

MANUFACTURING MILK LAW OF 2001 (EXCERPT)
Act 267 of 2001

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

Sec. 125.

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

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

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

(ii) The producer shall pay an administrative fine of \$50.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load.

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

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

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

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

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

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

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

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

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

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

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

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

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

director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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