



# HOUSE BILL No. 5880

May 9, 1996, Introduced by Reps. Lowe, Green, Gernaat, Goschka, Hill, Rhead, Llewellyn, Horton, Cropsey, Kukuk, Gnodtke and McManus and referred to the Committee on Agriculture and Forestry.

A bill to amend sections 2, 4, 4a, 4b, and 9 of Act No. 233 of the Public Acts of 1965, entitled as amended

"Fluid milk act of 1965,"

sections 2 and 9 as amended by Act No. 91 of the Public Acts of 1996 and sections 4a and 4b as amended by Act No. 5 of the Public Acts of 1993, being sections 288.22, 288.24, 288.24a, 288.24b, and 288.29 of the Michigan Compiled Laws; and to add sections 1a, 2a, and 4c.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 4, 4a, 4b, and 9 of Act No. 233 of  
2 the Public Acts of 1965, sections 2 and 9 as amended by Act  
3 No. 91 of the Public Acts of 1996 and sections 4a and 4b as  
4 amended by Act No. 5 of the Public Acts of 1993, being  
5 sections 288.22, 288.24, 288.24a, 288.24b, and 288.29 of the

1 Michigan Compiled Laws, are amended and sections 1a, 2a, and 4c  
2 are added to read as follows:

3 SEC. 1A. AS USED IN THIS ACT:

4 (A) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.

5 (B) "PERSON" MEANS, EXCEPT AS OTHERWISE PROVIDED IN SECTION  
6 2, AN INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, COOPER-  
7 ATIVE, ASSOCIATION, OR CORPORATION.

8 (C) "PRODUCER" MEANS A PERSON WHO OWNS OR OPERATES A DAIRY  
9 FARM IN THIS STATE AND SELLS AND DISTRIBUTES MILK PRODUCED ON  
10 THAT FARM.

11 (D) "PRODUCER AGENT" MEANS A PERSON WHO MARKETS MILK ON  
12 BEHALF OF A PRODUCER.

13 Sec. 2. (1) A person shall not produce, transport, process,  
14 label, or sell grade A milk and grade A milk products unless  
15 licensed under this ~~section~~ ACT. An applicant for a license  
16 shall apply to the department ~~of agriculture~~ on a form supplied  
17 by the department ~~of agriculture~~ and pay the appropriate fee as  
18 provided in this section. A licensee may annually renew a  
19 license issued under this section by applying to the department  
20 ~~of agriculture~~ at least 10 days before the expiration of the  
21 existing license. The anniversary date of a license for a milk  
22 plant providing a current ~~certified~~ audited financial statement  
23 as a means of compliance with producer security requirements is  
24 ~~+30~~ 150 days after the close of the licensee's fiscal year ~~—~~  
25 AS that date ~~being~~ IS determined by the records of the  
26 department. ~~of agriculture.~~ The department ~~of agriculture~~ may  
27 issue a renewal license for a milk plant providing a current

1 ~~certified~~ AUDITED financial statement pending the ~~department~~  
2 ~~of agriculture's audit~~ DEPARTMENT'S REVIEW of that AUDITED  
3 financial statement except that if the department ~~of~~  
4 ~~agriculture~~ determines, after ~~an audit~~ THE REVIEW of that  
5 financial statement, ~~that~~ the financial statement does not meet  
6 the producer security requirements, ~~then~~ the department ~~of~~  
7 ~~agriculture may~~ SHALL summarily revoke the license without  
8 refunding the license fee. All other licenses issued under this  
9 section expire on June 30 following the date of issuance. AN  
10 APPLICANT FOR AN INITIAL LICENSE SHALL PROVIDE TO THE DEPARTMENT  
11 A LIST OF PRODUCERS OR PRODUCER AGENTS WITH WHOM THE MILK PLANT  
12 INTENDS TO DO BUSINESS EXCEPT THAT NOT LATER THAN 90 DAYS AFTER  
13 BECOMING LICENSED FOR THE FIRST TIME, A LICENSEE SHALL SEND AN  
14 UPDATED LIST TO THE DEPARTMENT. AS A CONDITION TO RENEWAL OF A  
15 LICENSE, THE LICENSEE SHALL PROVIDE TO THE DEPARTMENT A COMPLETE  
16 LIST OF PRODUCERS AND PRODUCER AGENTS WITH WHOM THE MILK PLANT IS  
17 DOING BUSINESS. THE LIST REQUIRED UNDER THIS SUBSECTION SHALL  
18 INCLUDE BOTH THE NAME AND MAILING ADDRESS OF THE PRODUCERS AND  
19 PRODUCER AGENTS.

20 (2) Subject to subsection (3), a milk plant, receiving sta-  
21 tion, or transfer station shall pay an annual fee of \$5.00 for  
22 each dairy farm whose milk is first received at the milk plant,  
23 ~~or~~ receiving station, or transfer station, plus an additional  
24 \$10.00 per farm shipping to it if the milk plant, ~~or~~ receiving  
25 station, or transfer station operator does not maintain an ade-  
26 quate number of industry personnel who are certified to conduct  
27 farm supervision and who do not, in fact, conduct farm

1 supervision. The department ~~of agriculture~~ shall not levy this  
2 additional \$10.00 per farm fee if a cooperative association is  
3 ~~doing~~ CONDUCTING the farm supervision for the milk plant  
4 operator. The department ~~of agriculture~~ shall not charge the  
5 license fee DESCRIBED IN THIS SUBSECTION to the producer OR  
6 PRODUCER AGENT.

7 (3) Each milk plant that is a first receiving point for milk  
8 shall pay a \$50.00 licensing fee ~~. This fee is~~ in addition to  
9 the annual license fee required in subsection (2).

10 (4) Each milk distributor or grade A milk plant operator  
11 shall pay an annual fee of \$10.00 for each delivery vehicle  
12 operated. ~~This~~ THE fee IMPOSED UNDER THIS SUBSECTION is the  
13 sole distributor or vendor license fee required by the state or  
14 ~~any~~ A POLITICAL subdivision of the state ~~where~~ IF the princi-  
15 pal purpose of the vehicle is the delivery and distribution of  
16 the products regulated by this act.

17 (5) Each certified industry fieldman shall pay an annual  
18 LICENSE fee of \$10.00 for a license to conduct certified farm  
19 inspections.

20 (6) A person shall not pick up grade A milk in a farm pickup  
21 milk tank from a farm bulk milk tank without a license issued by  
22 the department ~~of agriculture~~ under this section or under sec-  
23 tion 3d of THE MANUFACTURING MILK ACT, Act No. 222 of the Public  
24 Acts of 1913, being section 288.103d of the Michigan Compiled  
25 Laws. The license fee is \$20.00 PER YEAR. ~~Every~~ EACH appli-  
26 cant for a license shall be examined by the department ~~of~~  
27 ~~agriculture~~ under the provisions of this act and rules

1 promulgated pursuant to this act to determine his or her  
2 qualifications to evaluate milk in a farm bulk milk tank, to  
3 accurately measure milk in a farm bulk milk tank, to obtain rep-  
4 resentative samples of milk from a farm bulk milk tank, to prop-  
5 erly handle and deliver the samples, and to pick up milk. -A  
6 ~~license issued under this act or section 3d of Act No. 222 of the~~  
7 ~~Public Acts of 1913 may be revoked or suspended if the person~~  
8 ~~licensed does any of the following:~~

9 ~~(a) Fails to agitate grade A milk in the farm bulk milk tank~~  
10 ~~before taking a sample for delivery to the milk plant or the~~  
11 ~~department.~~

12 ~~(b) Fails to take the sample for analysis in accordance with~~  
13 ~~the procedures established by departmental rules.~~

14 ~~(c) Picks up grade A milk the temperature of which exceeds~~  
15 ~~45 degrees Fahrenheit.~~

16 ~~(d) Fails to accurately report the weight or temperature of~~  
17 ~~grade A milk picked up from a farm bulk milk tank.~~

18 (7) As used in this section, "person" means a natural person  
19 operating his or her own farm pickup milk tank or the farm pickup  
20 milk tank of another person, who is actually engaged in picking  
21 up milk in a farm pickup milk tank from farm bulk milk tanks.

22 (8) Each milk plant or transfer station shall pay an annual  
23 LICENSE fee of \$25.00 for each location which is not a first  
24 receiving point for dairy farm milk.

25 (9) The state or ~~any~~ A POLITICAL subdivision of the state  
26 shall not levy special license fees or taxes on ~~any~~ 1 OR MORE  
27 of the persons or businesses described in this section ~~7~~ except

1 for taxes or fees that are generally levied on persons or  
2 businesses other than dairy plants and dairy plant operators.

3 SEC. 2A. (1) EXCEPT AS OTHERWISE PROVIDED FOR IN  
4 SUBSECTION (6), BEFORE SUSPENDING OR REVOKING A LICENSE, THE  
5 DEPARTMENT SHALL PROVIDE THE AFFECTED LICENSEE WITH A WRITTEN  
6 NOTICE THAT IDENTIFIES ALL OF THE FOLLOWING:

7 (A) THE INTENT TO SUSPEND OR REVOKE.

8 (B) THE GROUNDS UPON WHICH THE INTENDED SUSPENSION OR REVO-  
9 CATION IS BASED.

10 (C) THE TIME AND PLACE OF HEARING ON THE INTENDED SUSPENSION  
11 OR REVOCATION.

12 (2) THE DEPARTMENT SHALL PERSONALLY SERVE OR SEND BY CERTI-  
13 FIED MAIL TO THE LICENSEE THE NOTICE OF THE HEARING ON THE  
14 INTENDED SUSPENSION OR REVOCATION AT LEAST 10 DAYS BEFORE THE  
15 DATE SET FOR THE HEARING. THE HEARING SHALL BE CONDUCTED IN A  
16 MANNER PRESCRIBED BY THE ADMINISTRATIVE PROCEDURES ACT OF 1969,  
17 ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO  
18 24.328 OF THE MICHIGAN COMPILED LAWS.

19 (3) THE DEPARTMENT MAY REVOKE OR SUSPEND A LICENSE ISSUED  
20 UNDER THIS ACT UPON DETERMINING THAT THE LICENSEE HAS DONE 1 OR  
21 MORE OF THE FOLLOWING:

22 (A) FAILED TO PROVIDE INFORMATION REQUIRED TO BE SUPPLIED TO  
23 THE DEPARTMENT UNDER THIS ACT OR INFORMATION REQUESTED BY THE  
24 DEPARTMENT UNDER SECTION 4A(5).

25 (B) FAILED TO PROVIDE A SECURITY DEVICE IN THE AMOUNT AND  
26 MANNER REQUESTED BY THE DEPARTMENT UNDER SECTION 4A(18).

1 (C) KNOWINGLY PROVIDED FALSE OR FRAUDULENT INFORMATION OR  
2 MADE A MATERIAL MISREPRESENTATION ON AN APPLICATION.

3 (D) KNOWINGLY PROVIDED FALSE OR FRAUDULENT INFORMATION OR  
4 MADE A MATERIAL MISREPRESENTATION IN RESPONSE TO A REQUEST FOR  
5 INFORMATION BY THE DEPARTMENT.

6 (E) FAILED TO PAY A PRODUCER OR PRODUCER AGENT IN THE MANNER  
7 PROVIDED FOR IN SECTION 3E(1).

8 (F) FAILED TO AGITATE GRADE A MILK IN THE FARM BULK MILK  
9 TANK BEFORE TAKING A SAMPLE FOR DELIVERY TO THE MILK PLANT OR THE  
10 DEPARTMENT.

11 (G) FAILED TO TAKE THE SAMPLE FOR ANALYSIS IN ACCORDANCE  
12 WITH THE PROCEDURES ESTABLISHED BY RULES PROMULGATED BY THE  
13 DEPARTMENT.

14 (H) PICKED UP GRADE A MILK THE TEMPERATURE OF WHICH EXCEEDS  
15 45 DEGREES FAHRENHEIT.

16 (I) FAILED TO ACCURATELY REPORT THE WEIGHT OR TEMPERATURE OF  
17 GRADE A MILK PICKED UP FROM A FARM BULK MILK TANK.

18 (J) IN THE CASE OF A LICENSEE THAT IS A FIRST RECEIVING  
19 POINT FOR MILK, FAILED TO PROVIDE A SECURITY DEVICE DESCRIBED IN  
20 SECTION 4A(2).

21 (K) VIOLATED THIS ACT OR A RULE PROMULGATED UNDER THIS ACT.

22 (4) A PERSON WHOSE LICENSE HAS BEEN SUSPENDED, REVOKED, OR  
23 DENIED SHALL IMMEDIATELY DISCONTINUE OPERATION OF THE BUSINESS  
24 FOR WHICH THE LICENSE WAS ISSUED OR REQUESTED.

25 (5) A PERSON WHOSE LICENSE HAS BEEN SUSPENDED OR REVOKED IS  
26 NOT ELIGIBLE FOR REINSTATEMENT OF THE LICENSE UNTIL THE  
27 DEPARTMENT DETERMINES THAT THE VIOLATION HAS BEEN REMEDIED.

1 (6) THE DEPARTMENT MAY SUMMARILY SUSPEND THE LICENSE OF A  
2 LICENSEE IF THE DEPARTMENT DETERMINES THAT SUCH A SUSPENSION IS  
3 NECESSARY TO PROTECT THE HEALTH, SAFETY, OR WELFARE OF THE PUBLIC  
4 OR TO PREVENT IMMINENT THREAT OF FINANCIAL LOSS TO PRODUCERS.  
5 THE DEPARTMENT SHALL INCORPORATE THIS DETERMINATION IN ITS ORDER  
6 OF SUMMARY SUSPENSION. SUMMARY SUSPENSION MAY BE ORDERED EFFEC-  
7 TIVE ON THE DATE SPECIFIED IN THE ORDER OR UPON SERVICE UPON THE  
8 LICENSEE OF THAT CERTIFIED ORDER, WHICHEVER IS LATER, AND IS  
9 EFFECTIVE DURING THE PROCEEDINGS. THE PROCEEDINGS SHALL BE  
10 PROMPTLY COMMENCED AND DETERMINED.

11 Sec. 4. (1) ~~Every person, firm, association or~~  
12 ~~corporation~~ A LICENSEE purchasing milk for the purposes of  
13 reselling or of manufacturing ~~the same~~ THAT MILK into other  
14 products ~~—~~ shall pay the producer ~~monthly or oftener. Payment~~  
15 ~~may be made on or before the first day of each and every month~~  
16 ~~for cream or milk; payment shall be made~~ OR PRODUCER AGENT on or  
17 before the fifteenth day of each ~~and every~~ month for all cream  
18 or milk received ~~prior to the first day of the same~~ DURING THE  
19 PRECEDING month. ~~The director of agriculture may revoke or~~  
20 ~~refuse any license required by this act whenever the provisions~~  
21 ~~of this section have been violated.~~

22 (2) A LICENSEE SHALL NOT ISSUE A CHECK UNLESS THE NAME OF  
23 THE LICENSEE IS NOTED ON THE CHECK ISSUED TO THE PRODUCER OR  
24 PRODUCER AGENT.

25 Sec. 4a. (1) ~~A~~ THE DEPARTMENT SHALL NOT ISSUE A license  
26 ~~shall be granted~~ under this act to a milk plant that is a first  
27 receiving point for milk ~~if~~ UNLESS 1 of the ~~following~~

1 security ~~arrangements~~ DEVICES DESCRIBED IN SUBSECTION (2) is  
2 filed with the ~~director of the~~ department. ~~of agriculture.~~ A  
3 SECURITY DEVICE SHALL BE IN AN AMOUNT DETERMINED BY THE DEPART-  
4 MENT TO BE THE GREATER OF THE FOLLOWING:

5 (A) THE VALUE OF THE GREATEST MILK RECEIPTS THE MILK PLANT  
6 HAS RECEIVED WITHIN A CONSECUTIVE 30-DAY PERIOD DURING THAT MILK  
7 PLANT'S MOST RECENT FISCAL YEAR.

8 (B) THE VALUE OF THE GREATEST MILK RECEIPTS THE MILK PLANT  
9 IS ANTICIPATED TO RECEIVE DURING A 30-DAY PERIOD WITHIN THE  
10 LICENSING PERIOD.

11 (2) THE DEPARTMENT MAY ACCEPT THE FOLLOWING SECURITY  
12 DEVICES:

13 (a) A current ~~certified,~~ audited financial statement  
14 ~~prepared by a certified public accountant. The licensee shall~~  
15 ~~also submit to the department of agriculture copies of~~ AND A new  
16 year end ~~certified audits~~ AUDITED FINANCIAL STATEMENT within  
17 120 days of the licensee's year end ~~. The certified audited~~  
18 ~~statement shall~~ THAT verify the licensee's ability to meet mini-  
19 mum liquidity requirements of current assets to current liabili-  
20 ties ~~which shall have a~~ IN THE ratio of 1.2:1.

21 (b) A COMMERCIAL SURETY bond MADE PAYABLE TO THE DEPARTMENT  
22 issued by a surety company authorized to do business in this  
23 state and conditioned upon the faithful and proper discharge of  
24 the duty to pay a producer OR PRODUCER AGENT, when payment is  
25 due, for milk received. ~~, cash, in an amount not to exceed the~~  
26 ~~value of the 30 days of highest milk receipts that the milk plant~~  
27 ~~received during the most recent completed fiscal year or the~~

1 ~~value of the 30 days of highest milk receipts that the milk plant~~  
2 ~~is anticipated to receive during the license period, whichever is~~  
3 ~~higher, or other~~

4 (C) A CERTIFICATE OF DEPOSIT OR MONEY MARKET CERTIFICATE  
5 THAT IS ENDORSED TO THE DEPARTMENT AND THAT CANNOT BE CANCELED OR  
6 REDEEMED WITHOUT THE WRITTEN AUTHORIZATION OF THE DEPARTMENT.  
7 THE CERTIFICATE SHALL BE FROM A COMMERCIAL BANK WHOSE DEPOSITS  
8 ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR A  
9 NATIONAL BANK FOR COOPERATIVES SUBJECT TO THE FARM CREDIT ACT OF  
10 1971, PUBLIC LAW 92-181, 85 STAT. 583.

11 (D) STOCKS, BONDS, OR SECURITIES ACCEPTABLE TO THE DEPART-  
12 MENT THAT ARE ISSUED OR ENDORSED TO THE DEPARTMENT AND READILY  
13 CONVERTIBLE TO CASH BY THE DEPARTMENT AND SUBJECT TO REDEMPTION  
14 OR SALE ONLY UPON WRITTEN PERMISSION OF THE DEPARTMENT.

15 (E) AN IRREVOCABLE LETTER OF CREDIT PROVIDING FOR AUTOMATIC  
16 ANNUAL RENEWAL FILED AS SECURITY WITH THE DEPARTMENT ISSUED BY A  
17 BANK ACCEPTABLE TO THE DEPARTMENT AND LICENSED TO DO BUSINESS IN  
18 THIS STATE. THE DEPARTMENT MAY REQUEST INFORMATION FROM THE  
19 FINANCIAL INSTITUTIONS BUREAU OF THE DEPARTMENT OF CONSUMER AND  
20 INDUSTRY SERVICES REGARDING THE FINANCIAL VIABILITY OF THE BANK.

21 (F) LIFE INSURANCE POLICIES ACCEPTABLE TO THE DEPARTMENT  
22 THAT ARE ISSUED OR ENDORSED TO THE DEPARTMENT SO THAT THE INSURER  
23 CANNOT MAKE ANY PAYMENT TO THE POLICY BENEFICIARIES UNLESS THE  
24 INSURER FIRST PAYS THE EQUIVALENT OF THE CASH SURRENDER VALUE TO  
25 THE DEPARTMENT AND SO THAT THE CASH SURRENDER VALUE IS PAID TO  
26 THE DEPARTMENT UPON CANCELLATION OR SURRENDER OF THE POLICY.

1 (G) OTHER security DEVICES acceptable to the department. ~~of~~  
2 ~~agriculture, including, but not limited to, an irrevocable letter~~  
3 ~~of credit less any offsetting balances owed by the producer to~~  
4 ~~the milk plant. The bond or other security shall be payable to~~  
5 ~~the department of agriculture and the cash shall be paid to the~~  
6 ~~department of agriculture, for the benefit of the producers who~~  
7 ~~would be damaged by a default in payment.~~

8 (H) ~~(c)~~ An agreement in which the milk plant prepays for  
9 its milk supply ~~—~~ by providing cash payment not later than the  
10 time of delivery.

11 (3) A LICENSEE SHALL NOT CANCEL OR MODIFY A SECURITY DEVICE  
12 UNLESS WRITTEN NOTICE IS GIVEN TO THE DEPARTMENT AT LEAST 90 DAYS  
13 BEFORE THE DATE OF CANCELLATION OR MODIFICATION. THE LICENSEE  
14 SHALL SEND THE NOTICE OF CANCELLATION OR MODIFICATION TO THE  
15 DEPARTMENT BY CERTIFIED MAIL.

16 (4) THE AUDITED FINANCIAL STATEMENT DESCRIBED IN SUBSECTION  
17 (2)(A) SHALL BE PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT ACCORD-  
18 ING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND SHALL CONTAIN  
19 THE FOLLOWING:

20 (A) THE MILK PLANT'S CORRECT LEGAL NAME AND ANY TRADE NAME  
21 USED BY THE MILK PLANT. IF THE MILK PLANT IS A PERSON NOT AN  
22 INDIVIDUAL, THE NAME OF EACH OFFICER, PARTNER, MEMBER, OR OWNER.

23 (B) THE LOCATION OF THE MILK PLANT TO WHICH THE STATEMENT  
24 PERTAINS AND THE NAME OF THE RESPONSIBLE PERSON WHO MAY BE CON-  
25 TACTED AT THAT LOCATION.

26 (C) THE LARGEST GROSS AMOUNT PAID BY THE MILK PLANT TO  
27 PRODUCERS OR PRODUCER AGENTS FOR MILK RECEIVED DURING ANY

1 PRODUCER PAYMENT PERIOD, IDENTIFYING THE PRODUCER PAYMENT PERIOD,  
2 THE AMOUNT AND DATE OF ANY ADVANCE PAYMENT, AND THE AMOUNT AND  
3 DATE OF THE FINAL PAYMENT.

4 (D) THE NUMBER OF PRODUCERS FROM WHOM THE MILK PLANT  
5 RECEIVES MILK AND THE IDENTITY OF ANY PRODUCER AGENTS FROM WHOM  
6 THE PRODUCER MILK IS RECEIVED.

7 (E) THE NAME OF THE FINANCIAL INSTITUTION THROUGH WHICH MILK  
8 CHECKS ARE ISSUED TO PRODUCERS OR PRODUCER AGENTS.

9 (5) THE DEPARTMENT MAY REQUIRE A LICENSEE TO FILE A SUPPLE-  
10 MENTARY OR INTERIM FINANCIAL STATEMENT OR PROVIDE ADDITIONAL  
11 INFORMATION AT ANY TIME PERTAINING TO THE FINANCIAL STATEMENTS  
12 FILED UNDER SUBSECTION (2)(A) OR TO SPECIFIC INFORMATION REQUESTS  
13 MADE BY THE DEPARTMENT. THE DEPARTMENT SHALL DETERMINE WHETHER  
14 THE STATEMENT SHALL BE AUDITED OR VERIFIED.

15 (6) IN DETERMINING WHETHER THE LICENSEE HAS MET THE FINAN-  
16 CIAL STANDARDS DESCRIBED IN SUBSECTION (2)(A) IN AN AUDITED OR  
17 VERIFIED FINANCIAL STATEMENT, THE DEPARTMENT SHALL EXCLUDE ALL  
18 INTANGIBLE ASSETS AND ASSETS THE DEPARTMENT CONSIDERS TO BE OF  
19 DOUBTFUL VALUE AND MAY ALSO EXCLUDE NONTRADE NOTES; ACCOUNTS  
20 RECEIVABLE FROM OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, OR  
21 STOCKHOLDERS OR FROM MEMBERS OF THEIR FAMILIES; AND NOTES AND  
22 ACCOUNTS RECEIVABLE FROM PARENT ORGANIZATIONS, SUBSIDIARIES, OR  
23 AFFILIATES. AN APPLICANT FOR A LICENSE THAT HAS NOT BEEN IN THE  
24 BUSINESS OF RECEIVING MILK DURING THE PRECEDING 12 MONTHS SHALL  
25 ONLY PROVIDE A SECURITY DEVICE OTHER THAN AN AUDITED FINANCIAL  
26 STATEMENT FOR AT LEAST THE INITIAL 12 MONTHS OF LICENSED  
27 OPERATION. AT THE END OF THE INITIAL 12-MONTH PERIOD, THE

1 DEPARTMENT MAY ALLOW THE LICENSEE TO UTILIZE AN AUDITED FINANCIAL  
2 STATEMENT AS A SECURITY DEVICE IF THE STATEMENT MEETS MINIMUM  
3 LIQUIDITY REQUIREMENTS OF SUBSECTION (2)(A) AND IF THE LICENSEE  
4 IS OTHERWISE IN COMPLIANCE WITH THIS ACT.

5 (7) A LICENSEE WHO FILES AN AUDITED FINANCIAL STATEMENT AS A  
6 SECURITY DEVICE SHALL FILE, IN ADDITION TO THE AUDITED YEAR END  
7 FINANCIAL STATEMENT, A VERIFIED QUARTERLY FINANCIAL STATEMENT  
8 WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, A BALANCE SHEET,  
9 INCOME STATEMENT, AND ANY OTHER INFORMATION REQUIRED BY THE  
10 DEPARTMENT. THE LICENSEE SHALL FILE THE VERIFIED QUARTERLY  
11 STATEMENT WITHIN 60 DAYS AFTER THE END OF THE FISCAL QUARTER TO  
12 WHICH THE STATEMENT PERTAINS.

13 (8) ALL LICENSEES SHALL FILE AN AUDITED YEAR END FINANCIAL  
14 STATEMENT WITH THE DEPARTMENT COVERING THE MILK PLANT'S MOST  
15 RECENTLY COMPLETED FISCAL YEAR. THE AUDITED YEAR END FINANCIAL  
16 STATEMENT SHALL CONTAIN A BALANCE SHEET, INCOME STATEMENT, EQUITY  
17 STATEMENT, STATEMENT OF CASH FLOW, NOTES TO THE STATEMENTS, AND  
18 ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT. THE AUDITED  
19 YEAR END FINANCIAL STATEMENT SHALL BE FILED NOT LATER THAN THE  
20 FIFTEENTH DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE  
21 LICENSEE'S FISCAL YEAR. THE DEPARTMENT MAY EXTEND THE DATE FOR  
22 FILING THE AUDITED YEAR END FINANCIAL STATEMENT BY UP TO 30 DAYS  
23 ONLY UPON THE WRITTEN REQUEST OF THE LICENSEE OR THE LICENSEE'S  
24 ACCOUNTANT PREPARING THE STATEMENT IF THE REQUEST IS MADE NOT  
25 LESS THAN 10 DAYS BEFORE THE DEADLINE FOR THE FILING OF THE  
26 STATEMENT. THE REQUEST SHALL STATE THE REASON FOR THE DELAY.

1 (9) ~~(2)~~ Upon receipt or renewal of a license and any time  
2 the type of licensing is ~~altered~~ MODIFIED, the ~~director of~~  
3 ~~the~~ department ~~of agriculture~~ shall notify, IN THE MANNER PRO-  
4 VIDED FOR IN SECTION 4C, each producer OR PRODUCER AGENT deliver-  
5 ing milk to the MILK plant of the financial basis on which the  
6 license was issued. The notice shall ~~state the type and amount~~  
7 ~~of security provided pursuant to this~~ CONFORM TO section 4C.

8 (10) ~~(3)~~ A milk plant that is a first receiving point for  
9 milk shall ~~not receive~~ NOTIFY THE DEPARTMENT AT LEAST 30 DAYS  
10 BEFORE RECEIVING milk which will increase the amount due and  
11 accrued from the MILK plant to an amount greater than the amount  
12 represented as a basis for the issuance of the license. ~~, with~~  
13 ~~out first notifying the department of agriculture.~~

14 (11) ~~(4)~~ This section ~~shall~~ DOES not ~~be construed to~~  
15 apply to the sale of milk or milk products in interstate commerce  
16 to an out of state purchaser not licensed pursuant to this act.  
17 The protection provided by this section shall be available to a  
18 producer in another state selling milk products to a licensee in  
19 this state.

20 (12) ~~(5) Financial~~ EXCEPT AS OTHERWISE PROVIDED FOR IN  
21 SUBSECTION (13), FINANCIAL and product information filed by a  
22 milk plant that is a first receiving point for milk is not  
23 subject to disclosure under the freedom of information act, Act  
24 No. 442 of the Public Acts of 1976, ~~as amended,~~ being sections  
25 15.231 to 15.246 of the Michigan Compiled Laws.

26 (13) ~~(6)~~ An individual ~~milk~~ producer or ~~an~~ PRODUCER  
27 agent ~~of the producer~~ shall, upon written request to the

1 department, ~~of agriculture,~~ be given a copy of the ~~certified~~  
2 MOST RECENT audited financial statement of a milk plant that is  
3 the first receiving point for the milk of that producer OR  
4 PRODUCER AGENT.

5 (14) ~~(7)~~ An individual ~~milk~~ producer or ~~an~~ PRODUCER  
6 agent ~~of the producer~~ may file a written complaint with the  
7 department ~~of agriculture~~ requesting an INDEPENDENT audit ~~of~~  
8 REGARDING the ability of ~~the milk plant~~ A LICENSEE THAT FILES  
9 AN AUDITED FINANCIAL STATEMENT AS A SECURITY DEVICE AND that is  
10 the first receiving point for the milk of the individual producer  
11 OR PRODUCER AGENT to meet the minimum liquidity requirements  
12 ~~pursuant to~~ DESCRIBED IN subsection ~~(+)(a)~~ (2)(A). The com-  
13 plaint shall be accompanied by a certified check in the amount of  
14 \$100.00 and a signed document guaranteeing full payment for ~~an~~  
15 THE audit if required under subsection ~~(8)~~ (15). Upon receipt  
16 of the complaint and check, the department ~~of agriculture~~ shall  
17 notify the ~~appropriate milk plant~~ LICENSEE and ~~present to~~  
18 ADVISE the ~~milk plant~~ LICENSEE OF the choice of either having  
19 an independent audit conducted ~~or~~ or OF voluntarily ~~changing~~  
20 MODIFYING the security arrangement to ~~either~~ ANY of the alter-  
21 natives provided for in subsection ~~(+)(b) or (c)~~ (2)(B) THROUGH  
22 (H).

23 (15) ~~(8)~~ If ~~the milk plant~~ A LICENSEE THAT requests an  
24 independent audit ~~or~~ ~~the cost of that audit~~ UNDER SUBSECTION  
25 (14) shall ~~be borne by the milk plant~~ BEAR THE COST OF THAT  
26 AUDIT if the DEPARTMENT DETERMINES THAT THE INDEPENDENT audit  
27 ~~shows an~~ ESTABLISHES THE LICENSEE'S inability to meet minimum

1 liquidity requirements as defined in subsection ~~(1)(a)~~ and the  
2 ~~rules promulgated thereunder, or by the complainant if the milk~~  
3 ~~plant~~ (2)(A). IF THE LICENSEE meets the minimum liquidity  
4 requirements, THE COMPLAINANT SHALL BEAR THE COST OF THE AUDIT.

5 (16) ~~(9)~~ If the milk plant fails to meet the minimum  
6 liquidity requirements DESCRIBED IN SUBSECTION (2)(A), the  
7 department ~~of agriculture~~ shall ~~, in conformance with the~~  
8 ~~administrative procedures act of 1969, Act No. 306 of the Public~~  
9 ~~Acts of 1969, as amended, being sections 24.201 to 24.328 of the~~  
10 ~~Michigan Compiled Laws,~~ suspend or revoke the milk plant's  
11 license IN THE MANNER PROVIDED FOR IN SECTION 2A until such time  
12 as the milk plant meets the ~~licensing~~ SECURITY requirements in  
13 subsection ~~(1)(b) or (c)~~ (2)(B) THROUGH (H) and the \$100.00  
14 shall be returned to the complainant. If the milk plant meets  
15 the minimum liquidity requirements, the \$100.00 shall be for-  
16 feited to the milk plant.

17 (17) ~~(10)~~ A licensee may request a ~~change~~ MODIFICATION  
18 in its security ~~arrangement~~ DEVICE at any time. THE DEPARTMENT  
19 SHALL ALLOW THE MODIFICATION IN THE LICENSEE'S SECURITY DEVICE if  
20 all requirements for the new security arrangement have been met  
21 and all producers AND PRODUCER AGENTS doing business with the  
22 licensee have been duly notified.

23 ~~(11) The department of agriculture shall deny an applica-~~  
24 ~~tion for or revoke a license of a milk plant that is a first~~  
25 ~~receiving point for milk and that fails to provide 1 of the~~  
26 ~~security arrangements provided for in subsection (1).~~

1 (18) THE DEPARTMENT MAY REQUIRE A LICENSEE TO PROVIDE  
2 INCREASED OR MODIFIED SECURITY IF THE DEPARTMENT HAS REASON TO  
3 BELIEVE AFTER REVIEWING RELEVANT FINANCIAL INFORMATION THAT THE  
4 LICENSEE NO LONGER MEETS THE FINANCIAL STANDARDS OF THIS ACT OR  
5 THAT THE LICENSEE CAN NO LONGER MAKE PAYMENTS IN THE MANNER PRO-  
6 VIDED FOR IN SECTION 4(1). THE DEPARTMENT SHALL SEND WRITTEN  
7 NOTICE BY CERTIFIED MAIL TO THE LICENSEE STATING THE REASONS FOR  
8 THE DEMAND FOR INCREASE OR MODIFICATION IN SECURITY AND SETTING  
9 THE DATE FOR PROVIDING THE INCREASED OR MODIFIED SECURITY.

10 (19) THE DEPARTMENT SHALL NOTIFY ALL PRODUCERS AND PRODUCER  
11 AGENTS SHIPPING MILK TO THE LICENSEE OF THE DECISION TO REQUIRE  
12 THE LICENSEE TO MODIFY OR CHANGE A SECURITY DEVICE. THE NOTICE  
13 REQUIRED UNDER THIS SUBSECTION SHALL BE PROVIDED WITHIN 5 DAYS  
14 AFTER THE DEPARTMENT'S ISSUANCE OF THE ORDER TO REQUIRE ANOTHER  
15 SECURITY DEVICE.

16 Sec. 4b. (1) A person injured by the breach of an obliga-  
17 tion ~~for which~~ SECURED BY a security ~~arrangement has been~~  
18 ~~entered into pursuant to~~ DEVICE DESCRIBED IN section 4a, INCLUD-  
19 ING, BUT NOT LIMITED TO, A PRODUCER, A PRODUCER AGENT, AND A  
20 PERSON REPRESENTING A COMMODITY CHECKOFF PROGRAM, may file with  
21 the department ~~of agriculture~~ a verified proof of claim or  
22 other evidence of default. Upon receipt of a verified proof of  
23 claim or other evidence of default, the department, ~~of~~  
24 ~~agriculture,~~ by order, may require all interested creditors to  
25 file their verified proofs of claim before a certain date, or be  
26 barred from participating in any recovery made by the department.  
27 ~~of agriculture.~~ Notice of the entry of an order shall be given

1 by posting a copy of the order on the premises described in the  
2 license, and by publication of a notice pursuant to the rules for  
3 service by publication contained in the Michigan court rules.  
4 The date of last publication shall be not less than 30 days  
5 before the last day for the filing of claims. The department of  
6 agriculture shall ~~make the necessary~~ audit ~~of~~ THE LICENSEE and  
7 shall, by order, allow or disallow each claim presented. Notice  
8 of allowance or disallowance and request for the payment within  
9 30 days of the claims allowed shall be sent to the ~~principal and~~  
10 ~~surety~~ PERSON RESPONSIBLE FOR LIQUIDATION AND PAYMENT OF THE  
11 SECURITY DEVICE by registered mail. The department ~~of~~  
12 ~~agriculture~~ may demand, collect, and receive from the licensee,  
13 or from the ~~surety or sureties of the licensee~~ PERSON RESPONSI-  
14 BLE FOR LIQUIDATION AND PAYMENT OF THE SECURITY DEVICE, the  
15 amount determined to be necessary to satisfy the claims WITH  
16 INTEREST AT THE JUDGMENT RATE COMPUTED FROM THE DATE OF LOSS.  
17 The department ~~of agriculture~~ may request the department of  
18 attorney general to commence an action for that purpose in a  
19 court of competent jurisdiction. IF THE ATTORNEY GENERAL PRE-  
20 VAILS IN WHOLE OR IN PART, THE COURT SHALL AWARD INTEREST FROM  
21 THE DATE OF LOSS AT THE JUDGMENT RATE. Upon receipt of the money  
22 to be applied to the satisfaction of a claim as provided in this  
23 section, the department of agriculture shall make a distribution  
24 to the claimant in accordance with the order allowing the claim,  
25 in full or proportionally.

26 (2) This section and section 4a do not affect or impair any  
27 other lien, security, or priority for the claim or judgment.

1 SEC. 4C. THE DEPARTMENT SHALL PROVIDE NOTICE TO PRODUCERS  
2 AND PRODUCER AGENTS ANY TIME A LICENSE IS ISSUED, RENEWED, OR  
3 MODIFIED. THE NOTICE SENT BY THE DEPARTMENT SHALL SUBSTANTIALLY  
4 CONFORM TO THE FOLLOWING:

5 "MICHIGAN LAW REQUIRES DAIRY PLANT LICENSEES TO DEMONSTRATE  
6 A REASONABLE DEGREE OF FINANCIAL RESPONSIBILITY TO THE MICHIGAN  
7 DEPARTMENT OF AGRICULTURE. THIS LAW IS DESIGNED TO PROVIDE REA-  
8 SONABLE ASSURANCE THAT PRODUCERS WILL BE PAID FOR THEIR MILK;  
9 HOWEVER, IT DOES NOT GUARANTEE THAT PRODUCERS WILL BE PAID. EACH  
10 PRODUCER HAS SOME RESPONSIBILITY FOR DETERMINING THE CREDIT WOR-  
11 THINESS OF THE DAIRY PLANT TO WHICH THE PRODUCER IS SELLING  
12 MILK. A DAIRY PLANT LICENSEE MAY QUALIFY FOR A LICENSE BY DOING  
13 1 OF THE FOLLOWING:

14 (A) FILING FINANCIAL STATEMENTS AUDITED BY A CERTIFIED  
15 PUBLIC ACCOUNTANT WITH THE DEPARTMENT DEMONSTRATING THAT THE  
16 DAIRY PLANT MEETS CERTAIN MINIMUM FINANCIAL STANDARDS.

17 (B) FILING SECURITY WITH THE DEPARTMENT IN AN AMOUNT DETER-  
18 MINED BY THE DEPARTMENT TO BE THE GREATER OF THE FOLLOWING:

19 (1) THE VALUE OF THE GREATEST MILK RECEIPTS THAT THE DAIRY  
20 PLANT RECEIVED WITHIN A CONSECUTIVE 30-DAY PERIOD DURING THAT  
21 DAIRY PLANT'S MOST RECENT FISCAL YEAR.

22 (2) THE GREATEST MILK RECEIPTS THAT THE DAIRY PLANT IS  
23 ANTICIPATED TO RECEIVE DURING A 30-DAY PERIOD WITHIN THE LICENS-  
24 ING PERIOD.

25 (C) \_\_\_\_\_, (NAME OF DAIRY PLANT LICENSEE) IS  
26 CURRENTLY LICENSED ON THE BASIS OF ITS AUDITED FINANCIAL  
27 STATEMENT MEETING THE MINIMUM FINANCIAL REQUIREMENT OF A CURRENT

1 RATIO OF AT LEAST 1.2 TO 1 CURRENT ASSETS TO CURRENT  
2 LIABILITIES. OUR MOST RECENT YEAR-END FINANCIAL STATEMENT  
3 AUDITED BY THE FIRM OF \_\_\_\_\_ (AUDITOR'S NAME) MEETS THE FOL-  
4 LOWING MINIMUM FINANCIAL STANDARDS, OR \_\_\_\_\_ (NAME OF DAIRY  
5 PLANT LICENSEE) HAS FILED SECURITY WITH THE DEPARTMENT TO SECURE  
6 PAYMENT TO ITS PRODUCERS. THE MAXIMUM AMOUNT OF SECURITY IS THE  
7 AMOUNT DETERMINED TO BE THE GREATER OF THE FOLLOWING:

8 (1) THE VALUE OF THE GREATEST MILK RECEIPTS THAT THE DAIRY  
9 PLANT RECEIVED WITHIN A CONSECUTIVE 30-DAY PERIOD DURING THAT  
10 DAIRY PLANT'S MOST RECENT FISCAL YEAR.

11 (2) THE GREATEST MILK RECEIPTS THAT THE DAIRY PLANT IS  
12 ANTICIPATED TO RECEIVE WITHIN A 30-DAY PERIOD WITHIN THE LICENS-  
13 ING PERIOD.

14 THE SECURITY FILED IS IN THE FOLLOWING FORM OR FORMS:

15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_".

18 Sec. 9. (1) Subject to subsection (3), any person who,  
19 alone or through ~~his or her servant or~~ AN agent, as the  
20 ~~servant or~~ agent of any other person, or as the officer ~~or~~  
21 ~~servant,~~ or agent of any firm or corporation, ~~violates any of~~  
22 ~~the provisions of~~ WHO DOES ANY OF THE FOLLOWING IS GUILTY OF A  
23 MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN \$50.00 AND NOT  
24 MORE THAN \$500.00, OR IMPRISONMENT FOR NOT MORE THAN 90 DAYS, OR  
25 BOTH:

26 (A) VIOLATES this act ~~or ordinances adopted~~ OR A RULE  
27 PROMULGATED pursuant to this act. ~~or rule~~

1 (B) VIOLATES no. 407 governing haulers' duties and  
2 prohibitions, cleaning and sanitizing milk pickup tanks and  
3 transport tanks, records, and samples, qualifications of grade A  
4 plants for reduced licensing fees, dairy farm requirements, milk  
5 sample handling and records. ~~; or rule~~

6 (C) VIOLATES no. 408 governing fluid milk and milk products,  
7 definitions, last date of sale, time interval of date, flavor,  
8 and sale after date which are in effect on December 30, 1980. ~~—~~  
9 ~~is guilty of a misdemeanor, punishable by a fine of not less than~~  
10 ~~\$50.00 and not more than \$500.00, or imprisonment for not more~~  
11 ~~than 90 days, or both.~~

12 (D) PROVIDES FALSE OR FRAUDULENT INFORMATION ON AN APPLICA-  
13 TION OR IN RESPONSE TO A REQUEST FROM THE DEPARTMENT.

14 (2) The director of the department of agriculture shall  
15 impose upon a producer OR PRODUCER AGENT who violates this act by  
16 selling or offering for sale milk which has been found positive  
17 for drug residues on a test performed pursuant to appendix N and  
18 section 7 of the grade A pasteurized milk ordinance, --1993 rec-  
19 ommendations of the United States public health service/food and  
20 drug administration, the following sanctions and ~~civil~~

21 ADMINISTRATIVE fines:

22 (a) Both of the following in the case of a first positive  
23 test within a 12-month period:

24 (i) A written notification from the buyer of the milk in the  
25 form of a pay deduction, that the milk picked up from the farm  
26 testing positive was not paid for.

1           (ii) The sum of \$300.00 to be paid to the department of  
2 agriculture. If the producer OR PRODUCER AGENT has voluntarily  
3 participated in the milk and dairy beef quality assurance program  
4 within the 36 months immediately preceding the date of the viola-  
5 tive sample, as evidenced by a properly signed completion certifi-  
6 cate, \$200.00 of the ADMINISTRATIVE fine will be suspended. The  
7 ~~civil~~ ADMINISTRATIVE fine may be paid by the milk buyer, if a  
8 like amount has been deducted from the producer's milk check.

9           (b) Both of the following in the case of a second positive  
10 test within a 12-month period:

11           (i) A written notification from the buyer of the milk in the  
12 form of a pay deduction, that the milk picked up from the farm  
13 testing positive was not paid for.

14           (ii) The sum of \$600.00 to be paid to the department of  
15 agriculture, no part of which shall be suspended. This sum may  
16 be paid by the milk buyer if a like amount has been deducted from  
17 the producer's OR PRODUCER AGENT'S milk check.

18           (c) All of the following in the case of a third positive  
19 test within a 12-month period:

20           (i) A written notification from the buyer of the milk in the  
21 form of a pay deduction, that the milk picked up from the farm  
22 testing positive was not paid for.

23           (ii) The sum of \$1,200.00 to be paid to the department of  
24 agriculture, no part of which shall be suspended. This sum may  
25 be paid by the milk buyer if a like sum has been deducted from  
26 the producer's milk check.

1 (iii) The suspension of the producer's OR PRODUCER AGENT'S  
2 permit for a period not to exceed 60 days after notice and the  
3 opportunity for a hearing before the department of agriculture.

4 (3) Subsection (1) applies to a producer OR PRODUCER AGENT  
5 who violates this act by selling or offering for sale milk which  
6 tests positive for drug residues on a test performed pursuant to  
7 appendix N and section 7 of the grade A pasteurized milk ordi-  
8 nance, --1993 recommendations of the United States public health  
9 service/food and drug administration, only under the following  
10 circumstances:

11 (a) The producer OR PRODUCER AGENT fails to pay the ~~civil~~  
12 ADMINISTRATIVE fine required by subsection (2) within 10 days of  
13 the notification of the violation.

14 (b) The producer OR PRODUCER AGENT has been fined under  
15 subsection (2) 3 times within the preceding 12-month period.

16 (4) The ~~civil~~ ADMINISTRATIVE fines imposed under subsec-  
17 tion (2) shall be paid to the department of agriculture within 10  
18 days after notification of the violation. The ~~civil~~  
19 ADMINISTRATIVE fines received by the department of agriculture  
20 under subsection (2) shall be deposited in the state general fund  
21 and shall be expended for the purpose of enforcing this section.