

No. 1984-243

## AN ACT

SB 1527

Amending the act of April 28, 1937 (P.L.417, No.105), entitled, as amended, "An act relating to milk and the products thereof; creating a Milk Marketing Board; establishing its jurisdiction, powers and duties; regulating the production, transportation, manufacturing, processing, storage, distribution, delivery and sale of milk and certain products thereof; providing for the licensing of milk dealers and the payment of fees therefor; requiring milk dealers to file bonds to secure payment for milk to producers and certain milk dealers; authorizing the holding of hearings and the issuance of subpoenas by the board; conferring jurisdiction upon courts to punish contempts and to prohibit violations of this act and of rules, regulations and orders of the board; authorizing the board to adopt rules, regulations and orders, and to enter into interstate and Federal compacts; requiring persons who weigh, measure, sample or test milk to procure permits or certificates, to take examinations, to pay fees therefor, to furnish certain notices, records and statements, and to use certain methods of weighing, measuring, sampling and testing; authorizing the board to examine the business, papers and premises of milk dealers and producers, requiring the keeping of records and the filing of reports by milk dealers, and permitting, with limitations, the use of information obtained thereby; authorizing the board to fix prices for milk and certain milk products subject to the approval of the Governor, and conferring certain powers upon the Governor with respect thereto; providing for appeals to the courts from decisions of the board, and for the burden of proof upon such appeals; prescribing penalties, fines and imprisonment for violations of this act and rules, regulations and orders of the board; defining perjury; defining remedies; repealing legislation supplied and superseded by this act, and saving rights, duties and proceedings thereunder; and making appropriations," further defining "milk," "milk dealer" and "subdealer"; defining "milk components"; further providing for organization and powers of the Milk Marketing Board; further providing for licensing and for bonding; further providing for milk haulers and for weighing and testing milk; further providing for records; creating a joint study committee; and further providing for milk prices.

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

Section 1. Section 103 of the act of April 28, 1937 (P.L.417, No.105), known as the Milk Marketing Law, amended December 15, 1965 (P.L.1101, No.425) and July 31, 1968 (P.L.963, No.294), is amended to read:

Section 103. Definitions; Construction.—The following terms shall be construed in this act to have the following meanings, except in those instances where the context clearly indicates otherwise:

"Books and records" or "books or records" shall include all pertinent books, ledgers, journals, records, papers, memoranda, correspondence, vouchers, bills, receipts, cancelled checks, accounts, exhibits, photographs and other documents.

"Board" means the State agency created by this act, to be known as the "Milk Marketing Board."

“Consumer” means any person, natural, corporate, statutory or governmental, other than a milk dealer or handler who purchases milk for consumption or use by himself or others.

“Cooperative” means a cooperative agricultural association or corporation of producers organized under the laws of this Commonwealth or of any other state and engaged in making collective sales or in the marketing of milk for producers under contract with it. A cooperative shall not be deemed a milk dealer or handler, but shall be deemed a producer, except as otherwise provided herein.

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

“Licensee” means a licensed milk dealer or handler.

“Market” includes any county, city, borough, incorporated town, or township in the Commonwealth, or any two or more such counties, cities, boroughs, incorporated towns, or townships, or any portions thereof, or any other land within the territorial limits of the Commonwealth designated by the **[commission] board** as a marketing area.

“Milk” includes fluid milk and cream, fresh, sour or storage, skimmed milk, *lowfat milk*, flavored milk or milk drink, buttermilk, ice cream mix, and condensed or concentrated whole or skimmed milk[, ] except when contained in hermetically sealed cans.

*“Milk components” means the components of milk, including butterfat and any other components, for which the prices of handlers, producers or both are established by marketing agreements or orders issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601, et seq.) and which the Milk Marketing Board determines by regulation are applicable to the marketing areas established under this act.*

“Milk dealer” or “handler” means any person, **[including any store or subdealer or subhandler, as hereinafter defined,]** who purchases or receives or handles on consignment or otherwise milk within the Commonwealth, for **[sale, shipment, storage,]** processing or manufacture *and further sale*, within or without the Commonwealth, whether on behalf of himself or others, or both. A producer who delivers milk to a milk dealer or handler only shall not be deemed a milk dealer or handler. If a cooperative distributes or makes available on consignment or otherwise milk within this Commonwealth to stores, as defined in this act, or to consumers, as defined in this act, or to other milk dealers or handlers, as defined in this act, or acts as an agent for its members, it shall be deemed to be a milk dealer or handler as to that part of its business, and shall be governed by the provisions of this act applicable thereto. Such cooperative shall be governed by the applicable provisions of this act as to the prices at which it sells, markets, or bargains to sell or make available on consignment or otherwise milk within this Commonwealth to milk dealers, handlers and others.

“Person” includes an individual, corporation, association, partnership, limited partnership, or other unincorporated enterprise owned or conducted by or on behalf of two or more individuals or other persons.

“Price” includes the amount paid or to be paid and the proceeds returned or to be returned, whether the transaction be one of purchase, sale, consignment, sale or return, accounting, or otherwise.

“Producer” means a person producing milk.

“Store” includes a grocery store, hotel, restaurant, soda fountain, dairy products store, or any similar mercantile establishment which sells or distributes milk.

“Subdealer” or “subhandler” means any **[milk dealer or handler handling] person other than a store or controlled affiliate who handles** milk within the Commonwealth, **[who sells or]** and delivers all such milk to consumers, *schools, institutions* or stores in the same containers as those in which **[he] it was purchased [or acquired it from other milk dealers or handlers]**.

Any reference in this act to quantity of milk shall be construed to include its whole milk equivalent.

Article or section headings shall not be construed to affect in any manner the scope or meaning of any article or section of this act.

The singular shall be construed to include the plural. The masculine shall be construed to include the feminine and the neuter, and conversely, the neuter shall be construed to include the masculine and the feminine.

Section 2. Sections 201, 202, 204, 306, 308.1, 310, 402, 403, 404, 404.1 and 513 of the act, amended July 31, 1968 (P.L.963, No.294), are amended and a section is added to read:

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

The Governor shall designate one of the members of the board as chairman. The chairman shall, when present, preside at all meetings *and price hearings*, and in his absence a member designated by the chairman shall preside. *When presiding at a price hearing, the chairman or acting chairman shall have the status of agency head for the purpose of conducting the hearing.*

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

The Governor may remove any board member for inefficiency, neglect of duty, *loss of qualification as provided in section 202* or misconduct in office: Provided, That he is given a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense upon not less than ten days' notice, and that the Governor file with the Department of State a complete statement of all charges made against such board member, together with a complete record of the proceedings and his findings thereon.

Section 202. Qualifications and Salaries.—Each member of the board at the time of his appointment and qualification shall be *a resident of the Commonwealth and a citizen of the United States. Residence outside the Commonwealth or loss of citizenship shall result in automatic disqualification as a board member. In case of a disqualification, the unexpired term shall be filled by the procedure for appointment as provided in section 201. For the purpose of the immediate section, "residence" shall mean that place where a person maintains the principal home.*

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

The chairman of the board shall receive a salary in an amount as provided by law. The other members of the board shall receive salaries in amounts as provided by law.

Section 204. Bureau of Consumer Affairs.—There shall be established under the direction of the board a Bureau of Consumer Affairs *which shall be supervised by the secretary under the direction of the consumer member by and with the consent of a majority of the board.* The purpose of this bureau shall be to consult with representatives of consumer groups, to disseminate information relative to activities of the board [and other], *to act as a liaison to other Federal, State and local agencies involved in the dairy industry and in milk marketing, to supply pertinent data to news media and other interested parties and to make any recommendations found necessary as a result of such consultations with consumer groups and other bureau activities as directed by the secretary, consumer member and board.*

*The office and personnel of the bureau shall be located in a place designated by a majority of the members of the board.*

Section 306. Contempt.—Any person who refuses to obey a subpoena issued hereunder, or to be sworn or affirmed, or to testify, or who is guilty of any contempt after summons to appear, may be punished as for contempt of court. For this purpose an application may be made by the board to [the court of common pleas within the territorial jurisdiction of which the offense was committed] *the Commonwealth Court*, for which purpose such court is hereby given jurisdiction.

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

**Section 310. Entry and Inspection.**—Pursuant to the purposes of this act, any member of the board, or any employe designated for the purpose, shall have access to, and may enter and inspect, at all reasonable hours, all places and equipment where milk or any product thereof is being produced, stored, bottled, processed, manufactured, sold, weighed, tested, consigned or otherwise handled. Any member of the board or any designated employe thereof also shall have power, at all reasonable hours, to inspect, photograph, photostat, mark or stamp for identification, audit, and copy all books, papers, records or documents in any place within the Commonwealth, for the purpose of ascertaining facts to enable the board to administer this act. The information obtained regarding any person by any such inspection, auditing or copying, or by reports or statements required or authorized by this act, shall be for the confidential use of the board and the various administrative departments, boards and commissions of the State government, and shall not be disclosed by any person except as may be required in the enforcement of law or by order of court; and any member or employe of the board, or other person, disclosing such information, except as herein required, *and except as disclosed by board employes during testimony given at price hearings*, shall be subject to the penalties herein provided for a violation of this act. Nothing contained in this act shall prevent the use of any information by the board in the compiling and dissemination of general statistical data.

However, any evidence, statements or other testimony offered by parties, **[other than board employes]** *or board employes* or agents, during official hearings before the board shall be subject to full examination and cross-examination. Consumers attending official hearings *who are not represented by counsel* may submit questions to the chairman who shall request an answer from the board *or from testifying witnesses* if the questions are relevant to the official hearing.

**Section 402. Milk Dealers or Handlers Subject to Exemption.**—The board may, by official order, exempt from the license requirements provided by this act milk dealers or handlers who purchase or handle milk in a total quantity not exceeding one thousand five hundred pounds in any month, and milk dealers or handlers selling milk in any quantity only in markets of a population of one thousand, or less, for local consumption. **[The board may, by official order, exempt stores, or any class thereof, from the license requirements provided by this act.]** However, milk dealers or handlers exempted by this section from the license requirements of this act shall continue to be subject to all the other provisions of this act relating to milk dealers or handlers: Provided, however, That in cash sales of milk to consumers, if he shall have produced all the milk on the farm where sold and such milk has at no time left the producer's farm prior to its sale to the consumer and he shall have neither purchased, handled or received any milk from other producers or handlers for cash sale or any other purpose and his total sales to consumers do not exceed two gallons to any one consumer in any one day, the producer so selling milk shall be exempt from the provisions of this act.

**Section 403. Applications.**—An application for a license to operate as a milk dealer or handler shall be completed and filed by the dealer or handler with the board within thirty days after this act takes effect, or prior to his engaging in business, and annually thereafter, on or before June fifteenth, by mail or otherwise, upon a form prescribed by the board. Such application shall be accompanied by the fee required by this act, and by a bond when so required by this act, in order to be complete. The license year shall commence July first and shall end June thirtieth following. The applicant shall state under oath or affirmation, upon a form prescribed by the board the following:

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

**Section 404. Grounds for Refusal, Suspension or Revocation.**—The board shall grant a license to an applicant complying with the provisions of this act and the rules, regulations and orders issued by the board pursuant thereto. *Anything in this act to the contrary notwithstanding, a store or controlled affiliate which satisfies all other requirements for licensing shall not be denied an appropriate license if it has been so licensed on the effective date of this amendment.* The board may decline to grant a license to an applicant, or may suspend or revoke the right of a licensee or former licensee to apply for a license for a new license period, or may suspend, revoke or refuse to transfer a license already granted to a milk dealer or handler, or may prohibit a milk dealer or handler exempted from the license requirements of this act from continuing to operate as a milk dealer or handler, after determination by the board that the dealer or handler:

- (1) Has rejected, without reasonable cause, any milk purchased or acquired from a producer, or has rejected, without either reasonable cause or reasonable advance notice, milk delivered or made available by or on behalf of a producer in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated: Provided, however, That in

the absence of an express or implied fixing of a longer period in the contract, "reasonable advance notice" shall not be construed to mean notice of less than [two weeks nor more than four weeks] *fourteen days nor more than forty-five days*;

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

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

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

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

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

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

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

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

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

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

(12) Has rejected milk sold or delivered or made available on consignment or otherwise by, or on behalf of, a producer in ordinary continuance of a previous course of dealing because the producer or his employe, agent or representative testified in any proceeding before the board, or in any civil or criminal case in any court, whether or not of record, in which any provision of this act or any order of the board was concerned, and it shall be no defense that reasonable advance notice was afforded the producer before the milk was rejected;

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

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

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

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



*(14) Has demonstrated through the financial information submitted with his application, a lack of financial responsibility or a probable inability to meet the financial responsibilities imposed by this act or by the act of July 6, 1984 (P.L.652, No.136), known as the "Milk Producers' Security Act," and by the regulations of the Milk Marketing Board.*

*(15) Has been convicted of a felony during the five years immediately prior to the date upon which an application for license renewal has been submitted; or, if the applicant is a partnership, association or corporation, has had any partner, officer or management employe who was convicted of a felony during the five years immediately preceding the date upon which the application for a milk dealer's license or for a license renewal has been submitted. For purposes of this section, the word "felony" shall mean a criminal offense which has been designated a felony under Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses) or under the Federal or State laws of the jurisdiction where the person or dealer was convicted or found guilty and which has been committed as a result of, in furtherance or facilitation of, under the guise of or in relation to business activities and dealings which the board has authority to regulate under this act.*

Section 404.1. Penalties in Lieu of Suspension.—In any case where the board shall suspend a license, the board may accept from the licensee an offer in compromise at the rate of **[fifty dollars (\$50)] one hundred fifty dollars (\$150)** for each day of suspension as a penalty in lieu of such suspension, and thereupon rescind the suspension.

Section 513. Subdealers' or Subhandlers' Bonds.—It shall be unlawful for a subdealer or subhandler to buy, acquire, receive or handle milk from a milk dealer or handler who purchases, acquires or receives milk from producers, unless the subdealer or subhandler shall file with the board a corporate surety or collateral bond, approved by the board. Such bond shall be executed to the Commonwealth in a sum equal to **[six hundred dollars (\$600.00) for each route owned or operated by the subdealer or subhandler,] the sum of the highest aggregate amount owed for milk by the subdealer or subhandler to dealers or handlers for any thirty-day period during the preceding twelve months** and shall be conditioned for the payment by the subdealer or subhandler of all amounts due under this act and the orders of the board for milk purchased, acquired or received from such milk dealer or handler or dealers or handlers during the license year; subject, however, to the further condition that if at time of default, such milk dealer or handler or dealers or handlers are indebted, or in arrears in their payments, to producers, the proceeds thereof shall be held on the account of such dealer or handler or dealers or handlers for the benefit of such producers. Such bond shall be filed annually with the subdealer's or subhandler's application for a license, **and shall, in all applicable particulars not herein specifically mentioned, be subject to terms and conditions such as are provided in the other sections of this article for the bonds of other milk dealers or handlers and for suits thereon, except where the protection of such milk dealers or handlers selling, delivering or making available milk to the subdealer or subhandler or of producers selling, delivering or making available milk to such milk dealers**

or handlers, requires the substitution of such dealers or handlers and producers in applying such terms and conditions to the bonds of subdealers or subhandlers]. *The bond shall be executed to the Commonwealth by the subdealer or subhandler as principal and by a corporate surety company as surety. The board shall have no authority to reject any corporate surety bond which is executed by a corporate surety company authorized to do business in this Commonwealth if the amount of the bond is equal to or less than the amount which the surety company is authorized to execute on a single bond without obtaining collateral security from the principal. The board may reject any bond which exceeds this amount.*

*The board shall have the power to sue at its discretion on the bond on behalf of the milk dealer or handler to whom money is owed by the subdealer or subhandler, or the board may sue on behalf of a milk dealer or handler to recover a debt owed to him by a subdealer or subhandler. Suits which are brought shall be in the name of the Commonwealth, shall identify the board as the real party and shall follow the same procedure as for debts which are recoverable by law.*

*If a subdealer or subhandler who has not engaged in the business during the preceding twelve months purchases, acquires, receives or intends to purchase or receive milk from a milk dealer or handler, he shall file a bond in a sum to be fixed by the board in accordance with the subdealer's or subhandler's anticipated purchases from a dealer. The board shall review the operations of the subdealers and of the subhandlers every two months. Bonds shall be modified so that purchases from dealers are adequately covered.*

**Section 553. Employed Weighers and Samplers.**—*No person engaged in the business of milk hauling or transport in this Commonwealth shall employ or otherwise utilize a person to pick up milk from farms unless that person is certified by the board as provided in section 603.*

Section 3. Sections 602 and 603 of the act, amended July 31, 1968 (P.L.963, No.294), are amended to read:

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

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

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

Any person who is not the holder of such certificate of proficiency upon the effective date of this act, shall, prior to applying for a tester's certificate,

apply to the board for a certificate of proficiency. Such application shall be accompanied by a fee of five dollars (\$5.00). The applicant shall be required to pass an examination in milk testing, reasonably prescribed and conducted by the board, and upon approval of the application shall be issued a certificate of proficiency. Thereupon, and annually thereafter without such examination, the person so certified may apply for a tester's certificate as herein prescribed.

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

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

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

*It shall be unlawful for any person to pick up milk from farms unless the person making the pickup has a valid tester's certificate or weigher's or sampler's certificate issued by the board.*

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

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

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

Section 4. Sections 606 and 607 of the act, amended July 31, 1968 (P.L.963, No.294), are amended to read:

Section 606. Samples; Check Tests.—Milk dealers buying or receiving milk from producers on the basis of, or with reference to, the amount or percentage of butterfat contained in such milk, as determined by the method commonly known as the "Babcock Test," shall make such test at least once every sixteen (16) days. The milk from each producer shall be represented by a composite sample taken from the entire delivery of each of the several lots of milk bought or received from said person, and shall cover a period of not more than sixteen (16) days. The composite sample, to which a suitable preservative has been added, shall be made up of aliquot parts taken from each of the several lots of milk from each producer concerned, and composite samples of all producers concerned shall cover the same period of time.

Any person taking a sample or samples of milk, either from the aliquot part of each lot of milk sampled or from the composite lot of milk sampled, shall thoroughly stir or mix the contents of each and every container immediately before such sample or samples are taken, in such manner that the milk is thoroughly mixed in each container before the sample is taken. No weigh tank or container from which the aliquot part is taken for composite samples shall have any partition, division, or strainer which will prevent such thorough stirring or mixing. Each composite sample shall be held in an airtight bottle, such bottle being plainly labeled showing the name or number of the producer whose milk the composite sample represents, and the rack or container where the samples are held shall be plainly labeled showing the date of the first and last day of the period covered by the said composite samples.

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

Every milk dealer affected by the provisions of this act shall, within two (2) days after the day on which the test herein provided for has been made, notify the producer or his agent of the result of such test, stating the period of time during which said composite samples were taken. Notice under this section shall be given by posting of the results of said tests continuously for ten (10) days in a conspicuous place in the plant or receiving station, or in writing delivered to the producer or his agent. Where a daily test is made on milk, and the average of these several tests is used as a basis of settlement, there shall also be a composite sample taken covering the period of the first half of the month, and a composite sample taken covering the period of the last half of the month, and such samples shall be held intact on the premises for a period of not less than ten (10) days after the rendering of a statement to the producers for milk delivered during each such period, in order to make possible a check test.

The board shall make check tests, and other reasonable tests, whenever in its judgment such tests are advisable for the public welfare, and may also require additional samples or additional composite samples from time to time. *In addition, the board may require by regulation tests and testing procedures for components other than butterfat.*

Section 607. Violations.—It shall be unlawful for any milk dealer or other person engaged or employed in the business of buying or receiving milk from producers, or selling or delivering milk to stores or consumers, on the basis of, or with reference to, the amount or percentage of butterfat contained therein, to take, collect or use for testing purposes an unfair or inaccurate sample, or to underread, overread or erroneously manipulate the “Babcock Test” *or any other test prescribed by the board as an acceptable test method* used for determining the amount or percentage of butterfat in such milk, or to falsify the record thereof, or to make the “Babcock” reading, except when the fat has a temperature of one hundred thirty-five degrees (135) to one hundred forty-five degrees (145) Fahrenheit, or to use for such test quantities other than seventeen and six-tenths (17.6) cubic centimeters, in the case of milk, and nine (9) grams or eighteen (18) grams, in the case of cream. In all tests of cream the cream shall be weighed and not measured into the test bottle.

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

Section 5. Sections 608, 701, 801, 802, 803, 804 and 807 of the act, amended July 31, 1968 (P.L.963, No.294), are amended to read:

Section 608. Payment for Milk; Statement.—Milk dealers shall determine weight, measure and butterfat *and appropriate milk component* content of milk as provided in this act, or in rules, regulations or orders of the board pertaining thereto and consistent with this act. Payment for milk shall be made either upon the basis of weight, measure or butterfat *or appropriate milk component* content, or any combination thereof, as the rules, regulations or orders of the board may require.

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

receiving station or plant receiving milk, each receiving station or plant to be considered separately, in lieu of such periodic statement of the amount of milk delivered, unless the board otherwise provides.

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

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

Section 701. Records.—Milk dealers subject to license by the board shall keep within the Commonwealth the following records:

(1) A record of the quantity of all milk received or produced, detailed as to location and as to names and addresses of producers or milk dealers from whom received, with butterfat **[test]** *or appropriate milk component tests*, weights; prices paid, and deductions or charges made.

(2) A record of the quantity of all milk sold, detailed as to grade, use, location, market outlet, and size and type of container, with prices and amounts received therefor, and the butterfat **[test]** *or appropriate milk component tests* thereof.

(3) A record of the quantities of all milk transported, shipped, or hauled, including the distances and the amounts paid for the movement of such milk, in all cases where the dealer pays on his own account or on the account of producers for the movement thereof.

(4) A record of the quantity of each milk product manufactured, the quantity of milk used in the manufacture of each product, and the quantity and value of milk products sold.

(4.1) The price or cost of containers used, by size and type.

(5) A record of wastage or loss of milk or butterfat.

(6) A record of the spread or handling expense and profit or loss, represented by the difference between the price paid and the price received for all milk and milk products.

(7) A record of all other transactions affecting the assets, liabilities, or net worth of the dealer.

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

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

Section 801. Requisites of Orders Fixing Price of Milk.—The board shall ascertain, after a hearing in which all interested persons shall be given reasonable opportunity to be heard, the logical and reasonable milk marketing areas within the Commonwealth, shall describe the territorial extent thereof, shall designate such areas by name or number, and shall ascertain

and maintain such prices *paid to producers, to dealers and to stores* for milk in the respective milk marketing areas as will be most beneficial to the public interest, best protect the milk industry of the Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth, having special regard to the health and welfare of children residing therein.

The board shall base all prices upon all conditions affecting the milk industry in each milk marketing area, including the amount necessary to yield a reasonable return to the producer, which return shall not be less than the cost of production and a reasonable profit to the producer, of the quantity of milk necessary to supply the consumer demand for fluid milk plus a reasonable reserve supply as determined by the board, and a reasonable return **[to the milk dealer or handler] on aggregate milk sales by milk dealers or handlers and stores selling milk. A reasonable return shall mean not less than a two and one-half percent (2 1/2%) nor more than a three and one-half percent (3 1/2%) rate of return based on net sales of price-controlled products determined in accordance with generally accepted accounting principles.** However, where the board determines that the market for Pennsylvania produced milk is threatened it may establish producer prices designed to market the milk. In ascertaining such returns, the board shall utilize *available information concerning producers' cost of production* and a cross-section representative of **[the average or normally efficient] producers [and], dealers [or handlers] and stores** in the area and shall consider **[the cost of containers according to size and type] unit costs of various types of products and of various sizes of containers.**

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

The board may, upon its own motion or upon application in writing, from time to time, alter, revise or amend an official order defining milk marketing areas or fixing prices to be charged or paid for milk. Before making, revising or amending any order defining milk marketing areas or fixing prices to be charged or paid for milk, the board shall hold a hearing, after giving reasonable opportunity to be heard to interested persons, of whom the board has notice, and, in the case of any order affecting the public, after giving reasonable notice thereof to the public in such newspaper or newspapers as, in the judgment of the board, shall afford sufficient notice and publicity: Provided, however, That after such hearing, there shall be a further hearing or conference before the board on any proposed order, and notice of such further hearing or conference shall be given to the parties represented and heard at the previous hearing. Upon application in writing from a person aggrieved by an order of the board hereunder, filed within fifteen (15) days after the issuance of the order complained of, or upon its own motion, the board may, within twenty (20) days after the effective date of such order, issue an order revising or amending such order without a further hearing, if such revision or amendment is based on the record of the hearing held prior to the issuance of such order.

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

At any hearing provided for herein the testimony of an expert statistician present at the hearing and any printed, typewritten, duplicated, mimeographed or other written treatise, report or statistical data by an expert not present as a witness, if and to the extent it is endorsed as reliable to an expert witness present at the hearing, shall be competent evidence on any subject material to fixing any price under this article. *However, the testimony, treatise, report or data must result from a study of facts and conditions in the milk marketing area which is the subject of the hearing.*

All provisions of all price-fixing orders of the board shall be presumed to be valid, and the burden of proving any invalidity of any provisions thereof shall be upon the person asserting the same. Any determination by the board, or a court to which an appeal has been taken, that the wholesale or retail prices provided are invalid shall not prevent the enforcement of prices to producers, but any determination that prices to producers are unreasonable shall require the redetermination by the board of wholesale and retail prices as well as prices to producers.

Whenever an order of the board fixing prices is remitted to the board with directions to reform the findings or order in accordance with the opinion of the court, and no further appeal is taken by the board, the board shall make such reformation within thirty days from the entry of the order of the court remitting the **[price fixing] price-fixing** order to the board.

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

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

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



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

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

Section 804. Classification.—When, pursuant to any statute or regulations or orders adopted thereunder, or any ordinance or reasonable trade practice, various grades of milk are specified, orders of the board fixing minimum or maximum prices may be applicable to each grade *or milk component*. Orders of the board fixing minimum or maximum prices may vary in different markets, and shall designate the markets to which applicable. Such orders may likewise classify milk and milk dealers or handlers in any reasonable manner which the board deems advisable, and may vary according to the classes to which they are applicable. The orders of the board with respect to the minimum prices to be paid to producers and others shall apply to the area in which the milk is produced, or to the area in which the milk so produced is manufactured, sold or distributed, as the board shall provide, and may vary in different areas according to varying uses, grades and conditions. Each such order may classify such milk by forms, classes, grade or uses, as the board may deem advisable, and may specify the minimum prices therefor. Other reasonable methods of classification may be prescribed by the board.

Section 807. Violations.—After the board shall have fixed prices to be charged or paid for milk, whether by class, grade, use or otherwise, it shall be unlawful for a milk dealer or handler or producer or directors or officers of a cooperative association or corporation, knowingly or unknowingly, or any other person knowingly, by himself or through another, to sell or deliver, or make available on consignment or otherwise, or buy or receive, or handle on consignment or otherwise, or offer to sell or deliver or make available on consignment or otherwise, or buy or receive or handle on consignment or otherwise, or advertise for sale, delivery, purchase or receipt, or hold one's self out as willing to sell, deliver, buy or receive milk at any price below the minimum price or above the maximum price applicable to the particular transaction.

*It shall be a violation of this act for any milk dealer or handler to provide manufacturing, processing, bottling or delivery services for another dealer for a price less than the costs of the service provided. Costs shall be based upon average per unit cost of the services provided at the plant providing services, as determined in accordance with generally accepted accounting principles and adjusted for significant changes in average per unit cost. In deter-*

***mining the cost of the service provided, the costs of raw milk to all dealers and handlers shall be computed at not less than the minimum prices to producers as determined in accordance with this act or Federal law. All contracts for services must be approved by the board before the service is provided.***

No method or device shall be lawful whereby milk is bought or received or handled on consignment or otherwise, or sold or handled or delivered or made available on consignment or otherwise, or offered to be bought or received or handled on consignment or otherwise, or sold or handled or delivered or made available on consignment or otherwise, at a price less than the minimum price applicable to the particular transaction, whether by any discount, premium, rebate, free service, trading stamps, advertising allowance, or extension of credit, or by a combined price for such milk, together with another commodity or a service which is less, or is represented to be less, than the aggregate of the price of the milk and the price or value of such commodity or service when bought or received or handled on consignment or otherwise, sold or delivered or made available on consignment or otherwise, or offered for sale, delivery, purchase, handling or receiving separately or otherwise.

It shall be unlawful for any milk dealer or handler or directors or officers of a cooperative association or corporation, to store, manufacture, process, sell or handle or deliver or make available on consignment or otherwise, any milk for which he has paid, or agreed to pay, a price lower than that fixed by the board for milk of that class or grade.

It shall be unlawful for a milk dealer or handler or directors or officers of a cooperative association or corporation, knowingly or unknowingly, or any other person knowingly, by himself or through another, to store, manufacture, process, sell or deliver, or make available on consignment or otherwise, or buy or receive or handle on consignment or otherwise, or offer to sell or deliver or make available on consignment or otherwise, or buy or receive or handle on consignment or otherwise, milk at a price computed upon false or erroneous weight, butterfat [test] or appropriate milk component tests, grade or classification; or at a price from which have been made deductions not authorized by law or in excess of any deductions so authorized, whether such illegal deductions be in the form of excessive transportation charges or otherwise.

The act of a director, officer, agent or other person acting for or employed by a milk dealer or directors or officers of a cooperative association or corporation shall be deemed the act of such milk dealer or cooperative association or corporation.

Section 6. The act is amended by adding a section to read:

***Section 1204. Joint Study Committee.—There is hereby created a Joint Study Committee which shall study the implementation and effect of resale pricing under this act. The committee shall be in existence until its report hereunder is delivered to the General Assembly not later than December 31, 1985. The committee shall consist of the following members:***

***(1) Four producers, one each appointed by the majority leader and minority leader of each house.***

*(2) Four consumers, one each appointed by the majority and minority leaders of each house.*

*(3) Four dealers, one each appointed by the majority and minority leaders of each house.*

*(4) The chairman and the minority chairman of the Agriculture and Rural Affairs Committees of each house, or their designee.*

*(5) One at-large member appointed by the Secretary of Agriculture.*

*At the first meeting of the committee which will be called by the chairman of the Senate Agriculture and Rural Affairs Committee, the committee shall elect a chairman who, with the concurrence of a majority of the members of the committee, shall determine a schedule of meetings for the conduct of committee business. The chairman thus elected, or another member of the committee as appointed by the chairman, shall preside at all meetings of the committee.*

*There is also hereby created an advisory committee to provide assistance and support for the Joint Study Committee and which shall consist of:*

*(1) The chairman of the Pennsylvania Milk Marketing Board and his staff.*

*(2) The Dean of the Pennsylvania State University College of Agriculture and his staff.*

*(3) The Dean of the Wharton School of Business Administration of the University of Pennsylvania and his staff.*

*The purpose of the committee shall be to study and report upon the implementation and effect of the resale milk pricing provisions of this act. The committee shall submit its final report to the Agriculture and Rural Affairs Committee of each house not later than December 1, 1985.*

Section 7. This act reestablishes the Milk Marketing Board in accordance with the procedures set forth in section 7(a) of the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 8. The presently confirmed members of the Milk Marketing Board as of December 31, 1984, shall continue to serve as board members until their present terms of office expire.

Section 9. Section 13(f) of the act of July 6, 1984 (P.L.652, No.136), known as the Milk Producers' Security Act, is repealed.

Section 10. Each rule and regulation of the board in effect on December 31, 1984, shall continue to remain in effect until repealed or amended by the board.

Section 11. This act shall take effect January 1, 1985.

APPROVED—The 21st day of December, A. D. 1984.

DICK THORNBURGH