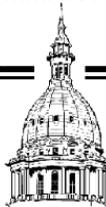




Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5879 (Substitute H-2 as passed by the House)
House Bill 5880 (Substitute H-2 as passed by the House)
Sponsor: Representative Michael L. Green
House Committee: Agriculture and Forestry
Senate Committee: Agriculture and Forestry

Date Completed: 5-23-96

CONTENT

House Bill 5879 (H-2) and House Bill 5880 (H-2) would amend the Manufacturing Milk Act and the Fluid Milk Act, respectively, to do substantially the following in each Act:

- Specify additional information that license applicants would have to provide to the Department of Agriculture, including the names of persons owning at least 35% of a plant's equity; a projection of receipts; a list of producers; and, the name of the financial institution used for issuing milk checks.
- Provide for annual licensure renewal under each Act as well as permit the issuance of a temporary license under the Manufacturing Milk Act.
- Provide for the revocation or suspension of a license if a licensee failed to meet certain requirements, including providing a security device as required under the bills, or knowingly provided false information to the Department.
- Provide for financial status monitoring, including requiring audited year end financial statements and verified quarterly statements.
- Specify certain forms of security, such as a commercial surety bond, a certificate of deposit, stocks, and life insurance policies, that a milk or dairy plant could provide as a security device.
- Permit the Department to require a dairy or milk plant to change or increase a security device if the Department believed that the plant could not meet liquidity requirements or could no longer

make payments, or the value of the security device fell below the Act's requirements.

- Require the Department to notify dairy producers any time a license under the Act was issued, renewed, or modified.
- Establish misdemeanor penalties for a person who provided false or fraudulent information on an application or in response to a Department request.

The bills would take effect October 1, 1996.

Licensure

Under the Fluid Milk Act, a person cannot produce, transport, process, label, or sell Grade A milk products unless licensed under the Act.

The Manufacturing Milk Act requires that before operating a dairy plant, a person owning or intending to operate a dairy plant that is not licensed by the Department of Agriculture under other laws regulating dairy plants must obtain a license from the Department Director. The person must complete an application form furnished by the Director that requires the person to identify the ownership and location of the dairy plant and provide other information required by the Director. The Director may issue a temporary license. The bills would retain the licensing requirements and add the following.

An applicant for an initial license either as a milk plant or a dairy plant that produced manufactured dairy products would have to apply to the Department on a form it supplied and provide a statement that contained the following:

- The plant's correct legal name and any name by which the plant was doing business; and, if the plant were a person not an individual, the name of each officer and director, and partner, member, or owner owning more than 35% of equity or stock.
- The location of the plant to which the statement pertained and the name of the responsible person who could be contacted at that location.
- The anticipated value of greatest milk receipts the dairy plant expected to receive during a consecutive 30-day period within the licensing period.
- A list of producers, including names, mailing addresses, and Department producer permit number, with whom the dairy or milk plant intended to do business; within 90 days after becoming licensed for the first time, the plant would have to send an updated list to the Department.
- The name of the financial institution through which milk checks were to be issued to producers.

License Renewal

A dairy or milk plant would have to renew annually a license issued under the Act by applying to the Department at least 30 days before the expiration of the existing license. The anniversary date of a license for a plant that was providing a financial statement as a security device would have to be 130 days after the close of the licensee's fiscal year. All other licenses issued under the Act would expire on June 30 following the date of issuance. The dairy or milk plant would have to apply for license renewal on a form supplied by the Department and provide a statement that contained the same information, as required on the initial licensure application, on the plant's name and the name of its director and officers; the plant's location; and, the name of financial institution that would issue milk checks to producers. In addition, information would have to be provided on the greater of either the value of the greatest milk receipts that the dairy or milk plant received within a consecutive 30-day period during its last license year or the greatest milk receipts that the dairy or milk plant was anticipated to received during a consecutive 30-day period within the licensing period, and a complete list of producers, including names, mailing addresses, and Department producer permit number, with whom the dairy or milk plant was doing business.

Temporary License

The Department could issue a temporary license under the Manufacturing Milk Act if it determined that the issuance would not be detrimental to the protection of the public health, safety, or welfare or would not cause an imminent threat of financial loss to producers.

License Suspension, Denial

Before revoking a license, the Department is required under the Manufacturing Milk Act to provide the licensee with written notice that identifies the intent to revoke, the grounds for revocation, and the time and place of a hearing. The Act also specifies procedures for notifying the affected licensee and requires a hearing to be conducted as prescribed under the Administrative Procedures Act. House Bill 5879 (H-2) would apply these provisions to the suspension or denial of a license. In addition, the Department would have to notify in writing each producer with whom a dairy plant did business at least five days before the date of required hearing.

Under the Fluid Milk Act, a license may be revoked or suspended if the licensee does not meet the Act's requirements on taking samples of the milk, meeting temperature requirements, or reporting on the weight or temperature of the milk. The bill would retain these provisions and add the following.

Under each bill, the Director could revoke or suspend a license upon determining that the licensee had done one or more of the following:

- Failed to provide information required to be supplied to the Department under the Act or information requested by the Department under the bill's provisions on security devices.
- Failed to provide a security device in an amount and manner requested by the Department under the bill.
- Knowingly provided false or fraudulent information or made a material misrepresentation on an application.
- Knowingly provided materially false or fraudulent information or made a material misrepresentation in response to a request for information by the Department.
- Failed to pay a producer in the manner provided in the bill.

- For a dairy plant, knowingly possessed, sold, offered for sale, or purchased any milk or cream for use in a human food product that had been condemned under the Manufacturing Milk Act.
- Violated the Act or a rule promulgated under it.

House Bill 5880 (H-2) also would require the Department under the Fluid Milk Act to provide a licensee with written notice as currently required for licensees under the Manufacturing Milk Act. Under the bills, a person whose license had been suspended, revoked, or denied would have to discontinue immediately operation of the business for which the license had been issued. A person whose license had been suspended or revoked would not be eligible for a license until the Department determined that the violation had been remedied.

The bills would require the Department to suspend summarily the license of a licensee if the Department determined that a suspension was necessary to protect the health, safety, or welfare of the public. If the Department had provided notice to a licensee and subsequently determined that summary suspension of a license was necessary to prevent an imminent threat of financial loss to one or more producers with whom the licensee did business, the Department could summarily suspend the licensee's license. In either case, the Department would be required to incorporate the determination in its order of summary suspension. Summary suspension could be ordered effective on the date specified in the order or the date of service upon the licensee, whichever was later, and was effective during the proceedings. The proceedings would have to be promptly commenced and determined.

Milk Producer Payments

Currently under the Acts, a person purchasing milk for resale or manufacture into another product must pay the milk's producer by the dates specified in the Acts. Violation of these provisions may result in refusal to issue a license or in the revocation of a license. The bills would revise payment provisions to require a milk purchaser to pay the milk's producer an advance payment on or before the last day of each month for milk received during the first 15 days of the month and a final payment on or before the 15th day after the end of the month for milk received during the preceding month. The Department would have to deny, in addition to revoke, a license for a violation of this provision. A dairy plant that produced manufactured dairy products could not issue a

check to the producer unless the name of the dairy plant were noted on the check.

Examination of Records

The Department could examine the books, records, and accounts of a milk plant or dairy plant that produced manufactured dairy products if the dairy plant had not responded to requests from the Department pursuant to either bill.

Security Devices

Currently, the Department must issue a license to a milk plant or a dairy plant that produces manufactured dairy products if one of the following security devices is filed with the Director, and must revoke or deny a license if the licensee or applicant fails to provide one of these devices: an audited financial statement and new year end certified audits that verify the licensee's ability to meet specified ratio minimum liquidity requirements of current assets to current liabilities. Under the bills, the Department could revoke or deny a license for a dairy plant that produced manufactured dairy products if the licensee or applicant failed to provide one of the security devices required as a condition to licensure. The bills specifies that the audited financial statement to be provided as a security device would have to be prepared according to generally accepted accounting principals, and would require a quarterly verified financial statement, instead of new year end certified audits.

Under the bills, the audited financial statement would have to be filed not more than 120 days after the close of the licensee's fiscal year end. The audited year end financial statement would have to 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 could extend the date for filing the audited year end financial statement by up to 30 days only upon the written request of the dairy or milk plant or the plant's accountant preparing the statement if the request were made at least 10 days before the deadline for the filing of the statement. The request would have to state the reason for the delay. The verified quarterly financial statements would have to be filed within 60 days after the end of the fiscal quarter to which the statement pertained. The verified quarterly financial statement would have to include, but not be limited to, a balance sheet, income statement, and any other information required by the Department.

The Department could require a milk plant dairy plant that produced 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 provision or to specific information requests made by the Department. In determining whether the licensee had met the minimum liquidity requirement in an audited or verified financial statement, the Department would have to exclude all intangible assets and assets the Department determined to be of doubtful value and also could exclude nontrade notes; accounts receivable from officers, directors, and employees, partners, or stockholders, or from members of their families; and notes and accounts receivable from parent organizations, subsidiaries, or affiliates if the Department determined them to be of doubtful value. An applicant for a license that had not been in the business of receiving milk during the preceding 12 months would have to provide only 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 could allow the licensee to use an audited financial statement as a security device if the statement met the bill's minimum liquidity requirements and if the licensee otherwise complied with the Act.

A milk plant or a dairy plant that produced manufactured dairy products also could provide as a security device 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 could be damaged by default in payment:

- A commercial surety bond made payable to the Department and subject to cancellation only after written notice to the Department at least 90 days before cancellation.
- A certificate of deposit or money market certificate that was issued or endorsed to the Department and that could not be canceled or redeemed, or funds transferred or withdrawn, without the written authorization of the Department. The certificate would have to be from a financial institution authorized to do business in the State whose deposits were insured by the Federal Deposit Insurance Corporation.
- Stocks, bonds, or securities acceptable to the Department that were 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.

- An irrevocable letter of credit filed as security with the Department and made payable to it issued by a financial institution acceptable to the Department and licensed to do business in the State. The letter of credit would have to provide for automatic renewal unless, at least 90 days before the scheduled renewal date, the issuing financial institution gave written notice that the letter of credit could not be renewed. The Department could request information from the Financial Institutions Bureau of the Department of Consumer and Industry Services regarding the financial viability of the financial institution.
- Life insurance policies acceptable to the Department that were issued or endorsed to the Department so that the insurer could not make any payment to the policy beneficiaries unless the insurer first paid the equivalent of the cash surrender value to the Department and so that the cash surrender value was paid to it upon cancellation or surrender of the policy.

The value of the security device would have to be in an amount determined by the Department to be the greater of the value of the greatest milk receipts that the plant had 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 was anticipated to receive during a consecutive 30-day period within the licensing period. The bills would delete provisions that currently permit as a security device cash in amounts specified in the Acts.

A milk plant or dairy plant that produced manufactured dairy products could not cancel or modify a security device unless written notice were given to the Department by the dairy plant at least 90 days before the date of cancellation or modification. The dairy plant would have to send the notice of cancellation or modification to the Department by certified mail.

The Department could require a dairy or milk plant to provide a change or increase in a security device if the Department had reason to believe after reviewing relevant financial information that the dairy plant no longer met the minimum liquidity requirements of the Act, that the dairy plant could no longer make payments in the manner provided, or that the value of the dairy plant's security device fell below the requirements of House Bill 5879 (H-2) 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. The Department would have to send written notice by certified mail to the dairy or milk 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.

The Department would have to notify all producers shipping dairy products to a dairy plant that produced manufactured dairy products or shipping milk to a milk plant of the decision to require the plant to modify or change a security device. The required notice would have to be provided within five days after the Department issued the order to require another security device.

Producer Notification

The Department would have to notify producers delivering dairy products to a licensed dairy plant of the type of security device used for the benefit of producers and would have to notify producers any time a license was issued, renewed, or modified. The Departmental notice would have to conform substantially to the notice described in the bill concerning plant licensees demonstrating to the Department a reasonable degree of financial responsibility.

Penalties

Under the bills, a person who provided materially false or fraudulent information on an application or in response to a request from the Department would be guilty of a misdemeanor, punishable by a fine of at least \$50 and not more than \$500 and/or imprisonment for up to 90 days.

MCL 288.101 et al. (H.B. 5879)
288.22 et al. (H.B. 5880)

Legislative Analyst: L. Arasim

FISCAL IMPACT

The Department would incur minimal increased costs for added mailings.

Fiscal Analyst: A. Rich

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.