

## No. 2004-66

## AN ACT

## HB 2512

Amending the act of July 6, 1984 (P.L.652, No.136), entitled "An act requiring prompt payment to milk producers; providing for the establishment of a security fund; providing for a procedure to process claims against the security fund; providing for alternative methods of security on behalf of milk producers; and providing for certain prohibitions, repeals and penalties," further providing for definitions; providing for passage of title to milk; further providing for security bonds, for bonds, for the security fund and for new licenses; providing for review of security; and further providing for trusteeship, for prohibitions and violations and for penalties.

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

Section 1. Section 4 of the act of July 6, 1984 (P.L.652, No.136), known as the Milk Producers' Security Act, is amended to read:

Section 4. Definitions.

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

"Blend price." The actual price due or paid to producers after computation of the licensed dealer's or handler's producer obligation pursuant to the applicable rules, regulations or orders of the board or applicable orders established by the United States Department of Agriculture.

"Board." The Milk Marketing Board.

"Cooperative." A cooperative agricultural association or corporation of producers organized under the laws of this Commonwealth or of any other state, which qualifies as such under the provisions of the Federal Capper-Volstead Act, and engaged in making collective sales or in the marketing of milk for its own members. A cooperative shall not be deemed a milk dealer or handler but shall be deemed a producer, except as provided in section 3(a).

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

"**Handler.**" *A milk dealer.*

"Milk." Fluid milk sold to a dealer from a producer.

"Milk [**dealer**" or "**handler.**"] *dealer.*" Any person who purchases or receives or handles on consignment or otherwise milk within the Commonwealth, for sale, shipment, storage, processing or manufacture, within or without the Commonwealth, whether on behalf of the person or others, or both. This definition shall not include cooperatives as provided for in section 3(a). *The term includes a vested milk dealer.*

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

“Producer.” A person producing milk.

***“Vested milk dealer.” A handler or milk dealer that, on the effective date of this definition, is participating in the security fund under section 9. The term does not include a handler or milk dealer participating in the security fund as of the effective date of this definition that at any time discontinues such participation in the security fund.***

Section 2. The act is amended by adding a section to read:

**Section 4.1. Title to milk.**

**(a) The scope of this section is as follows:**

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

**(2) This section shall have no effect on any provision of the act of April 28, 1937 (P.L.417, No.105), known as the Milk Marketing Law.**

**(3) This section shall not supersede an order of a Federal administrative agency or of the board which requires the cost of shipment of milk to be free on board the place of destination.**

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

Section 3. Sections 7, 8, 9 and 10 of the act are amended to read:

**Section 7. Security bonds.**

(a) Each milk dealer, as required by this act, shall file with the board a corporate surety bond or collateral bond. The bond shall be on a form prescribed by the board conditioned for the payment by the milk dealer or handler of all amounts due under this act and all other applicable Federal laws in addition to the orders of the board for milk purchased or otherwise acquired from producers by the milk dealer or handler during the license year, which payments shall be made within the time limits specified in this act or the regulations of the board and shall be upon such other terms and conditions as the board may prescribe.

(b) A corporate surety bond shall be executed to the Commonwealth by the milk dealer as principal and by a corporate surety company authorized and regulated by the Commonwealth as surety. The board shall have no power to reject any corporate surety bond which is so executed by a corporate surety company authorized to do business in this Commonwealth as surety, so long as the amount of the bond is equal to or less than the amount the surety company is authorized by the Pennsylvania Insurance Commissioner to execute on a single bond without obtaining collateral security from the principal. The board may reject any bond which exceeds that amount. A collateral bond shall be executed to the Commonwealth by the milk dealer as principal, shall set forth the collateral posted with the bond and shall have attached thereto the collateral properly assigned and

transferred to this Commonwealth. The collateral posted with the bond shall be cash in an equal amount of the bond or the bond shall be secured by an actual deposit with a bank, bank and trust company or national bank within the Commonwealth of money to the full amount of the bond or securities to the amount of the bond consisting of interest-bearing obligations of the Federal Government or an irrevocable letter or letters of credit for the account of the milk dealer authorizing the board to draw on a bank or a trust company or banks or trust companies located within and authorized to do business in this Commonwealth.

(c) The bond shall be *filed in accordance with the following:*

*(1) Except as set forth in paragraph (2), a milk dealer shall file with the board a bond equal to a minimum of 75% of the highest aggregate amount owed by the milk dealer to all producers for a 40-day period during the preceding 12 months.*

*(2) A vested milk dealer shall file with the board a bond in a sum equal to a minimum of 30% of the highest aggregate amount owed by the vested milk dealer to all producers for a 40-day period during the preceding 12 months. [Such bond may exceed the 30% minimum and be equal to the full amount of the money owed, at the discretion of the dealer.]*

*(3) A milk dealer licensed on the effective date of this paragraph, other than a vested milk dealer, may petition the board to file a bond in an amount less than that required by paragraph (1) and to participate in the security fund as a vested milk dealer under section 9. The board shall act upon the petition within 60 days of the date of filing the petition. When considering the petition, the board shall require that the milk dealer provide adequate reason and documentation for the request and may hear testimony from all interested persons potentially affected by the request. To ensure the level of protection for producers contemplated by this act, the board shall impose such conditions as it deems appropriate, including, but not limited to, the following minimum conditions:*

*(i) Higher per hundredweight contributions to the security fund.*

*(ii) More frequent payments to producers.*

*(iii) The filing of a bond greater than 30% of the highest aggregate amount owed to producers for a 40-day period during the preceding 12 months.*

*(4) A milk dealer filing a petition under paragraph (3) may request that the board enter an order requiring that confidential financial information only be disclosed to the board. Such confidential financial information shall be deemed to have been provided to the board pursuant to section 310 of the act of April 28, 1937 (P.L.417, No.105), known as the Milk Marketing Law.*

(d) Milk purchased, acquired or received by a milk dealer or handler from producers outside this Commonwealth and sold or distributed by the

dealer or handler as fluid milk within this Commonwealth shall be included in computing the amount of the dealer's or handler's bond, except where the dealer or handler has filed a bond or other security for the protection of the producers with the state wherein the milk is purchased, acquired or received.

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

#### Section 8. Bonds.

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

#### Section 9. Security fund.

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

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

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

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

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

(f) Any security fund established and maintained under this section shall be considered a security trust fund for the exclusive benefit of producers

supplying milk to the *vested milk* dealer paying into the fund. No claims of the Commonwealth or any other person may be made against the fund until all amounts due to producers for supplying milk to the *vested milk* dealer have been paid. Amounts paid into the security trust fund shall be considered an expense to the *vested milk* dealer necessary for maintaining [the dealer's] a license and shall not be considered an asset of the *vested milk* dealer.

Section 10. New licensees.

*(a) Except as set forth in subsection (b), the following apply:*

*(1) A milk dealer or handler purchasing or acquiring or receiving or intending to purchase or receive milk from producers, but not so engaged during the preceding 12 months, shall file a bond in a sum to be fixed by the board in accordance with the handler's anticipated purchases from producers and the handler's obligation to a producer settlement or equalization fund, but not less than the total amount expected to be owed during the full 40-day pay period.*

*(2) The board shall review the operations of the milk dealer or handler every two months and the bond shall be modified by the board at the time the board is satisfied that the producers are adequately secured.*

*(3) At the end of six months of operation, upon approval by the board, the [new] milk dealer or handler [may file the amount of the bond and pay into the security fund as required in sections 7 and 9.] shall file a bond in a sum equal to a minimum of 75% of the highest aggregate amount owed or expected to be owed by the milk dealer or handler to all producers for a 40-day period.*

*(b) Subsection (a) does not apply to a vested milk dealer.*

Section 4. The act is amended by adding a section to read:

*Section 10.1. Review of security.*

*(a) If the board determines that the financial condition of a milk dealer that purchases milk from a producer is not adequate to reasonably assure prompt payment to producers, the board may require that milk dealer to furnish additional security to afford producers the protection intended by this act.*

*(b) If the board determines that the value of milk purchased or received from a producer by a milk dealer has increased or may reasonably be anticipated to increase so that the amount of security furnished by the milk dealer does not comply with section 7 as applied to any consecutive two-month period during the current year, the board may require that milk dealer to furnish additional security to afford producers the protection intended by this act.*

Section 5. Section 11 of the act is amended to read:

**[Section 11. Trusteeship.**

**(a) In such cases where it appears that the financial condition of the applicant for a license or the licensee is not adequate to reasonably assure payment to producers, the board may require in lieu of other security or payments to the security fund and, where it is practical from**

**an operating standpoint, the licensee to file an agreement providing for the complete control over all processed or manufactured milk and dairy products by a trustee to be selected at least annually by the involved producers. Such trustee shall make and file a trustee's fidelity bond and contracts signed by the operator and the purchasers of the dairy products requiring that payment for such products sold be made to him as trustee. Such trustee shall maintain a separate bank account for that purpose and shall at least twice annually render a true and correct account of his dealings to the board and to the producers. Producers shall have a first lien on assets of trusteeship to assure payment in case of default.**

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

Section 6. Section 13 of the act, repealed in part December 21, 1984 (P.L.1278, No.243), is amended to read:

Section 13. Prohibitions and violations.

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

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

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

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

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

***(f) Each milk dealer shall report to the board any increase or anticipated increase in the value of milk purchased or received from producers.***

Section 7. Section 15 of the act is amended to read:

Section 15. Penalties.

A violation of this act shall subject a milk dealer or a participating cooperative to a penalty of **[\$50] \$150** for each day that it is late in making

payment into the security fund of the assessment required by this act, for each day it sells milk to a milk dealer after being notified by the board of the milk dealer's failure to provide security as provided herein or for each day a milk dealer or participating cooperative has failed to make payments for milk purchased as provided pursuant to section 5. Any person who buys or sells in violation of the credit period provided in section 5 shall be liable for suspension or revocation of his milk dealer's license in pursuance of the act of April 28, 1937 (P.L.417, No.105), known as the Milk Marketing Law, or the board may accept from the licensee an offer in compromise, a penalty at the rate of [~~\$50~~] \$150 for each day of violation. *A milk dealer that violates section 13(f) shall be liable for suspension or revocation of the milk dealer's license pursuant to the Milk Marketing Law.*

Section 8. This act shall take effect immediately.

APPROVED—The 4th day of July, A.D. 2004.

EDWARD G. RENDELL