders of the [commission] board, or any stipulation entered into between the said dealer or handler and the [commission] board in the course of any proceeding before the [commission] board;

(11) Has violated any provisions of acts repealed hereby, or of rules, regulations or orders issued thereunder;

(12) Has rejected milk sold or delivered or made available on consignment or otherwise by, or on behalf of, a producer in ordinary continuance of a previous course of dealing because the producer or his employe, agent or representative testified in any proceeding before the [commission] board, or in any civil or criminal case in any

¹ court, whether or not of record, in which any provision of this act or any order of the [commission] board was concerned, and it shall be no defense that reasonable advance notice was afforded the producer before the milk was rejected;

(13) Has refused without reasonable cause to receive milk from a producer because it was not hauled to the milk dealer or handler by a hauler of the dealer's or handler's choosing, or because it was hauled to the dealer or handler by a producer or a hauler of a producer's or cooperative's choosing, providing that such producer or hauler has adequate facilities and equipment for hauling, and is delivering, or is ready, able and willing to deliver, milk to the plant of such dealer or handler in proper condition and at the times necessary to coincide with the current schedule of plant operations of the dealer or handler.

The burden of proving reasonable cause under any provisions of this section shall be upon the milk dealer.

The issuance or renewal by the [commission] board of a license hereunder shall not preclude the [commission] board from suspending or revoking such license for a violation committed by the licensee prior to the license period, except where the [commission] board or its predecessor board ² or commission had proceeded against the licensee for such violation, and any valid order thereon has been complied with by the licensee.

The [commission] board shall grant a provisional and temporary license to a prior licensee when and if for any cause the action of the [commission] board with respect to an application seasonably filed has not become final prior to the expiration of the period of such prior license. Such a temporary and provisional license may be issued on such terms and conditions as the [commission] board may impose, and shall authorize the licensee to continue in business until final action with respect to his pending application has been taken and no longer.

Section 19. Section 404.1 of the act, added June 10, 1957 (P. L. 285), is amended to read:

Section 404.1. Penalties in Lieu of Suspension.—In any case where the [commission] board shall suspend a license, the [commission] board may accept from the licensee an offer in compromise at the rate of fifty dollars (\$50) for each day of suspension as a penalty in lieu of such suspension, and thereupon rescind the suspension.

Section 20. Section 405 of the act, amended July 24, 1941 (P. L. 443), is amended to read:

¹ "course" in original.

² underscoring supplied.

Section 405. Hearings and Orders.—Before refusing to grant or to reissue, or before suspending, revoking, or refusing to transfer a license, the [commission] board shall afford the applicant or the licensee, respectively, an opportunity to be heard. It shall direct a citation to such applicant or licensee, by registered mail, sent to his last known address, giving therein at least five days' notice of such hearing, and a statement of the matters complained of. The direction of such citation by registered mail as aforesaid shall be sufficient notice of such hearing, notwithstanding any refusal of the addressee to accept or receive said citation. The five days' notice shall be computed as from the time that the addressee accepts or receives or refuses to accept or receive said citation. After such hearing, and upon entry of any order thereon, the [commission] board shall serve a certified copy of such order upon the applicant or licensee, filing at its office the original and a statement in writing of the findings of fact in support thereof.

Section 21. Sections 406 and 407 of the act are amended to read:

Section 406. Cancellation.—Where the [commission] board declines to grant a license to an applicant, or revokes a license, and the dealer appeals therefrom, obtaining a supersedeas, the reason assigned for declining to grant or for revoking the license shall not be a reason for declining to grant the same dealer a license for a subsequent license period. However, in the event that the appeal from the order of the [commission] board is dismissed, or otherwise terminated favorably to the [commission] board, any license issued for such subsequent period shall be automatically cancelled five days after the termination of the appeal, unless the [commission] board otherwise orders.

Section 407. Transfer.—Licenses issued under this act may not be assigned. Licenses may, however, be transferred from one person to another, provided that the prior written approval of the [commission] board to such transfer is obtained; but a receiver, an executor or administrator who succeeds to the business of a licensee may continue the business for a period of two weeks, if otherwise authorized by law, without securing the prior approval of the [commission] board. Any change in the membership of a partnership or limited partnership, either by the withdrawal or the addition of a partner, shall be construed to require a transfer of the license. Applications for such transfers shall be filed with the [commission] board at least one week before the transfer is to be made, or, in the case of a receiver or an executor or administrator, within two weeks after he takes possession of the business of the licensee. Whenever any license is transferred, no license fee shall be required from the person to

whom such transfer is made for the balance of the then current license year, except the transfer fee of one dollar.

Section 22. Sections 408 and 409 of the act, amended June 19, 1953 (P. L. 286), are amended to read:

Section 408. License Fees Generally.—The [commission] board shall charge and collect license fees from milk dealers on a ¹yearly ²basis, as follows: Where a milk dealer received, produced or brought within the Commonwealth, during the ³calendar ⁴year preceding the period for which the license is issued, a daily average total quantity of milk—

(1) Not exceeding [twenty (20) pounds, a license fee of one dollar (\$1.00) ;

(2) Exceeding twenty (20) pounds, but not exceeding one hundred (100) pounds, a license fee of three dollars (\$3.00) ;

(3) Exceeding one hundred (100) pounds, but not exceeding] five hundred (500) pounds, a license fee of ten dollars (\$10.00) ;

[(4)] (2) Exceeding five hundred (500) pounds, but not exceeding one thousand (1,000) pounds, a license fee of fifteen dollars (\$15.00) ;

[(5)] (3) Exceeding one thousand (1,000) pounds, but not exceeding two thousand (2,000) pounds, a license fee of thirty dollars (\$30.00) ;

[(6)] (4) Exceeding two thousand (2,000) pounds, but not exceeding three thousand (3,000) pounds, a license fee of forty dollars (\$40.00) ;

[(7)] (5) Exceeding three thousand (3,000) pounds, but not exceeding four thousand (4,000) pounds, a license fee of fifty dollars (\$50.00) ;

[(8)] (6) Exceeding four thousand (4,000) pounds, but not exceeding five thousand (5,000) pounds, a license fee of sixty dollars (\$60.00) ;

[(9)] (7) Exceeding five thousand (5,000) pounds, but not exceeding seven thousand five hundred (7,500) pounds, a license fee of seventy-five dollars (\$75.00) ;

[(10)] (8) Exceeding seven thousand five hundred (7,500) pounds, but not exceeding ten thousand (10,000) pounds, a license fee of one hundred dollars (\$100.00) ;

¹ "yearly" bracketed in original.

² "fiscal year (July 1 to June 30)" in original.

³ "calendar" bracketed in original.

⁴ "fiscal" in original.

[(11)] (9) Exceeding ten thousand (10,000) pounds, but not exceeding fifteen thousand (15,000) pounds, a license fee of one hundred fifty dollars (\$150.00);

[(12)] (10) Exceeding fifteen thousand (15,000) pounds, but not exceeding twenty-five thousand (25,000) pounds, a license fee of two hundred dollars (\$200.00);

[(13)] (11) Exceeding twenty-five thousand (25,000) pounds, but not exceeding fifty thousand (50,000) pounds, a license fee of three hundred dollars (\$300.00);

[(14)] (12) Exceeding fifty thousand (50,000) pounds, but not exceeding one hundred thousand (100,000) pounds, a license fee of five hundred dollars (\$500.00);

[(15)] (13) Exceeding one hundred thousand (100,000) pounds, but not exceeding two hundred fifty thousand (250,000) pounds, a license fee of one thousand dollars (\$1,000.00);

[(16)] (14) Exceeding two hundred fifty thousand (250,000) pounds, but not exceeding five hundred thousand (500,000) pounds, a license fee of one thousand five hundred dollars (\$1,500.00);

[(17)] (15) Exceeding five hundred thousand (500,000) pounds, but not exceeding seven hundred fifty thousand (750,000) pounds, a license fee of two thousand five hundred dollars (\$2,500.00);

[(18)] (16) Exceeding seven hundred fifty thousand (750,000) pounds, but not exceeding one million (1,000,000) pounds, a license fee of three thousand five hundred dollars (\$3,500.00);

[(19)] (17) Exceeding one million (1,000,000) pounds, a license fee of five thousand dollars (\$5,000.00);

In addition to the foregoing specific annual fee and to be added to the amount thereof, the [commission] board shall charge and collect one cent per hundredweight, for [the] each license year [beginning the first day of May, one thousand nine hundred fifty-four, and one-half cent per hundredweight for each license year thereafter], on all milk, the prices of which the [commission] board is required to fix by the mandatory provision of section eight hundred two of this act, received, produced or brought within the Commonwealth by the dealer during the ¹calendar ²year preceding the period for which the license is issued. If the dealer was engaged in the milk business during a part only of the preceding ¹calendar ²year, the number of hundredweight on which the additional license fee shall be com-

¹ "calendar" bracketed in original.

² "fiscal" in original.

puted shall be determined by dividing the total number of hundred-weight of milk, as defined above, received, produced or brought into the Commonwealth by the dealer during the preceding license year, by the number of months during which the dealer was licensed, and multiplying by twelve. The foregoing provisions do not apply to sub-dealers, sub-handlers or stores.

The [commission] board shall charge and collect license fees from sub-dealers on a ¹yearly ²basis of [fifteen dollars (\$15.00)] twenty-five dollars (\$25.00) for each route owned or operated at the commencement of the license period.

Except as otherwise expressly provided by this act, the license fee fixed by this section shall be paid before any license, or any renewal thereof, is issued. Where a license is applied for by a milk dealer, and the [commission] board declines to grant a license to the applicant, the license fee shall be charged and retained by the [commission] board only pro rata for so much of the license year as expired prior to the issuance of the order refusing the license.

Section 409. License Fees of Certain Milk Dealers.—Milk dealers who are not engaged in the milk business at the commencement of the license period shall pay a proportionate amount of the specific annual fee as follows:

(1) For a license issued on or after [August] October first, but prior to [November] January first, three-fourths of the annual fee;

(2) For a license issued on or after [November] January first, but prior to [February] April first of the succeeding year, one-half of the annual fee;

(3) For a license issued on or after [February] April first, but prior to [May] July first, one-fourth of the annual fee.

Milk dealers not engaged in the milk business during any month in the preceding ³calendar ⁴year shall submit with their application a license fee in the sum of [one dollar (\$1.00)] ten dollars (\$10.00) and, in addition thereto, (1) at such time or times as the [commission] board may fix, but not more than four months after the granting of the license, shall pay an additional sum based upon the daily average total quantity of milk received, produced or brought within the Com-

¹ "yearly" bracketed in original.

² "fiscal year" in original.

³ "calendar" bracketed in original.

⁴ "fiscal" in original.

monwealth by such dealer during any of such months, in the proportionate amount above stated; and (2) shall pay monthly one cent per hundredweight during the part of the license year ¹ [beginning the first day of May, one thousand nine hundred fifty-four, for which he is licensed, and one-half cent per hundredweight during the part of any license year thereafter for which he is first licensed,¹] on all milk, the prices of which the [commission] board is required to fix by the mandatory provision of section eight hundred two of this act, received, produced or brought within the Commonwealth by the dealer during the preceding month. The foregoing provisions do not apply to sub-dealers, sub-handlers or stores.

Section 23. Section 410 of the act, amended July 24, 1941 (P. L. 443), is amended to read:

Section 410. Computation of License Fees.—Milk sold and distributed outside of this Commonwealth in any state which charges milk dealers or handlers a license fee may be deducted in the determination of the amount of the license fee required by this act: Provided, That such quantity of milk is actually computed in determining the amount of such license fee in such other state. In computing the license fee to be charged by the [commission] board the fluid milk equivalent of milk other than fluid milk, shall be ascertained and fixed in such manner as the [commission] board shall prescribe, except in the case of farm-separated sour cream used exclusively in making butter to be marketed or ultimately sold as such, in which case the daily average total quantity of such milk shall be computed according to pounds of butterfat of sour cream rather than the fluid milk equivalent thereof. Nothing herein is to be construed as requiring, in the computation of the license fee, the inclusion of milk which is received by the applicant milk dealer or handler from another milk dealer or handler, subject to license hereunder, which milk has been included in the computation of such other dealer's fee; or milk which is produced by the applicant dealer or handler and not sold by him to stores or consumers. Applicant milk dealers or handlers, other than subdealers or subhandlers, receiving their entire supply from milk dealers or handlers who have paid a license fee thereon to ² this [commission] board, shall pay the license fee of ten dollars (\$10.00).

Section 24. Section 411 of the act is amended to read:

Section 411. Classification of Licenses.—The [commission] board may classify licenses, and may issue licenses to any milk dealer to operate as a milk dealer in a particular municipality only, or in a

¹ bracket not in original.

² "the" in original.

particular market or markets in the Commonwealth only, but no milk dealer shall, if granted a license under this act at all, be prohibited from acting as a milk dealer in any municipality or in any market in which he was operating upon January second, one thousand nine hundred thirty-four.

Section 25. Sections 501, 502 and 503 of the act, amended July 24, 1941 (P. L. 443), are amended to read:

Section 501. Milk Dealers or Handlers Required to File Bonds.—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 file with the [commission] board a corporate surety, individual surety, or collateral bond, supported by United States or Pennsylvania securities, approved by the [commission] board. Except as otherwise herein provided, the bond shall be in a sum equal to the value of the highest aggregate amount of milk purchased, acquired or received by the dealer or handler from producers in any [one month] two months during the preceding calendar year, which value shall be computed according to lawful prices, and shall not in any event exceed [one hundred thousand dollars (\$100,000.00)] two hundred thousand dollars (\$200,000.00). The bond shall be upon a form prescribed by the [commission] board, conditioned for the payment by the milk dealer or handler of all amounts due, including amounts due under this act and the orders of the [commission] board, for milk purchased or otherwise acquired from producers by the milk dealer or handler during the license year, upon such terms and conditions as the [commission] board may prescribe.

In the case of a milk dealer or handler who pays producers in full each week for milk purchased, acquired or received by him from such producers, the bond shall be in a sum equal to [fifty per centum of] the value of the highest aggregate amount of milk purchased, acquired or received by the dealer or handler from producers in any one month during the preceding calendar year, which value shall be computed according to lawful prices, and shall not in any event exceed [fifty thousand dollars (\$50,000.00)] one hundred thousand dollars (\$100,000.00).

Section 502. Computation of Amount of Certain Bonds.—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 for the pro-

tection of such producers with the state wherein the milk is purchased, acquired or received or with such producers. In such computation, the amount due for such milk shall be determined according to any applicable official prices or any lawful contract price.

A milk dealer or handler purchasing or acquiring or receiving or intending to purchase, acquire or receive milk from producers, but not so engaged during any month of the preceding calendar year, shall file a bond in a reasonable sum to be fixed by the [commission] board, and within the time for filing his application such dealer or handler shall request the [commission] board to fix such sum.

Section 503. Time of Filing; Effective Period of Bond.—The bond herein required shall be filed with the dealer's or handler's application for a license, and shall be filed within the time for filing such application. The bond shall become effective upon its being filed with the [commission] board for the entire license year, or for that part of the license year in which the milk dealer or handler became engaged in the milk business. Any bond filed with the [commission] board shall become effective upon being filed, whether or not it is approved by the [commission] board, and shall no longer be of effect during the license year only when it has been replaced by a bond approved by the [commission] board to be substituted therefor. The bond herein required shall be an obligation independent of the granting of a license and shall remain in full force and effect for and during the license year designated, as long as the dealer or handler purchases or receives milk from producers or is indebted to pay producers for any milk delivered during said license year, whether or not a license is granted the milk dealer or handler or a license granted the milk dealer or handler remains in force. The [commission] board shall determine within a reasonable time after the close of a license year which milk dealers or handlers have paid all amounts protected by their bonds filed with the [commission] board, and, if the [commission] board finds that all amounts protected by the bond of a milk dealer or handler have been paid, it shall thereafter return the bond for said past license year to each such milk dealer or handler.

Section 26. Section 504 of the act is amended to read:

Section 504. Requisites of Bonds; Substitution.—A corporate surety bond shall be executed to the Commonwealth by the milk dealer, as principal, and by a corporate surety company. The [commission] 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. ¹An individual

¹ bracket in original.

surety bond shall be executed to the Commonwealth by the milk dealer, as principal, and by one or more individuals, as surety or sureties, who shall have sole title to real estate, the fair valuation of which, free and clear, or in excess, of all encumbrances, shall be at least equal to the amount of the bond.¹ A collateral bond shall be executed to the Commonwealth by the milk dealer, as principal, shall set forth therein 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 ² amount of the bond; or such bond shall be secured by an actual deposit with the [commission] board, or with a bank, bank and trust company, or national bank within the Commonwealth, of money to the full amount of the bond; or by securities to such amount, consisting of interest-bearing obligations of the United States Government, of this Commonwealth, or of any political subdivision of this Commonwealth [, or by any other security or securities approved by the commission]. The security or securities deposited therewith shall constitute a trust fund for producers from whom the dealer purchases milk.

The [commission] board may likewise grant to any milk dealer the authority to substitute for any bond, surety or any collateral, another bond, surety or other collateral, provided that such other bond, surety or collateral meets all the requirements of this act.

Section 27. Sections 505 and 506 of the act, amended July 24, 1941 (P. L. 443), are amended to read:

Section 505. Financial Statement.—A milk dealer or handler shall, from time to time, when required by the [commission] board, make and file with the [commission] board a verified statement of his disbursements, or of any other facts in connection with his business, during a period to be prescribed by the [commission] board, which financial statement shall contain the names of the producers from whom milk was purchased, acquired, received or handled on consignment or otherwise, the amount due to the producers, and any other relevant facts required by the [commission] board pertinent to the dealer or handler or the dealer's or handler's surety or sureties.

Section 506. Increase or Decrease of Bond.—If it shall appear from the dealer's or handler's financial statement, or from facts otherwise ascertained by the [commission] board, that the bond afforded to producers selling, supplying or making available on consignment or otherwise milk to such milk dealer or handler does not adequately

¹ bracket in original.

² "amount of the" not in original.

protect such producers, the [commission] board may require such milk dealer or handler to procure an additional surety, or to give an additional bond or additional security for the collateral bond, in a sum to be determined by the [commission] board, which (1) shall not exceed more than [fifty per centum of] the value of the highest aggregate amount of milk purchased, acquired or received on consignment or otherwise by the dealer or handler from producers in any one month during the preceding or current year, which value shall be computed according to the prices applicable, or which (2) shall be a sum not exceeding [by more than fifty per centum] the amount found to be due and owing producers by such dealer on a particular date determined by the [commission] board, whichever sum is greater, but the total increase shall not in any event exceed [fifty thousand dollars (\$50,000.00)] one hundred thousand dollars (\$100,000.00). In the case of a milk dealer or handler who pays producers in full each week for milk purchased, acquired or received or handled on consignment or otherwise by him from such producers, any increase required hereunder shall not exceed more than twenty-five per centum of such value or amount, but the total increase in any event shall not exceed [twenty-five thousand dollars (\$25,000.00)] fifty thousand dollars (\$50,000.00).

The [commission] board may grant a reduction of the bond or the collateral, or release an additional surety, if it shall appear that owing to a decrease in the milk purchased, received or handled by the dealer or handler, or to other causes, a bond in a lesser amount or with fewer sureties will protect producers selling, supplying or making available milk to such milk dealer or handler.

Section 28. Section 507 of the act is amended to read:

Section 507. Duty of State Treasurer.—All bonds, together with any moneys, or securities given as collateral therefor, received by the [commission] board from milk dealers pursuant to the provisions of this section, shall be transmitted by the [commission] board to the State Treasurer for safekeeping, subject to withdrawal in whole or in part at any time by the [commission] board.

Section 29. Section 508 of the act, amended July 24, 1941 (P. L. 443), is amended to read:

Section 508. Interest or Dividends upon Securities.—The milk dealer or handler shall be entitled to all moneys received by the State Treasurer as interest or dividends upon any security or securities deposited by such milk dealer or handler with the [commission] board and transmitted by the [commission] board to the State

Treasurer for safekeeping, in accordance with the provisions of this act: Provided, however, That the milk dealer or handler shall not be entitled to interest or dividends if there is on file with the [commission] board a valid unpaid claim of a producer against the milk dealer or handler, based on milk sold, supplied or made available by such producer to the milk dealer or handler.

Section 30. Section 509 of the act is amended to read:

Section 509. Suit by [Commission] Board.—The [commission] 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 [commission] board, or of the Attorney General, in such manner as debts are now by law recoverable.

Section 31. Section 510, 511 and 513 of the act, amended July 24, 1941 (P. L. 443), are amended to read:

Section 510. Effect of Order by [Commission] Board.—If, by valid formal order refusing, suspending or revoking a license, after hearing with due notice to all those liable on the bond, the [commission] board has found a milk dealer or handler to be indebted thereunder, such order and the findings of fact in support thereof shall be conclusive evidence of the amount due under such bond in a suit thereon by the [commission] board, unless an appeal therefrom is pending and a supersedeas granted.

Section 511. Procedure for Disbursing Proceeds.—The [commission] board shall prescribe the procedure for the payment, out of the proceeds of any bond or collateral required by this article, of the amounts found due to producers or handlers or dealers, based on sales or deliveries of milk by them to a milk dealer or handler who has posted a bond or collateral: Provided, however, That if the proceeds of a bond or of collateral which has been posted by a milk dealer or handler shall be insufficient to pay in full the amounts due to producers who have sold or supplied milk to such milk dealer or handler, the moneys available shall be divided pro rata among such producers.

Section 513. Subdealers' or Subhandlers' Bonds.—It shall be unlawful for a subdealer or subhandler to buy, acquire, receive or handle milk from a milk dealer or handler who purchases, acquires or receives milk from producers, unless the subdealer or subhandler shall file with the [commission] board a corporate surety [, individual surety,] or collateral bond, approved by the [commission] board.

Such bond shall be executed to the Commonwealth in a sum equal to [three hundred dollars (\$300.00) six hundred dollars (\$600.00) for each route owned or operated by the subdealer or subhandler, and

shall be conditioned for the payment by the subdealer or subhandler of all amounts due under this act and the orders of the [commission] board for milk purchased, acquired or received from such milk dealer or handler or dealers or handlers during the license year; subject, however, to the further condition that if at time of default, such milk dealer or handler or dealers or handlers are indebted, or in arrears in their payments, to producers, the proceeds thereof shall be held on the account of such dealer or handler or dealers or handlers for the benefit of such producers. Such bond shall be filed annually with the subdealer's or subhandler's application for a license, and shall, in all applicable particulars not herein specifically mentioned, be subject to terms and conditions such as are provided in the other sections of this article for the bonds of other milk dealers or handlers and for suits thereon, except where the protection of such milk dealers or handlers selling, delivering or making available milk to the subdealer or subhandler or of producers selling, delivering or making available milk to such milk dealers or handlers, requires the substitution of such dealers or handlers and producers in applying such terms and conditions to the bonds of subdealers or subhandlers.

Section 32. Sections 550, 551 and 552 of the act, added December 15, 1965 (P. L. 1095), are amended to read:

Section 550. Licensing of Milk Haulers.—No person, association or corporation shall engage in the business of milk hauling or transport in this Commonwealth unless such person holds a milk hauler's license issued by the [commission] board. Applications for such license shall be completed and filed by the milk hauler within thirty days after this amending act takes effect, or prior to his engaging in business and annually thereafter, on or before [April] June fifteenth, by mail or otherwise, upon such forms as may be prescribed. The license year shall commence [May] July first and shall end [April] June thirtieth following.

Application for such license shall be accompanied by a fee of [ten dollars (\$10)] twenty dollars (\$20.00) per year or any portion of a year.

Such milk hauler's licenses may not be transferred or assigned.

Section 551. Refusal, Suspension or Revocation of License.—The [commission] board may decline to grant a license to an applicant, or may suspend or revoke the right of a licensee or former licensee to apply for a license for a new license period, or may suspend, or revoke a license already granted to a milk hauler after determination by the [commission] board that the hauler has not complied with the provisions of this act and rules, regulations and orders issued by the [commission] board pursuant thereto.

Before refusing to grant or reissue, or before suspending or revoking a license, the [commission] board shall afford the applicant for the license, an opportunity to be heard under the same procedure as provided in section 405 of this act.

Section 552. Records and Reports.—Milk haulers licensed under this act shall keep within the Commonwealth the following records:

(1) A record of all milk transported, shipped or hauled, including for each individual trip or movement the type and quantity of milk hauled by origin and destination, consignor and consignee.

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

The [commission] board also may from time to time require certain reports to be filed by milk haulers pursuant to rules, regulations or orders of the [commission] board.

Persons, associations, or corporations engaged in transporting milk in cans from farms where it is produced to a dealer's plant may be exempt from the provisions of this act.

Section 33. Section 601 of the act, amended October 2, 1959 (P. L. 1003), is amended to read:

Section 601. Weighing or Measuring Permits.—It shall be unlawful for any milk dealer to buy or receive milk from producers at any plant, station, creamery, factory or other place within the Commonwealth where such milk is weighed or measured, or to sell or deliver milk to stores or consumers, unless the milk dealer holds a permit for each place of weighing or measuring such milk, issued by the [commission] board as herein provided.

Milk dealers who receive milk in tank trucks from bulk storage tanks located on the premises of producers shall hold weighing or measuring permits for each such tank truck so used, and the provisions of this section shall not be construed to require such milk dealers to hold weighing or measuring permits for such bulk storage tanks.

The weighing or measuring permit shall be issued by the [commission] board for each such place upon application therefor by the milk dealer, on a form prescribed by the [commission] board, furnishing information including that pertaining to the apparatus and methods used, and persons engaged in weighing or measuring the milk. The application shall be accompanied by a fee of five dollars (\$5.00), and shall be filed before commencing to weigh or measure milk, and annually thereafter on or before December first.

Each weighing or measuring permit shall be issued hereunder for the term of one calendar year, and shall be posted and kept in plain view of persons delivering milk at the place for which it is issued.

Section 34. Sections 602, 603 and 604 of the act are amended to read:

Section 602. Certified Testers.—It shall be unlawful for any milk dealer to buy or receive milk from producers, or to sell or deliver milk to stores or consumers, on the basis of, or with reference to, the amount of butterfat contained in such milk, unless the butterfat test thereof is conducted by a tester certified by the [commission] board.

The certified tester shall keep an accurate record of all tests made, and copies of such record shall be kept for a period of two (2) years by him and by the milk dealer.

Any person who, upon the effective date of this act, is the holder of a certificate of proficiency for milk testing issued after examination conducted by the Pennsylvania Department of Agriculture, shall, upon application to the [commission] board, on a form prescribed by the [commission] board, furnishing information including that pertaining to good character and to the apparatus and methods used in testing, be issued a certificate and be designated therein as a certified tester.

Any person who is not the holder of such certificate of proficiency upon the effective date of this act, shall, prior to applying for a tester's certificate, apply to the [commission] board for a certificate of proficiency. Such application shall be accompanied by a fee of [three dollars (\$3.00)] five dollars (\$5.00). The applicant shall be required to pass an examination in milk testing, reasonably prescribed and conducted by the [commission] board, and upon approval of the application shall be issued a certificate of proficiency. Thereupon, and annually thereafter without such examination, the person so certified may apply for a tester's certificate as herein prescribed.

The application for a tester's certificate, accompanied by a fee of [three dollars (\$3.00)] five dollars (\$5.00), shall be filed, upon a form prescribed by the [commission] board, before commencing to test milk, and annually thereafter on or before December first.

The tester's certificate issued hereunder shall be for the term of one calendar year, and shall be posted and kept in plain view in the plant in which the certified tester is employed.

Section 603. Certified Weighers and Samplers.—It shall be unlawful for any milk dealer to buy or receive milk from producers, or to sell or deliver milk to stores or consumers on the basis of, or with reference to, the amount of butterfat contained in such milk, unless the samples taken for testing purposes shall be made by a certified tester or certified weigher and sampler, and according to the method prescribed in this act.

Any person who, upon the effective date of this act, is the holder of a certificate of proficiency for milk weighing and sampling issued after examination conducted by the Pennsylvania Department of Agriculture, shall, upon application to the [commission] board on a form prescribed by the [commission] board furnishing information including that pertaining to good character and to apparatus and methods used in weighing and sampling, be issued a certificate and be designated therein as a certified weigher and sampler.

Any person who is not the holder of such certificate of proficiency upon the effective date of this act, shall, prior to applying for a weighing and sampling certificate, apply to the [commission] board for a certificate of proficiency. Such application shall be accompanied by a fee of [three dollars (\$3.00)] five dollars (\$5.00). The applicant shall be required to pass an examination in weighing and sampling milk, reasonably prescribed and conducted by the [commission] board, and upon approval of the application shall be issued a certificate of proficiency. Thereupon, and annually thereafter without such examination, the person so certified may apply for a certificate as a certified weigher and sampler. The application for such weighing and sampling certificate, accompanied by a fee of [three dollars (\$3.00)] five dollars (\$5.00), shall be filed, upon a form prescribed by the [commission] board, before commencing to sample milk, and annually thereafter on or before December first.

The weighing and sampling certificate issued hereunder shall be for the term of one calendar year, and shall be posted and kept in plain view in the room in which the certified weigher and sampler is employed.

Section 604. Refusal, Suspension and Revocation of Permits and Certificates.—The [commission] board may decline to grant, or may suspend or revoke, a weighing or measuring permit, a tester's certificate or a weighing and sampling certificate, where the applicant therefor, or holder thereof, has violated any provision of this act for the weighing, measuring, testing or sampling of milk, or has violated any rules, regulations or orders of the [commission] board respecting the weighing, measuring, testing or sampling of milk, or has engaged in any practice with respect thereto which causes milk producers to be underpaid for their milk, or which causes stores or consumers to overpay for such milk, or which otherwise defrauds or tends to defraud milk producers, stores or milk consumers.

The procedure before the [commission] board and of the [commission] board, with respect to the refusal, suspension or revoca-

tion provided for herein, and the procedure governing appeals from such action of the [commission] board, shall be as that prescribed in this act with respect to milk dealers' licenses issued hereunder.

Licenses, permits and certificates heretofore issued by the Pennsylvania Department of Agriculture under acts repealed hereby, and which are in force upon the effective date of this act, shall be deemed permits and certificates issued by the [commission] board hereunder until the expiration dates thereof, and the holders shall be subject to all applicable provisions of this act.

Section 35. The third paragraph of section 606 of the act, amended July 8, 1957 (P. L. 588), is amended to read:

Section 606. Samples; Check Tests.—* * *

The [commission] board may require that the composite samples be tested at the receiving station where the milk is received, or by a licensed laboratory, within five days from the end of the period when the composite samples were taken. After such samples have been tested, their residues shall be held intact ¹ and in condition suitable to test on the premises where they are tested, for a further period of not less than ten (10) days after the rendering of a statement to the producer for milk delivered during such period, in order to make possible a check test.

* * *

Section 36. The last paragraph of section 606 and the last paragraph of section 607 are amended to read:

Section 606. Samples; Check Tests.—* * *

The [commission] board shall make check tests, and other reasonable tests, whenever in its judgment such tests are advisable for the public welfare, and may also require additional samples or additional composite samples from time to time.

Section 607. Violations.—* * *

It shall also be unlawful for such milk dealer or other person, so engaged or employed, to ascertain the "Babcock Test" of the milk by use of any glassware except standard "Babcock Test" glassware and weights which have been previously inspected and approved by the Department of Internal Affairs. If the amount or percentage of butterfat is determined by any method other than the "Babcock Test," no utensil or instrument shall be used in such determination until it has been inspected and approved by the [commission] board.

Section 37. Section 608 of the act, amended May 31, 1945 (P. L. 1195), is amended to read:

Section 608. Payment for Milk; Statement.—Milk dealers shall determine weight, measure and butterfat content of milk as provided

¹ "and" not in original.

in this act, or in rules, regulations or orders of the [commission] board pertaining thereto and consistent with this act. Payment for milk shall be made either upon the basis of weight, measure or butterfat content, or any combination thereof, as the rules, regulations or orders of the [commission] board may require.

Milk dealers buying or receiving milk from producers shall furnish to each producer or his agent a written statement showing the amount of milk delivered daily during the period for which payment is made, and, unless the [commission] board otherwise provides, the average butterfat test of the milk delivered for such period. Such statement shall set forth such information as may be required by the [commission] board, shall be furnished periodically, at the time of payment prescribed by the [commission] board, and in no event less often than monthly: Provided, however, That a written statement of weights shall be given daily to the producer or his agent, upon written request of a majority of the producers, who deliver milk to any receiving station or plant receiving milk, each receiving station or plant to be considered separately, in lieu of such periodic statement of the amount of milk delivered, unless the [commission] board otherwise provides.

It shall be unlawful to use as the basis of payment for milk any amount or percentage of butterfat therein which has been ascertained from a sample containing milk that has been so treated as to cause it to test lower or higher than the milk from which it was taken.

It shall be unlawful for any person, including any milk dealer, to knowingly, fraudulently, or negligently weigh, measure, sample or test milk, or cause milk to be weighed, measured, sampled, or tested in such manner as to cause or tend to cause loss or injury to milk producers, stores or milk consumers, or to make any false or misleading statement with respect to the weight, measurement, sampling or testing of milk.

Section 38. Sections 701 and 702 of the act are amended to read:

Section 701. Records.—Milk dealers subject to license by the [commission] 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 from whom received, with butterfat test, 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 [style] type of container, with prices and amounts received therefor, and the butterfat test 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 ¹ 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.

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

The records herein required shall be kept in the possession of the milk dealer for a period not less than two years, unless the [commission] board otherwise provides.

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

Section 39. The act is amended by adding, after section 703, a new section to read:

Section 704. Uniform System of Accounts.—The board shall, after reasonable notice and hearing, establish systems of accounts (including cost finding procedures) to be kept by licensees and shall prescribe the manner and form in which accounts are to be kept. Every licensee shall establish such systems of accounting and shall keep accounts in the manner and form required by the board in order to facilitate the costs studies provided for in section 801.

Section 40. Section 801 of the act, amended December 15, 1965 (P. L. 1098), is amended to read:

¹ "container" in original.

Section 801. Requisites of Orders Fixing Price of Milk.—The [commission] board shall ascertain, after a hearing in which all interested persons shall be given reasonable opportunity to be heard, the logical and reasonable milk marketing areas within the Commonwealth, shall describe the territorial extent thereof, shall designate such areas by name or number, and shall ascertain and maintain such prices for milk in the respective milk marketing areas as will be most beneficial to the public interest, best protect the milk industry of the Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth, having special regard to the health and welfare of children residing therein.

The [commission] board shall base all prices upon all conditions affecting the milk industry in each milk marketing area, including the amount necessary to yield a reasonable return to the producer, which return shall not be less than the cost of production and a reasonable profit to the producer, of the quantity of milk necessary to supply the consumer demand for fluid milk plus a reasonable reserve supply as determined by the [commission] board, and a reasonable return to the milk dealer or handler. However, where the [commission] board determines that the market for Pennsylvania produced milk is threatened it may establish producer prices designed to market the milk. In ascertaining such returns, the [commission] board shall utilize a cross-section representative of the average or normally efficient producers and dealers or handlers in the area and shall consider the cost of containers according to size and type.

The [commission] board shall file at its office, with each order issued, a general statement in writing of the findings of fact in support of, and the reasons for such order.

The [commission] board may, upon its own motion or upon application in writing, from time to time, alter, revise or amend an official order defining milk marketing areas or fixing prices to be charged or paid for milk. Before making, revising or amending any order defining milk marketing areas or fixing prices to be charged or paid for milk, the [commission] board shall hold a hearing, after giving reasonable opportunity to be heard to interested persons, of whom the [commission] board has notice, and, in the case of any order affecting the public, after giving reasonable notice thereof to the public in such newspaper or newspapers as, in the judgment of the [commission] board, shall afford sufficient notice and publicity: Provided, however, That after such hearing, there shall be a further hearing or conference before the [commission] board on any proposed order, and notice

of such further hearing or conference shall be given to the parties represented and heard at the previous hearing. Upon application in writing from a person aggrieved by an order of the [commission] board hereunder, filed within fifteen (15) days after the issuance of the order complained of, or upon its own motion, the [commission] board may, within twenty (20) days after the effective date of such order, issue an order revising or amending such order without a further hearing, if such revision or amendment is based on the record of the hearing held prior to the issuance of such order.

“Interested persons,” as used in this section, means all persons who may be affected by an order of the [commission] board fixing prices, and who have signified to the [commission] board in writing their desire to be notified of such hearings concerning a particular milk market area or areas within the Commonwealth. “Reasonable opportunity to be heard” may be afforded by written notice addressed to the last known address of an interested party by mail, postage prepaid, by deposit in a United States post office or any receptacle thereof. Nothing contained in this section shall be construed to limit or modify the provisions of section three hundred eight of this act relating to the posting and publicizing of orders of the [commission] board, including orders made under this article and the force and effect thereof.

At any hearing provided for herein the testimony of an expert statistician present at the hearing and any printed, typewritten, duplicated, 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] board 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] board, 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] board of wholesale and retail prices as well as prices to producers.

Whenever an order of the [commission] board fixing prices is remitted to the [commission] board 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] board, the [commission]

board shall make such reformation within thirty days from the entry of the order of the court remitting the price fixing order to the [commission] board.

Section 41. Sections 802, 803 and 804 of the act, amended July 24, 1941 (P. L. 443), are amended to read:

Section 802. Wholesale and Retail Prices.—The [commission] board shall fix, by official order (except as hereinafter provided in this section), the minimum wholesale and retail prices, and may fix, by official order, the maximum wholesale and retail prices, to be charged and received by milk dealers or handlers for milk sold, delivered, handled or consigned within any milk marketing area of the Commonwealth, wheresoever produced, including milk sold, delivered or consigned by:

- (1) Milk dealers or handlers to other milk dealers or handlers;
- (2) Milk dealers or handlers to consumers;
- (3) Milk dealers or handlers to stores, either for consumption at the stores or sale to consumers;
- (4) Stores to consumers, except for consumption at the store where sold.

Nothing herein contained shall be construed to empower the [commission] board to fix the price at which milk may be sold by any milk dealer or handler or producer to consumers for consumption on the premises of such milk dealer or handler or producer.

The fixing of minimum wholesale or retail prices for skimmed milk, condensed or concentrated whole or skimmed milk, bulk cream handled between milk dealers or handlers other than stores, and ice cream mix, shall be discretionary with the [commission] board.

Section 803. Prices to Producers.—The [commission] board shall fix, by official order, the minimum prices to be paid by milk dealers or handlers to producers for milk sold or delivered or made available on consignment or otherwise by producers to dealers or handlers: Provided, however, That the fixing of prices to be paid by milk dealers or handlers to producers for milk to be used solely in manufacturing shall be discretionary with the [commission] board.

Section 804. Classification.—When, pursuant to any statute or regulations or orders adopted thereunder, or any ordinance or reasonable trade practice, various grades of milk are specified, orders of the [commission] board fixing minimum or maximum prices may be applicable to each grade. Orders of the [commission] board fixing minimum or maximum prices may vary in different markets, and shall designate the markets to which applicable. Such orders may likewise classify milk and milk dealers or handlers in any reasonable manner which the [commission] board deems advisable, and may vary accord-

ing to the classes to which they are applicable. The orders of the [commission] board with respect to the minimum prices to be paid to producers and others shall apply to the area in which the milk is produced, or to the area in which the milk so produced is manufactured, sold or distributed, as the [commission] board shall provide, and may vary in different areas according to varying uses, grades and conditions. Each such order may classify such milk by ¹ forms, classes, grade or uses, as the [commission] board may deem advisable, and may specify the minimum prices therefor. Other reasonable methods of classification may be prescribed by the [commission] board.

Section 42. Sections 805 and 806 of the act are amended to read:

Section 805. Price Increases.—It is hereby declared to be the legislative intent that the benefits of any increase of prices received by milk dealers, by virtue of the minimum price provisions of this article, shall be given to producers, except in any case where the [commission] board deems a deviation from this policy necessary in order lawfully to maintain proper milk markets and outlets for producers and consumers. The [commission] board shall, whenever it deems such action necessary, issue orders, rules or regulations to effectuate this intent.

Section 806. Terms and Method of Payment.—The [commission] board may likewise fix, by official order, the terms upon which milk dealers shall pay producers and others for milk, may prescribe the method of computing payment therefor, and may prescribe a form of written statement to be sent to producers with each payment.

Section 43. Section 807 of the act, amended December 15, 1965 (P. L. 1101), is amended to read:

Section 807. Violations.—After the [commission] board 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.

¹ "farms" in original.

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] board 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, milk at a price computed upon false or erroneous weight, butterfat test, grade or classification; 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 44. Section 808 of the act, amended July 24, 1941 (P. L. 443), is amended to read:

Section 808. Prices of Certain Milk.—It is hereby declared to be the legislative intent that the instant (whenever that may be) that the handling by a milk dealer or handler of milk produced outside of the Commonwealth becomes a subject of regulation by the Commonwealth in the exercise of its police powers, the restrictions set forth in this act respecting such milk so produced shall apply, and the powers conferred on the [commission] board by this act,

and particularly by this article, shall attach; but such restrictions shall not apply to condensed or concentrated whole milk contained in hermetically sealed cans.

It is also hereby declared to be the legislative intent that the prices prescribed by the [commission] board for milk produced in this Commonwealth, and sold or delivered or made available on consignment or otherwise in this Commonwealth for shipment into and ultimate sale in another state, shall not be destructive of the price structure of producers in such other state.

Section 45. Section 809 of the act, amended December 15, 1965 (P. L. 1101) is amended to read:

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] board, 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] board, 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, 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] board 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] board over the prices at which it may sell milk to milk dealers or handlers, stores or consumers.

Every cooperative agricultural association or corporation operating under the provisions of this section shall file with the [commission] board 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.

Section 46. Sections 901, 902 and 903 of the act are amended to read:

Section 901. Appeals from General Orders.—Any person aggrieved by an order of the [commission] board fixing, revising or amending the price at, or the terms upon, which milk may be bought or sold, or by any other general action, rule, regulation or order of the [commission] board, may, within twenty (20) days after the effective date of such action, rule, regulation or order, file an appeal therefrom in the Court of Common Pleas of Dauphin County. No such appeal shall be permitted to act as a supersedeas, except on special order of the court. Refusal by the [commission] board of any application for revision or amendment, filed as provided in section eight hundred one, shall constitute an appealable action within the meaning of this section.

Section 902. Appeals from Special Orders.—Any person aggrieved by an order of the [commission] board in which the [commission] board refuses to issue, reissue or transfer, or revokes or suspends, a license to operate as a milk dealer, or by any other order of the [commission] board applying only to a particular person or persons named therein and not otherwise specifically provided for, may, within twenty (20) days after the service of such order, file an appeal therefrom in the court of common pleas of the county in which he resides or has his principal place of business, or, in the case of a non-resident who has no place of business within the Commonwealth, in

the Court of Common Pleas of Dauphin County. No such appeal shall be permitted to act as a supersedeas, except on special order of the court.

Section 903. Supersedeas.—A special order of court permitting an appeal to act as a supersedeas may be made only after reasonable notice to the [commission] board, and shall provide that the appellant file a bond with sufficient sureties, in such sum as shall be determined by the court to be necessary for the protection of producers and others during the pendency of the appeal.

Section 47. Section 904 of the act, amended July 24, 1941 (P. L. 443), is amended to read:

Section 904. Pleading and Service.—The appeal provided by this article from action of the [commission] board shall be by petition against the [commission] board, officially as defendant, alleging therein in brief detail the action and decision complained of, and praying for a reversal thereof. Such petition shall specify the petitioner's objections to the action and decision of the [commission] board, and shall state facts in support of such objections sufficient to constitute a prima facie case; and any objection not so specified and supported by facts shall not be considered by the court. Every such petition reciting facts shall be supported by oath or affirmation; and the petition shall include as part thereof, under oath or affirmation, an averment that the appeal is not filed merely for purposes of delay.

Upon service of a summons upon the [commission] board, returnable at least ten (10) days from the date of service, the [commission] board may, on or before the return day, file a motion to dismiss the appeal, raising questions of law or attacking the form or sufficiency of the petition. If such motion is not sustained, the [commission] board shall be given leave to file an answer within not less than ten (10) days after the order of the court overruling the motion.

On or before the return day of such summons served upon the [commission] board, or within the time allowed in an order of the court denying a motion to dismiss an appeal, the [commission] board may file an answer which shall deny or admit the allegations of fact in the petition, and which may also allege by way of defense the grounds for its action or decision. If no answer is filed by the [commission] board, the case shall be at issue without further pleadings as though an answer had been filed denying all the allegations of fact in the petition.

Upon the filing of an answer by the [commission] board, or, if no

answer is filed, then on the return day or at the expiration of the time allowed for answer by an order of court, the case shall be at issue without further pleadings, and upon application of either party the case may be advanced and heard without further delay.

Section 48. Sections 905, 906 and 908 of the act are amended to read:

Section 905. Certification of Record.—The [commission] board shall, on the return day of such summons, or within a reasonable time thereafter, certify to the court the record of the proceedings to which the petition refers. Such record shall include the testimony taken therein, the findings of fact of the [commission] board, a copy of all orders made by the [commission] board pertaining to the proceedings, and a copy of the order, action or decision of the [commission] board which the petition calls upon the court to reverse.

Section 906. Scope of Inquiry.—Mere technical irregularities in the procedure of the [commission] board shall not be the basis of the decision of the court.

In an appeal from an order or decision of the [commission] board applying only to the particular person or persons named therein, the case shall be heard upon the record certified to the court by the [commission] board. Additional testimony shall not be taken before the court, but the court may, in proper cases, remit the record to the [commission] board for the taking of further testimony.

In an appeal from any general order of the [commission] board, the case shall be heard by the court and testimony may be taken: Provided, however, That nothing herein shall be construed as relieving the appellant from submitting all essential facts in the first instance to the [commission] board at its hearing held prior to the issuance of such order. All or any relevant part of the record certified to the court shall be admitted in evidence by order of the court or upon motion of either party. Where the petition and answer raise questions of fact, the petitioner or appellant shall proceed with evidence in support of the facts alleged in his petition. The [commission] board shall then present evidence in support of the answer, which evidence may consist of, or include, the record or any part thereof. Any part of the record certified to the court, which is not based on technical rules of evidence customary in actions at law, shall not be disregarded by the court merely because of the violation of such rules.

Upon any appeal the court shall determine whether or not the or-

der appealed from is reasonable and in conformity with law. The appellant shall have the burden of proving that an order of the [commission] board is unreasonable or illegal. If the court shall determine that the order is unreasonable or illegal, it shall remit the case to the [commission] board with directions to reform the findings or order, or to revoke the order, in accordance with the court's opinion.

Section 908. Jurisdiction of Superior and Supreme Courts.—From the decision of a court of common pleas, upon an appeal from an order of the [commisison] board applying only to the particular person or persons named therein, an appeal may be taken by either party to the Superior Court of Pennsylvania in the manner provided by law. From the decision of a court of common pleas, upon an appeal from a general rule, regulation or order of the [commission] board, an appeal may be taken by either party to the Supreme Court of Pennsylvania in the manner provided by law.

Section 49. Sections 1001 and 1002 of the act, amended June 10, 1957 (P. L. 285), are amended to read:

Section 1001. Summary Offenses.—Except as otherwise specially provided in this act, any person violating any provision of this act, or any rule, regulation or order of the [commission] board lawfully made, shall for the first and second offense, upon conviction thereof in a summary proceeding, be sentenced to pay the costs of prosecution and a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00), and, in default thereof, to undergo imprisonment of not less than five (5) days nor more than thirty (30) days. In determining whether an offense is a first or second offense, no offense committed more than five (5) years before the date of the offense being prosecuted shall be considered as a prior offense.

Section 1002. Misdemeanors.—For a third or subsequent offense committed within a five (5) year period, any person violating any provision of this act, or any rule, regulation or order of the [commission] board lawfully made, shall be guilty of a misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), or to undergo imprisonment not exceeding one (1) year, or both, in the discretion of the court.

Section 50. Section 1003 of the act, amended July 24, 1941 (P. L. 443) is amended to read:

Section 1003. Actions to Enforce Compliance.—The [commission] board or any person, marketing committee, union or association, composed of persons affected by the orders, rules or regulations of the

[commission] board, may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this act, or to enforce compliance with any rule, regulation or order of the [commission] board made pursuant to the provisions of this act.

Section 51. Sections 1004, 1005 and 1006 and the heading to Article XI of the act are amended to read:

Section 1004. Application for ¹Injunction; Remedies.—In addition to any other remedy at law or in equity or under this act, the [commission] board may apply to the Court of Common Pleas of Dauphin County for relief by injunction, or to the court of common pleas in the county wherein the defendant resides or has his principal place of business, to enforce compliance with or restrain violations of any provision of this act or any rule, regulation or order of the [commission] board made pursuant thereto. The said Court of Common Pleas of Dauphin County is hereby clothed with jurisdiction to hear and determine all such actions by the [commission] board, regardless of where they may arise in the Commonwealth. The [commission] board, shall not be required to file any bond in any action under this act.

The penalties and remedies prescribed in this act shall be deemed concurrent or contemporaneous, and the existence or exercise of any one remedy herein shall not prevent the [commission] board from exercising any other remedy hereunder.

Section 1005. Proceedings Before the [Commission] Board.—Appropriate proceedings against any milk dealer violating this act or the rules, regulations or orders of the [commission] board, may be instituted before the [commission] board by any producer to whom the lawful price of milk has not been paid or to whom such price has not been fully paid, and such proceedings may also be instituted upon the [commission's] board's own motion.

Section 1006. Perjury.—Any person who shall wilfully and corruptly make a false oath or affirmation before the [commission] board at any investigation or hearing, or in any report or statement authorized or required by this act, shall be guilty of perjury, and, on conviction, be subject to the penalties prescribed by law for wilfully and corruptly making false oath or affirmation.

¹ "Injunctions" in original.

ARTICLE XI

MONEYS AND EXPENSES OF [COMMISSION] BOARD

Section 52. Section 1101 of the act, amended July 24, 1941 (P. L. 443), is amended to read:

Section 1101. Milk [Control] Marketing Fund.—All moneys collected or received by the [commission] board, arising from license fees, penalties, permits or any other source, shall be paid by the [commission] board into the State Treasury through the Department of Revenue, and shall, by the State Treasurer, be placed in a separate fund to be known as the “Milk [Control] Marketing Fund.” Fines imposed under this act shall be payable to, and collected by, the [commission] board, and similarly placed in the Milk [Control] Marketing Fund.

Moneys collected or received by the [commission] board, that are not funds of the Commonwealth, but are due to producers, dealers or handlers for, or on account of, milk acquired or received by dealers or handlers from producers or other dealers or handlers, and placed in the Milk [Control] Marketing Fund, shall be paid to the persons entitled thereto by the State ¹Treasurer, as directed by the [commission] board.

Section 53. Sections 1102, 1103, 1104, and 1105 ²of the act are amended to read:

Section 1102. Expenses.—As much of the money, from time to time, in the Milk [Control] Marketing Fund as may be necessary is hereby specifically appropriated to the Milk [Control Commission] Marketing Board to be used to pay its expenses, including the following:

(1) Salaries of the [commission] board, of its employes, and of any deputy attorney general, special deputy attorney general, assistant deputy attorney general, or other counsel as may be assigned by the Department of Justice to the [commission] board for the handling of any legal work, pertaining to its business.

(2) Rental and other expenses for offices, rooms, garage space and other accommodations outside of the Capitol Buildings, either in or outside of the capital city, occupied by the [commission] board.

¹ “Treasure” in original.

² “of the act” not in original.

(3) Premiums for workmen's compensation insurance covering the officers and employes of the [commission] board.

(4) Premiums for surety bonds for such officers or employes of the [commission] board as may be required by law to furnish such bonds.

(5) Purchase and operating costs of motor vehicles required by the [commission] board for full-time use, including premiums for liability insurance covering such motor vehicles and the members of the [commission] board and employes operating them; also the amount payable to the Department of Property and Supplies for the use of automobiles supplied by it for temporary use by the [commission] board.

(6) Furniture, stationery, materials, supplies and all other overhead expenses of the [commission] board.

(7) All other expenses of every kind and description necessary for the performance by the [commission] board of its work.

All such purchases and leases shall be made, and all such contracts of insurance and surety bonds shall be placed, through the Department of Property and Supplies as agent.

Section 1103. Refunds.—As much of the money, from time to time, in the Milk [Control] Marketing Fund, as may be necessary, is hereby appropriated to the Board of Finance and Revenue, for the payment of approved claims for refund made to the Board of Finance and Revenue, for moneys heretofore or hereafter paid into the Milk [Control] Marketing Fund, to which the Commonwealth is not rightfully entitled.

Section 1104. Approval of Governor.—Estimates of the amounts to be expended under this act by the Milk [Control Commission] Marketing Board, either itself, or through the Department of Property and Supplies as purchasing agent, or by the Board of Finance and Revenue in the payment of claims for refund, shall be submitted to the Governor from time to time for his approval or disapproval, as in the case of other appropriations made to administrative departments, boards and commissions, and it shall be unlawful for the Auditor General to honor any requisition for the expenditure of any moneys out of this appropriation by the Milk [Control Commission] Marketing Board, or by the Department of Property and Supplies as its agent, or by the Board of Finance and Revenue, in excess of the estimates approved by the Governor. Subject to this provision, the Auditor General shall, from time to time, draw warrants upon the State Treasury for the amounts specified in such requisitions, not exceeding, however, the amount in the Milk [Control]

Marketing Fund at the time of the making of any such requisition.

Section 1105. Miscellaneous Fees.—The [commission] board shall charge and collect the following fees for the following services:

For copies of papers, testimony and records, the fee shall be [twenty cents (\$0.20)] fifty cents (\$0.50) per page.

For certifying a copy of any paper or testimony, [two dollars (\$2.00)] four dollars (\$4.00).

For certifying a copy of a record for proceedings upon appeal, [five dollars (\$5.00)] ten dollars (\$10.00), in appeals from special orders, and [ten dollars (\$10.00)] twenty dollars (\$20.00) in appeals from general orders.

Section 54. Section 1106 of the act is repealed.

Section 55. Section 1203 of the act is amended to read:

Section 1203. Effect upon Proceedings, Duties and Rights under Other Acts of Assembly.—All rules, regulations, orders, suits, hearings, investigations, prosecutions and all other proceedings or actions of any kind whatsoever of the Milk Control Board or the Milk Control Commission of the Commonwealth of Pennsylvania, as created or continued under acts of Assembly prior to the effective date of this act and repealed hereby, in existence or pending prior to or upon the effective date of this act, and all penalties, obligations, appeals or violations of milk dealers and others under said rules, regulations, orders and prior acts of Assembly incurred, pending or accrued prior to or upon the effective date of this act, shall be saved and continued in every manner and for all purposes after the effective date of this act, and shall be continued under the provisions hereof. All employes, papers and possessions of such predecessor board and commission shall become the employes, papers and possessions of and subject to the [commission] board created by this act.

The repeal by this act of any other act shall not impair, repeal, or affect any act done, bond posted, offense committed, liability, penalty or judgment incurred, or rule, regulation or order issued prior to the time this act takes effect, but the same may be enforced, prosecuted or inflicted under the provisions of this act to the same extent as if such other act had not been repealed or had not expired.

All licenses, permits, certificates, rules, regulations and orders issued or made under any act repealed by this act, and in full force and effect upon the effective date of this act, shall remain in full force and effect for the term issued or until revoked, suspended or superseded under the provisions of this act or rules, regulations or orders of the [commission] board made hereunder.

APPROVED—The 31st day of July, A. D. 1968.

RAYMOND P. SHAFER

No. 295

AN ACT

HB 2457

Amending the act of January 14, 1952 (P. L. 1898), entitled, as amended, "An act to provide for the better protection of life and health of the citizens of this Commonwealth by requiring and regulating the examination, licensure and registration of persons and registration of corporations engaging in the care, preparation and disposition of the bodies of deceased persons, and providing penalties; providing for a State Board of Funeral Directors in the Department of Public Instruction; and repealing other laws," making editorial corrections and further regulating the preparation for and practice of funeral directors.

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

Section 1. The title and section 2, act of January 14, 1952 (P. L. 1898), known as the "Funeral Director Law," the title and clauses (2) and (3) of section 2 amended August 10, 1959 (P. L. 658), are amended to read:

AN ACT

To provide for the better protection of life and health of the citizens of this Commonwealth by requiring and regulating the examination, licensure and registration of persons and registration of corporations engaging in the care, preparation and disposition of the bodies of deceased persons, and providing penalties; providing for a State Board of Funeral Directors in the Department of [Public Instruction] State, and repealing other laws.

Section 2. Definitions.—The following terms as used in this act shall, unless the context indicates otherwise, have the following meanings:

[(1) The term "funeral director" shall include any person engaged in the profession of a funeral director or undertaking or the care, embalming, disposition or burial of the bodies of deceased persons, in his or her own name and on his or her own account, whether such persons shall use the title of "undertaker," "undertaker and embalmer," "embalmer," "funeral director," "mortician," or other term.

(2) The word "board" shall mean State Board of Undertakers in the Department of Public Instruction, hereby renamed the State Board of Funeral Directors.