

ARTICLE IV LICENSES OF MILK DEALERS

§401. Milk dealers or handlers required to be licensed

Except as herein otherwise specifically provided, a milk dealer or handler, as defined in this act, shall not buy or handle milk, whether as a broker, factor, bailee, consignee, or otherwise, and whether or not by contract or operation of law title passes to the handler, from producers or others within this Commonwealth for storage, consignment, brokerage, manufacture, processing, distribution, or sale within or without this Commonwealth, or manufacture, process, handle, sell or distribute milk within this Commonwealth, unless such dealer or handler be duly licensed as herein provided; and it shall be unlawful for a milk dealer or handler to buy or receive milk from, or sell or consign milk to, or handle as broker, factor, consignee or otherwise, milk for, a milk dealer or handler who is not either licensed or exempted as herein provided, or, in any way, to deal in or handle milk which he has reason to believe has previously been dealt in or handled in violation of the provisions of this act.

§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. 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.

§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.

§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 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;

(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.

The burden of proving reasonable cause under the 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 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.

§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 one hundred fifty dollars (\$ 150) for each day of suspension as a penalty in lieu of such suspension, and thereupon rescind the suspension.

§405. Hearings and orders

Before refusing to grant or to reissue, or before suspending, revoking, or refusing to transfer a license, the board shall afford the applicant or the licensee, respectively, an opportunity to be heard. It shall direct a citation to such applicant or licensee, by registered mail, sent to his last known address, giving therein at least five days' notice of such hearing, and a statement of the matters complained of. The direction of such citation by registered mail as aforesaid shall be

sufficient notice of such hearing, notwithstanding any refusal of the addressee to accept or receive said citation. The five days' notice shall be computed as from the time that the addressee accepts or receives or refuses to accept or receive said citation. After such hearing, and upon entry of any order thereon, the board shall serve a certified copy of such order upon the applicant or licensee, filing at its office the original and a statement in writing of the findings of fact in support thereof.

§406. Cancellation

Where the board declines to grant a license to an applicant, or revokes a license, and the dealer appeals therefrom, obtaining a supersedeas, the reason assigned for declining to grant or for revoking the license shall not be a reason for declining to grant the same dealer a license for a subsequent license period. However, in the event that the appeal from the order of the board is dismissed, or otherwise terminated favorably to the board any license issued for such subsequent period shall be automatically cancelled five days after the termination of the appeal, unless the board otherwise orders.

§407. Transfer

Licenses issued under this act may not be assigned. Licenses may, however, be transferred from one person to another, provided that the prior written approval of the board to such transfer is obtained; but a receiver, an executor or administrator who succeeds to the business of a licensee may continue the business for a period of two weeks, if otherwise authorized by law, without securing the prior approval of the board. Any change in the membership of a partnership or limited partnership, either by the withdrawal or the addition of a partner, shall be construed to require a transfer of the license. Applications for such transfers shall be filed with the board at least one week before the transfer is to be made, or, in the case of a receiver or an executor or administrator, within two weeks after he takes possession of the business of the licensee. Whenever any license is transferred, no license fee shall be required from the person to whom such transfer is made for the balance of the then current license year, except the transfer fee of one dollar.

§408. Repealed.

§409. Repealed.

§410. Repealed.

§411. Classification of licenses

The board may classify licenses, and may issue licenses to any milk dealer to operate as a milk dealer in a particular municipality only, or in a particular market or markets in the Commonwealth only, but no milk dealer shall, if granted a license under this act at all, be prohibited from acting as a milk dealer in any municipality or in any market in which he was operating upon January second, one thousand nine hundred thirty-four.

§412. Other licenses

The licenses required by this act shall be in addition to any other licenses which are now or may hereafter be required by law.