

MANUFACTURING MILK LAW OF 2001 (EXCERPT)

Act 267 of 2001

ARTICLE 11

288.670 License or permit.

Sec. 110. (1) A person shall not do any of the following without being licensed under this act or the grade A milk law of 2001:

- (a) Produce milk that is offered for sale.
- (b) Collect milk samples for regulatory purposes.
- (c) Operate a milk transportation company that owns or operates a can milk truck.

(d) Process, label, or sell milk or manufactured dairy products, except that a person operating a retail food establishment is exempt from licensure under this act if he or she complies with section 111 and is licensed under the food law of 2000. This subdivision does not prevent the sale at wholesale or retail at a retail food establishment licensed under the food law of 2000 of milk or milk products that are packaged in final consumer packages at a facility licensed under this act.

- (e) Wash milk tank trucks.

(2) A person licensed under the grade A milk law of 2001 and engaged in activities regulated under that act and activities regulated under this act is exempt from licensure under this act.

(3) A person licensed under the grade A milk law of 2001 or this act shall comply with the requirements of this act, where applicable, and is subject to the penalties set forth in this act, where applicable.

- (4) The director may issue a temporary license or permit for activities regulated under this act.

(5) State agencies operating dairy facilities under a memorandum of understanding with the department are not required to be licensed or permitted, or to provide producer security under this act, but are otherwise required to be in compliance with this act.

(6) An applicant for an initial manufacturing grade dairy farm permit shall apply to the department on a form provided by the department, pay the annual permit fee imposed under this section, and complete education on drug residue avoidance control measures acceptable to the director before receiving the permit.

(7) An applicant for an initial license as a dairy plant shall apply to the department on a form supplied by the department and provide a statement containing the following:

(a) The dairy plant's correct legal name and any name by which the dairy plant is doing business. If the dairy plant is a person not an individual, the name of each officer and director, and partner, member, or owner owning in excess of 35% of equity or stock.

(b) The location of the dairy plant to which the statement pertains and the name of the responsible person who may be contacted at that location.

(c) The anticipated value of greatest milk receipts the dairy plant expects to receive during a consecutive 30-day period within the licensing period.

(d) A list of producers, including names, mailing addresses, and department producer permit number, with whom the dairy plant intends to do business except that not later than 90 days after becoming licensed for the first time, the dairy plant shall send an updated list to the department.

- (e) The name of the financial institution through which milk checks are to be issued to producers.

(f) The annual volume of raw milk each milk plant anticipates receiving. The department may conduct an audit to verify the accuracy of the annual volume of raw milk receipts reported and may reassess the license fee accordingly. In the alternative, the department may utilize an audit conducted by the United States department of agriculture or any other audit acceptable to the director.

(8) A dairy plant shall annually renew a license issued under this act by applying to the department at least 30 days prior to the expiration of the existing license. The anniversary date of a license for a dairy plant that is providing a financial statement as a security device shall be 130 days after the close of the licensee's fiscal year. The dairy plant shall apply for renewal of a license on a form supplied by the department and provide a statement containing the following:

(a) The dairy plant's correct legal name and any name by which the dairy plant is doing business. If the dairy plant is a person not an individual, the name of each officer and director, and partner, member, or owner owning in excess of 35% of equity or stock.

(b) The location of the dairy plant to which the statement pertains and the name of the responsible person who may be contacted at that location.

(c) The greater of either the value of greatest milk receipts that the dairy plant received within a consecutive 30-day period during its last license year or the greatest milk receipts that the dairy plant is anticipated to receive during a consecutive 30-day period within the licensing period.

(d) A complete list of producers, including names, mailing addresses, and department producers permit number, with whom the dairy plant is doing business.

(e) The name of the financial institution through which milk checks are issued to producers.

(f) The annual volume of raw milk each milk plant anticipates receiving. The department may conduct an audit to verify the accuracy of the annual volume of raw milk receipts reported and may reassess the license fee accordingly. In the alternative, the department may utilize an audit conducted by the United States department of agriculture or any other audit acceptable to the director.

(9) License renewal for a dairy plant shall take place on June 30 of each year unless otherwise specified in this act. A dairy plant licensed under this act shall pay an annual license or permit fee as follows:

(a) Dairy plant with less than 6,000,000 pounds of anticipated raw milk receipts per year, at a rate of \$200.00 per year.

(b) Dairy plant with greater than or equal to 6,000,000 pounds of anticipated raw milk receipts per year, at a rate of \$400.00 per year.

(10) Each receiving station or transfer station shall be licensed or permitted either as part of a dairy plant or as a stand-alone facility. Each stand-alone facility will be licensed or permitted at a rate of \$200.00 per year. License renewal shall take place on June 30 every year.

(11) Each milk tank truck cleaning facility shall be licensed or permitted under this act either as part of a dairy plant, receiving station or transfer station, or as a stand-alone milk tank truck cleaning facility, or under the grade A law of 2001. Any milk tank truck cleaning facility that washes the milk contact surfaces of milk tank trucks used to haul grade A milk shall be licensed under the grade A law of 2001. Each stand-alone facility will be licensed or permitted at a rate of \$200.00 per year. License renewal shall take place on June 30 every year.

(12) Each single service containers and closures manufacturer shall be licensed or permitted under this act either as part of a dairy plant or as a stand-alone manufacturer. Each stand-alone facility will be licensed at a rate of \$200.00 per year. License renewal shall take place on June 30 every year.

(13) A person shall not pick up manufacturing grade milk in a farm pickup milk tank from a farm bulk milk tank without a hauler/sampler license issued by the department under the grade A law of 2001. Each milk tank truck or can milk truck shall be licensed or permitted under this act or as required under the grade A milk law of 2001 at a rate of \$20.00 per year. License or permit renewal shall take place on June 30 every year.

(14) Each dairy farm producing manufacturing milk to be offered for sale shall be licensed or permitted annually at either of the following rates:

(a) If the dairy farm does not maintain adequate industry personnel, as determined by the director, who are approved to conduct certified industry farm inspections, \$30.00.

(b) If the dairy farm maintains adequate industry personnel, as determined by the director, who are approved to conduct certified industry farm inspections, \$15.00.

(15) The fee described in subsection (14) shall be paid to the department by June 30 every year.

(16) A milk buyer shall pay the annual license or permit fee on behalf of the dairy farms and may submit an invoice to the dairy farms for reimbursement of the fee or may deduct the fee from the dairy farms' milk check. A milk buyer shall complete a form provided by the department that indicates the number of producers for which it is responsible and shall include a list of the producer names, addresses, and department permit numbers. The department may conduct audits to verify fee payments.

(17) The department may assess a plan review fee of \$100.00 to a potential dairy licensee or permittee, to be paid prior to an on-site consultation. The plan review fee is not refundable and does not apply toward any future license fees.

(18) The department may assess a \$150.00 fee on any licensee or permittee requiring the performance of 2 or more consecutive reinspections for compliance of items found in violation of this act.

(19) The director may issue a temporary license or permit if the director determines that issuance of the license or permit will not be detrimental to the protection of the public health, safety, or welfare or will not cause an imminent threat of financial loss to producers.

(20) A political subdivision of the state shall not levy special license fees or taxes on 1 or more of the persons or businesses described in this section except for taxes or fees that are generally levied on persons or businesses other than dairy plants and dairy plant operators.

(21) The director shall examine the books, records, and accounts of a dairy plant if the dairy plant has not responded to requests from the director regarding a security device described in sections 117, 118, and 119. All examinations of books, records, and accounts required under this subsection shall be made within this state.

(22) All applicants for a permit or license must complete an application provided by the department and

meet the minimum requirements of this act or the grade A law of 2001, and rules promulgated under this act.

(23) Any fees, assessments, civil or administrative fines, and money from any other source collected by the department under this act shall be deposited into the dairy and food safety fund created in section 4117 of the food law of 2000, MCL 289.4117.

(24) The department may impose a late fee of \$10.00 for a renewal application for each business day the application is late. The total late fee shall not exceed \$100.00. The department shall not issue or renew a license until any fees and fines have been paid. A hearing is not required regarding the department's refusal to issue or renew a license under this subsection except as allowed under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may charge a convenience fee and collect from the applicants any additional costs associated with the method of fee payment for the license or permit fees described in this section and section 110a, not to exceed the costs to the department.

History: 2001, Act 267, Eff. Feb. 8, 2002;—Am. 2008, Act 147, Eff. June 27, 2008;—Am. 2010, Act 42, Imd. Eff. Mar. 31, 2010.

288.670a Receipt of completed application for initial or renewal license; issuance of license within certain time period; "completed application" defined.

Sec. 110a. (1) The department shall issue an initial or renewal license or permit for regulated activities described in section 110 other than a manufacturing grade dairy farm or a bulk milk hauler/sampler, not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by an agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application is not an approval of the application for the license or permit and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license or permit.

(2) If the department fails to issue or deny a license or permit within the time required by this section, the department shall return the license or permit fee and shall reduce the license or permit fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license or permit within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, must be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(3) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing or permit fees and fines as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state. Under appropriate circumstances, completed application includes the completion of construction or renovation of any facility and the passing of a satisfactory inspection.

History: Add. 2004, Act 282, Imd. Eff. July 23, 2004;—Am. 2008, Act 147, Eff. June 27, 2008;—Am. 2018, Act 289, Eff. Sept. 27, 2018.

288.670b "Pasteurized milk ordinance" defined; license to conduct certified industry manufacturing farm inspections; license fee; inspections; authorization by director.

Sec. 110b. (1) As used in this section, "pasteurized milk ordinance" means that term as defined in section 6 of the grade A milk law, MCL 288.476.

(2) Each certified industry manufacturing farm inspector shall pay a 3-year license fee of \$150.00 for a license to conduct certified industry manufacturing farm inspections. License renewal shall take place on the expiration date of the 3-year certification.

(3) Certified industry manufacturing farm inspectors shall comply with the requirements for certified industry inspections specified in section 5 of the pasteurized milk ordinance and, in addition, shall conduct both of the following:

(a) A farm inspection of all producers having the first routine count exceeding legal standards for bacteria or somatic cells, or both.

(b) One routine inspection per year of each producer, with a copy of each required inspection forwarded to the local area dairy inspector.

(4) Certified industry manufacturing farm inspectors may perform official inspections, but only with authorization by the director.

History: Add. 2010, Act 42, Imd. Eff. Mar. 31, 2010.

288.671 Milk products manufactured at retail food establishments; exemption.

Sec. 111. Milk products manufactured at retail food establishments licensed under the food law of 2000 are exempt from this act if both of the following conditions are met:

- (a) All ingredients contained in these products comply with the requirements of the food law of 2000.
- (b) The milk products manufactured are not sold wholesale or to another business entity.

History: 2001, Act 267, Eff. Feb. 8, 2002;—Am. 2008, Act 147, Eff. June 27, 2008.

288.672 Unlicensed dairy plant or previously denied license dairy plant; application for license; investigation of sanitary conditions.

Sec. 112. Upon receipt of an application for licensure by an unlicensed dairy plant or for a dairy plant previously denied a license under this act, the department shall investigate the sanitary conditions of the dairy plant or place of business. The director shall issue a license under this act upon determining that the sanitary conditions of the applicant's dairy plant or place of business comply with this act and rules and regulations promulgated under this act.

History: 2001, Act 267, Eff. Feb. 8, 2002.

288.673 Noncompliance with act or rule; revocation or suspension of license or permit; administrative fine; notice; findings; operation of business or activity; reinstatement.

Sec. 113. (1) The director may revoke or suspend the license or permit of a licensee or permittee issued under this act or impose an administrative fine under section 125 for failure to comply with the requirements of this act or a rule promulgated under this act. A license or permit may be revoked or suspended according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall notify in writing each producer with whom a dairy plant does business regarding the pendency of the administrative action not less than 5 days before the date of the formal hearing set under subsection (1).

(3) The director may revoke or suspend a license or permit issued under this act, or impose an administrative fine pursuant to section 125, upon determining that the licensee or permittee has done 1 or more of the following:

- (a) Failed to provide supplementary or interim information or information required to be supplied to the department under this act or information requested by the director under this article.
- (b) Failed to provide a security device in the amount and manner required by the director under this article.
- (c) Knowingly provided false or fraudulent information or made a material misrepresentation on an application.

(d) Knowingly provided false or fraudulent information or made a material misrepresentation in response to a request for information by the department.

(e) Failed to pay a producer in the manner provided for in section 115.

(f) In the case of a dairy plant, failed to provide a security device described in article 11.

(g) Adulterated or caused to be adulterated milk or dairy products.

(h) Knowingly possessed, sold, offered for sale, or purchased any milk or milk product for use in a human food product that has been condemned under this act.

(i) Failed to provide the required number of milk quality sample results as established by the department.

(j) Failed to correct violations of this act noted on inspection reports after being given written instructions to correct the violations in a reasonable length of time.

(k) Failed to pay a final civil or administrative fine issued under this act.

(l) Violated this act or a rule promulgated under this act.

(4) A person whose license or permit has been suspended, revoked, or denied shall immediately discontinue operation of the business or activity for which the license or permit was issued.

(5) A person whose license or permit has been suspended or revoked is not eligible for reinstatement of the license or permit until the director determines that all violations have been corrected.

History: 2001, Act 267, Eff. Feb. 8, 2002;—Am. 2008, Act 147, Eff. June 27, 2008.

288.674 Summary suspension of license or permit; findings; compliance and reinstatement; order.

Sec. 114. (1) The director may summarily suspend a license or permit issued under this act upon determining that the licensee or permittee had done 1 or more of the following:

- (a) Offered for sale or sold milk or dairy products from diseased animals, or otherwise considered abnormal, that has been incorporated with milk or dairy products from normal healthy animals.

(b) Offered for sale or sold milk or dairy products that are not pasteurized according to the requirements set forth in section 137, except as allowed in section 138, or that are suspected of being contaminated with any substance considered by the department to be an imminent or substantial health hazard.

(c) Offered for sale or sold milk or dairy products from production, transportation, packaging, or storage facilities that have such an accumulation of trash, rubbish, dirt, insects, vermin, human or animal wastes, or spoiled milk or dairy products that precludes the reasonable protection of the milk or dairy products from contamination.

(d) Offered for sale or sold milk or dairy products produced in equipment with a significant portion of the milk contact surfaces covered with an accumulation of residues that were left after having gone through a cleaning regimen and that are thick enough that they may be easily scraped to form a body of solids.

(e) Offered for sale or sold milk or dairy products stored in a container of unapproved construction.

(f) Received or picked up milk or dairy products in a container of unapproved construction.

(g) Offered for sale or sold milk or dairy products produced from dairy animals with a majority of the milking herd with an excessive accumulation of manure on the flanks, bellies, or udders that precludes the reasonable protection of the milk from contamination during the milking process.

(h) Offered for sale or sold milk or dairy products that was of inadequate volume to properly agitate after the first milking.

(i) Offered for sale or sold milk or dairy products produced with excessive sediment.

(j) Interfered with inspection conducted by the department.

(k) Maintained dead animals on the premises in a manner inconsistent with 1982 PA 239, MCL 287.651 to 287.683.

(l) Maintained a minimum of 3 of the last 5 official bacteria counts illegal.

(m) Maintained a minimum of 3 of the last 5 official somatic cell counts illegal.

(n) Maintained a minimum of 3 of the last 5 official milk or dairy product cooling temperatures illegal.

(o) Failed to provide milk or dairy products free of violative drug residues based on tests approved by the United States food and drug administration.

(p) Offered for sale or sold milk or milk products that present an imminent health hazard due to improper or unknown storage temperature.

(q) Offered for sale or sold milk or milk products that present an imminent health hazard due to improper allergen labeling.

(r) Any other condition that creates an imminent or substantial threat to the public health, safety, or welfare.

(2) If the director summarily suspends a license or permit under subsection (1), the licensee or permittee shall be allowed a minimum of 72 hours to demonstrate compliance and obtain reinstatement of the license or permit before scheduling an administrative hearing.

(3) If the department has provided notice to a licensee or permittee as required by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and subsequently determines that summary suspension of the license or permit is necessary to prevent an imminent threat of financial loss to 1 or more producers with whom the licensee or permittee does business, the director may summarily suspend the license or permit. The director shall incorporate the determination in his or her order of summary suspension. The summary suspension may be ordered effective on the date specified in the order or the date of service upon the licensee, whichever is later, and is effective during the proceedings unless rescinded or otherwise modified. The department shall promptly commence and determine the proceedings.

History: 2001, Act 267, Eff. Feb. 8, 2002;—Am. 2008, Act 147, Eff. June 27, 2008.

288.675 Purchasing milk for resale or manufacture into another product; payment to producer; manner and dates; violation; issuance of check.

Sec. 115. (1) A person purchasing milk for resale or manufacture into another product shall pay the producer in a manner and on dates as mutually agreed to by the producers, the dairy plant, and the department. The department shall revoke or deny a license issued under this act for a violation of this subsection.

(2) A dairy plant that produces manufactured dairy products shall not issue a check to the producer unless the name of the person issuing the check is noted on the check.

History: 2001, Act 267, Eff. Feb. 8, 2002;—Am. 2008, Act 147, Eff. June 27, 2008.

288.676 Condition to issuance and maintenance of license; security required; exemption.

Sec. 116. The department shall revoke or deny a license for a dairy plant that produces manufactured dairy products if the licensee or applicant fails to provide 1 of the security devices required as a condition to

issuance and maintenance of a license. As a condition to issuance and maintenance of a license, a dairy plant that produces manufactured dairy products shall provide 1 or more of the security devices described in section 117, 118, or 119. Milk plants that receive milk only from dairy farms under the same sole proprietorship, the same registered partnership, or the same corporate ownership having the same registered name as the milk plant are exempt from the requirements of this section.

History: 2001, Act 267, Eff. Feb. 8, 2002;—Am. 2008, Act 147, Eff. June 27, 2008.

288.677 Audited financial statement.

Sec. 117. (1) A licensee or applicant for a license as a dairy plant not providing a security device under section 118 or 119 shall provide an audited fiscal year end financial statement prepared by a certified public accountant according to generally accepted accounting principles and a quarterly verified financial statement that verifies the licensee's ability to meet the ratio of 1.20:1 for minimum liquidity requirements of current assets to current liabilities.

(2) The audited financial statement, to be filed by the licensee not later than 120 days after the close of the licensee's fiscal year end, shall contain a balance sheet, income statement, equity statement, statement of cash flow, notes to the statements, and any other information required by the department. The department may extend the date for filing the audited financial statement by up to 30 days only upon the written request of the dairy plant or the dairy plant's accountant preparing the statement if the request is made not less than 10 days before the deadline for the filing of the statement. The request shall state the reason for the delay.

(3) The quarterly verified financial statement shall be filed within 60 days after the end of the fiscal quarter to which the statement pertains. The quarterly verified financial statement shall include, but not be limited to, a balance sheet, income statement, and any other information required by the department. The department may require a dairy plant that produces manufactured dairy products to file a supplementary or interim financial statement or provide additional information at any time pertaining to the financial statements filed under this subsection or to specific information requests made by the department. In determining whether the dairy plant has met the minimum liquidity requirement described in this subsection in an audited financial statement or verified financial statement, the department shall exclude all intangible assets and assets the department determines to be of doubtful value and may also exclude nontrade notes; accounts receivable from officers, directors, employees, partners, or stockholders or from members of their families; and notes and accounts receivable from parent organizations, subsidiaries, or affiliates if the department determines them to be of doubtful value.

(4) An applicant for a license that has not been in the business of receiving milk during the preceding 12 months shall only provide a security device other than an audited financial statement for at least the initial 12 months of licensed operation. At the end of the initial 12-month period, the department may allow the dairy plant to utilize an audited financial statement as a security device if the statement meets minimum liquidity requirements of this subsection and if the dairy plant is otherwise in compliance with this act.

History: 2001, Act 267, Eff. Feb. 8, 2002.

288.678 Other forms of security; request for information from financial and insurance services of department of consumer and industry services.

Sec. 118. (1) A licensee or applicant for a license as a dairy plant not providing a security device under section 117 or 119 shall provide any of the following forms of security, in a form and subject to terms and conditions considered necessary by the department, for the benefit of producers who may be damaged by a default in payment, the value of which shall be in an amount determined by the department to be the greater of the value of the greatest milk receipts that the dairy plant has received within a consecutive 30-day period during that dairy plant's most recent fiscal year or the value of the greatest milk receipts that the dairy plant is anticipated to receive during a consecutive 30-day period within the licensing period:

(a) A commercial surety bond made payable to the department on a form provided by or acceptable to the department and subject to cancellation only after written notice to the department at least 90 days before cancellation. The commercial surety bond shall be issued by a surety company authorized to do business in this state and conditioned upon the faithful and proper discharge of the duty to pay a producer, when payment is due as provided for in section 115, for milk received by the dairy plant.

(b) A certificate of deposit or money market certificate that is issued or endorsed to the department and that cannot be canceled or redeemed, or from which funds cannot be transferred or withdrawn, without the written authorization of the department. The certificate shall be from a financial institution authorized to do business in this state whose deposits are federally insured.

(c) Stocks, bonds, or securities acceptable to the department that are issued or endorsed to the department and readily convertible to cash by the department and subject to redemption or sale only upon written

permission of the department.

(d) An irrevocable letter of credit filed as security on a form provided by or acceptable to the department with the department and made payable to the department issued by a financial institution acceptable to the department and licensed to do business in this state. The letter of credit shall provide for automatic renewal unless, at least 90 days before the scheduled renewal date, the issuing financial institution gives written notice received by the department that the letter of credit is not to be renewed. The irrevocable letter of credit shall provide that in the event the financial institution gives timely notice of nonrenewal as set forth above, the department is permitted to draw on the letter of credit to cover any potential losses, whether known or unknown at the time of the draw, that have been or may be incurred on behalf of the producers. The money drawn from the letter of credit shall be held in an interest-bearing account by the department. Money in the account in excess of the total dollar amount of the approved claims after an adequate time period to discover and approve or disapprove claims shall be repaid to the bank. The excess money is to be paid to the milk plant if the bank has provided the department with a waiver of payment to the bank and has authorized payment to the dairy plant on a form approved by the department.

(e) Life insurance policies acceptable to the department that are issued or endorsed to the department that prohibit the insurer from making any payment to the policy beneficiaries unless the insurer first pays the equivalent of the cash surrender value to the department and provides that the cash surrender value is paid to the department upon cancellation or surrender of the policy.

(f) Other security acceptable to the department.

(2) The department may request information from the office of financial and insurance services of the department of consumer and industry services regarding the financial viability of the financial or insurance institution issuing any security device described in subsection (1).

History: 2001, Act 267, Eff. Feb. 8, 2002.

288.679 Cash prepayments.

Sec. 119. A licensee or applicant for licensure as a dairy plant not providing a security device under section 117 or 118 shall provide an agreement in which the dairy plant prepays for its milk supply by means of cash payments before or at the time the milk is received at the plant.

History: 2001, Act 267, Eff. Feb. 8, 2002;—Am. 2008, Act 147, Eff. June 27, 2008.

288.680 Cancellation or modification of security by dairy plant; notice required; manner; increase in amount due and accrued; applicability to dairy products in interstate commerce; disclosure of financial and product information; audited financial statement; complaint by producer requesting independent audit; filing; costs; suspension or revocation of dairy plant license; reinstatement.

Sec. 120. (1) A dairy plant that produces manufactured dairy products shall not cancel or modify a security device unless written notice is given to the department by the dairy plant at least 90 days before the date of cancellation or modification and approval is given by the department for the cancellation or modification. The dairy plant shall send the notice of cancellation or modification to the department by certified mail.

(2) A dairy plant that produces manufactured dairy products shall notify the department at least 30 days before receiving dairy products that will increase the amount due and accrued from the dairy plant to an amount greater than the amount represented as a basis for the issuance of the license.

(3) Sections 116 to 121 and 123 do not apply to the sale of dairy products or manufactured dairy products in interstate commerce to an out-of-state purchaser not licensed under this act. The protection provided by these sections is available to a producer in another state selling dairy products to a licensee in this state.

(4) Except as otherwise provided for in subsection (5), financial and product information filed by a dairy plant that produces manufactured dairy products is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Upon receipt of a written request, the department shall provide a producer a copy of the most recent audited financial statement of the dairy plant that produces the dairy products of that producer.

(6) A producer may file a written complaint with the department requesting an independent audit regarding the ability of a dairy plant that files an audited financial statement as a security device and that produces the dairy products of the producer to meet the minimum liquidity requirement described in section 117. The complaint shall be accompanied by a certified check in the amount of \$100.00 and a signed document guaranteeing full payment for the audit if required under subsection (7). Upon receipt of the complaint and check, the department shall notify the dairy plant and advise the dairy plant of the choice of either having an independent audit conducted or of voluntarily modifying the security device to either of the alternatives provided for in section 118 or 119.

(7) A dairy plant that requests an independent audit under subsection (6) shall bear the cost of that audit if the department determines that the independent audit establishes the dairy plant's inability to meet the minimum liquidity requirement described in section 117. The complainant shall bear the cost of the audit if the department determines that the audit establishes that the dairy plant meets the minimum liquidity requirement described in section 117.

(8) If the dairy plant fails to meet the minimum liquidity requirement described in section 117, the department shall return to the complainant the fee described in subsection (6) and suspend or revoke the dairy plant's license in the manner provided for in section 113. The department may reinstate a suspended license or reissue a revoked license if the dairy plant provides the department with a security device described in section 118 or 119. If the department determines that the dairy plant meets the minimum liquidity requirement described in section 117, the \$100.00 fee shall be forfeited to the dairy plant.

History: 2001, Act 267, Eff. Feb. 8, 2002.

288.681 Change in security device; circumstances requiring dairy plant to provide change or increase; notice sent by department to dairy plant; notice to producers.

Sec. 121. (1) A dairy plant that produces manufactured dairy products may request a change in its security device at any time. The department shall allow the change in the dairy plant's security device if all requirements for the new security device have been met and all producers doing business with the licensee have been notified by the department.

(2) The department may require a dairy plant to provide a change or increase in a security device if the department has reason to believe, after reviewing relevant financial information, that 1 or more of the following circumstances exist:

(a) The dairy plant no longer meets the minimum liquidity requirement of this act.

(b) The dairy plant can no longer make payments in the manner provided for in section 115(1).

(c) The value of the dairy plant's security device falls below the requirements due to depreciation in the value of the security, an increase in the maximum liability to producers, or the cancellation or change of the security device as specified in this act.

(3) The department shall send written notice by certified mail to the dairy plant stating the reasons for the demand for change or increase in a security device and setting the date for providing the changed or increased security device.

(4) The department shall notify all producers shipping dairy products to a dairy plant that produces manufactured dairy products of the decision to require the dairy plant to modify or change a security device. The notice required under this subsection shall be provided within 5 days after the department's issuance of the order to require another security device.

History: 2001, Act 267, Eff. Feb. 8, 2002.

288.682 Breach of obligation; proof of claim or evidence of default; order requiring filing of claims by creditors; publication of notice; notice of allowance or disallowance; action by attorney general; distribution; other liens, security, or priority.

Sec. 122. (1) A person injured by the breach of an obligation secured by a security device described in section 117, 118, or 119, including a producer and a person representing a commodity check-off program, may file with the department a verified proof of claim or other evidence of default. Upon receipt of a verified proof of claim or other evidence of default, the department may issue an order requiring each interested creditor, as may be known to the department, to file a verified proof of claim before a certain date or be barred from participating in any recovery made by the department.

(2) The department shall provide notice of the entry of an order issued under subsection (1) by posting a copy of the order on the premises described in the license and by publication in accordance with the Michigan court rules that govern service of process by publication. Publication shall be completed at least 30 days before the final date for the filing of claims.

(3) The department shall make the necessary audit and issue an order allowing or disallowing each claim presented. Within 30 days of that order, the department shall send to the principal and surety, by certified mail, notice of allowance or disallowance and request for the payment. The department shall demand and may collect and receive from the licensee, or from the surety or sureties of the licensee the amount determined to be necessary to satisfy the claims with interest at the judgment rate computed from the date of loss. The department may request that the department of attorney general commence an action for that purpose in a court of competent jurisdiction. If the attorney general prevails in whole or in part, the court shall award interest from the date of loss at the judgment rate. Upon receipt of money paid in partial or complete satisfaction of a claim as provided in this section, the department shall distribute to the claimant in accordance

with the order allowing the claim, in full or proportionally.

(4) This section does not affect or impair any other lien, security, or priority for the claim or judgment.

History: 2001, Act 267, Eff. Feb. 8, 2002.

288.683 Notice to producers of type of security device used; form; qualifications for dairy plant license.

Sec. 123. The department shall notify producers delivering dairy products to a licensed dairy plant that produces manufactured dairy products of the type of security device used for the benefit of producers and shall notify producers any time a license is issued, renewed, or modified. The notice sent by the department shall substantially conform to the following:

"Michigan law requires dairy plant licensees to demonstrate a reasonable degree of financial responsibility to the Michigan department of agriculture. This act is designed to provide reasonable assurance that producers will be paid for their milk; however, it does not guarantee that producers will be paid. Each producer has some responsibility for determining the credit-worthiness of the dairy plant to which the producer is selling milk. A dairy plant licensee may qualify for a license by doing 1 of the following:

(a) Filing financial statements audited by a certified public accountant with the department demonstrating that the dairy plant meets the minimum liquidity requirement.

(b) Filing security with the department in an amount determined by the department to be the greater of the following:

(1) The value of the greatest milk receipts that the dairy plant received within a consecutive 30-day period during that dairy plant's most recent fiscal year.

(2) The greatest milk receipts that the dairy plant is anticipated to receive during a 30-day period within the licensing period.

(c) _____, (name of dairy plant licensee) is currently licensed on the basis of its audited financial statement meeting the minimum liquidity requirement of a current ratio of at least 1.20 to 1 current assets to current liabilities. The licensee's most recent year-end financial statement audited by the firm of _____ (auditor's name) meets the following minimum liquidity requirement,

(or)

_____ (name of dairy plant licensee) has filed security with the department to secure payment to producers. The maximum amount of security is the amount determined to be the greater of the following:

(1) The value of the greatest milk receipts that the dairy plant received within a consecutive 30-day period during that dairy plant's most recent fiscal year.

(2) The greatest milk receipts that the dairy plant is anticipated to receive within a 30-day period within the licensing period, whichever is greater.

The security filed is in the following form or forms and in the amount of: _____."

History: 2001, Act 267, Eff. Feb. 8, 2002.

288.684 Conduct as misdemeanor; penalty.

Sec. 124. A person, alone or through an agent, as the agent of any other person, or as the officer or agent of any firm or corporation, who does any of the following is guilty of a misdemeanor punishable by a fine of not less than \$250.00 and not more than \$2,500.00 or imprisonment for not more than 90 days, or both:

(a) Violates this act or a rule promulgated under this act.

(b) Provides false or fraudulent information on an application or in response to a request from the director.

History: 2001, Act 267, Eff. Feb. 8, 2002.

288.685 Selling milk found positive for violative drug residues; sanctions and administrative fines.

Sec. 125. (1) The director shall impose upon a producer who violates this act by selling or offering for sale milk which has been found positive for violative drug residues on a test performed pursuant to sections 131 and 132 the following sanctions and administrative fines and provide notice and the opportunity for an administrative hearing:

(a) The following in the case of a first violative drug residue within a 12-month period:

(i) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(ii) The producer shall pay an administrative fine of \$50.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like

amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load.

(b) The following in the case of a second violative drug residue within a 12-month period:

(i) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(ii) The producer shall pay an administrative fine of \$200.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load.

(iii) The producer will be required to test all milk prior to shipment with a drug residue test acceptable to the director for a minimum of 12 months and must retain records of these tests for a minimum of 18 months.

(iv) The producer will be required to maintain complete drug treatment records for all lactating or near lactating dairy animals for a minimum of 12 months and shall retain records of these treatments for a minimum of 18 months.

(c) The following in the case of a third or any additional violative drug residue within a 12-month period:

(i) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(ii) The producer shall pay an administrative fine of \$500.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets its own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load.

(iii) The suspension of the producer's permit for a period not to exceed 60 days after notice and the opportunity for an administrative hearing before the department.

(iv) The producer will be required to test all milk prior to shipment with a drug residue test acceptable to the director for a minimum of 12 months and must retain records of these tests for a minimum of 18 months.

(v) The producer will be required to maintain complete drug treatment records for all lactating or near lactating dairy animals for a minimum of 12 months and must retain records of these treatments for a minimum of 18 months.

(2) The director may accept verification, on forms acceptable to the director, from the violative producer's milk marketing cooperative or purchaser of milk as satisfying the penalty requirements and may verify the information.

(3) The disposal method and location of disposal for violative drug residue milk on the milk tank truck shall be immediately reported to the director, by the party making the disposal, on forms provided by and acceptable to the director.

(4) The director shall investigate the cause of the violative drug residue and shall discuss drug residue avoidance control measures with the violative producer.

(5) Selling or offering for sale milk which has been found violative for drug residues is determined by either of the following criteria:

(a) When milk is picked up from a milk producer by a milk tank truck and not commingled with milk from other producers, the milk becomes subject to possible drug residue penalties at the point the milk tank truck leaves the farm with the milk.

(b) When milk is picked up from a milk producer by a milk tank truck and commingled with milk from other producers, it becomes subject to possible drug residue penalties at the point of commingling.

(6) Section 124 applies to a producer who violates this act by selling or offering for sale milk which tests positive for violative drug residues on a test performed pursuant to sections 131 and 132 only under the following circumstances:

(a) The producer fails to pay the administrative fine required by subsection (1) in compliance with subsections (8) and (9).

(b) The producer has been fined under subsection (1) within the preceding 12-month period 3 or more times.

(7) After notice and an opportunity for an administrative hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may revoke or suspend a license or permit issued under this act for any violation of this act or a rule promulgated under this act. Except as otherwise provided for under subsection (1), upon finding that a person violated a provision of this act or rule promulgated under this act, the director may impose an administrative fine of not more than \$1,000.00 and the actual costs of the investigation of the violation.

(8) The administrative fines imposed under subsection (1) or (7) shall be paid to the department within 10 days after notification of the violation and fine or within 10 days after notification of adverse findings following a hearing or appeal, or both. The administrative fines received by the department under this section shall be deposited into the dairy and food safety fund as provided for in section 110(23).

(9) Failure to pay a load contamination or any other administrative fine imposed under this section within 120 days without making acceptable arrangements for payment of the fine may result in license revocation or permit suspension or court action, following notice and the opportunity for an administrative hearing.

(10) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in court of competent jurisdiction to recover the fine.

(11) A decision of the director under this section is subject to judicial review as provided by law.

(12) This section does not require the director to issue an administrative fine or initiate court action for minor violations of this act whenever the department believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning.

History: 2001, Act 267, Eff. Feb. 8, 2002;—Am. 2008, Act 147, Eff. June 27, 2008;—Am. 2010, Act 42, Imd. Eff. Mar. 31, 2010.

288.686 Restraining order.

Sec. 126. In addition to the remedies otherwise provided in this act, the department may apply to circuit court to grant a temporary or permanent injunction restraining any person from violating this act or any rule promulgated pursuant to this act, irrespective of whether there exists an adequate remedy at law.

History: 2001, Act 267, Eff. Feb. 8, 2002.