

**HOUSE BILL No. 2254**

By Committee on Agriculture and Natural Resources

Requested by Representative Rahjes

2-4

1 AN ACT concerning agriculture; relating to financial accounts used to  
2 hold and disburse milk producer funds; defining milk producer to  
3 include any cooperative association that sells or markets milk on behalf  
4 of members; requiring milk processors to hold payments in trust for  
5 milk producers until full payment is received, with funds in escrow  
6 considered held in trust; allowing milk producers to require escrow  
7 accounts for payments, with specific conditions for deposits and  
8 account management; specifying that funds in trust or escrow are the  
9 property of the milk producer; exempting milk processors from escrow  
10 or trust requirements if certain conditions are not met; prohibiting milk  
11 processors from purchasing raw milk without compliance with federal  
12 milk marketing orders and agreed provisions; holding milk processors  
13 liable for unpaid raw milk, including purchase price, interest and  
14 attorney fees.

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16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. As used in this act:

18 (a) "Act" means sections 1 through 5, and amendments thereto.

19 (b) "Association" means the same as defined in K.S.A. 17-1602, and  
20 amendments thereto.

21 (c) "Cooperative" means the same as defined in K.S.A. 17-1602, and  
22 amendments thereto.

23 (d) "Milk processor" means the same as defined in K.S.A. 65-771,  
24 and amendments thereto.

25 (e) (1) "Milk producer" means the same as defined in K.S.A. 65-771,  
26 and amendments thereto.

27 (2) "Milk producer" includes any cooperative association that sells or  
28 markets milk on behalf of a person described in subparagraph (A).

29 (f) "Purchase price" means an amount of money, based on estimated  
30 butterfat content at the time of delivery, that a milk processor agrees to pay  
31 a milk producer for a purchase of raw milk.

32 (g) "Timely payment" means a payment made within three days  
33 following the payment due date under a milk marketing order or similar  
34 terms in a contract.

35 Sec. 2. (a) (1) Except as provided by subsections (b) and (d), a milk

1 processor shall hold in trust all payments received from the sale of milk for  
2 the benefit of the milk producer from whom the milk was purchased until  
3 the milk producer has received full payment of the purchase price for the  
4 milk.

5 (2) For the purposes of this subsection, funds placed in escrow in  
6 compliance with subsections (b) through (e) are held in trust.

7 (b) (1) (A) Except as provided by subsection (d), a milk producer  
8 who sells milk to a milk processor may require the milk processor to  
9 establish an escrow account for the benefit of the milk producer.

10 (B) If a milk producer requires a milk processor to establish an  
11 escrow account under this subsection, the milk processor shall deposit all  
12 payments received from the sale of any milk or dairy product into the  
13 escrow account until the milk producer has received full payment of the  
14 purchase price for the milk.

15 (2) (A) A milk processor required to establish an escrow account  
16 under this section shall, on receipt of a payment from the sale of milk or  
17 dairy products, deposit into the account a sum of money determined by  
18 multiplying the total amount of all payments received by the milk  
19 processor from the sale of milk or dairy products by the fraction  
20 determined by dividing the total quantity of milk purchased by the milk  
21 processor for sale as milk or dairy products into the quantity of milk sold  
22 by the milk producer to the milk processor.

23 (B) The milk processor shall continue to make payments into the  
24 escrow account until the milk producer has received full payment of the  
25 purchase price for the milk.

26 (3) (A) An escrow account required under this section shall be  
27 established for the benefit of the milk producer as a segregated, interest-  
28 bearing account with a financial institution located in this state, the  
29 deposits of which are insured by the federal deposit insurance corporation  
30 or the federal savings and loan insurance corporation.

31 (B) If a milk processor is required to establish more than one escrow  
32 account under this section, the milk processor may combine the accounts  
33 into a single account.

34 (C) If the funds accumulated in a combined escrow account are  
35 insufficient to pay all the milk producers who have not received full  
36 payment and for whose benefit the account was established, the agent of  
37 the institution with whom the escrow account is established shall distribute  
38 the funds in proportion to the amount then due to each milk producer.

39 (4) On presentation of proof of identity satisfactory to an agent of the  
40 institution with which the escrow account is established, the agent shall  
41 promptly distribute any funds accumulated for the benefit of the milk  
42 producer to the milk producer or, if required by an applicable federal milk  
43 marketing order, to the federal milk administration.

1 (5) This subsection shall not apply to a purchase of raw milk by a  
2 milk processor until there has been a failure to make a timely payment to a  
3 milk producer in accordance with section 3, and amendments thereto.  
4 Once the entire amount due for the purchase is received by the milk  
5 producer, the requirements of this subsection shall terminate in regard to  
6 such purchase.

7 (c) Funds held in trust by a milk processor or in an escrow account  
8 are the property of the milk producer.

9 (d) A milk processor is not required to establish an escrow account or  
10 maintain payments in trust under subsection (a) or (b) for a payment if:

11 (1) Full payment of the purchase price is not received, and the milk  
12 producer does not give written notice to the milk processor, by the end of  
13 the 30<sup>th</sup> business day after the final date for payment of the purchase price  
14 in accordance with section 3, and amendments thereto; or

15 (2) a payment instrument received by the milk producer is  
16 dishonored, and the milk producer does not give written notice to the milk  
17 processor, by the end of the 15<sup>th</sup> business day after the day that the notice  
18 of dishonor was received.

19 Sec. 3. (a) A milk processor may not purchase raw milk from a milk  
20 producer unless:

21 (1) Payment of the purchase price is made according to the provisions  
22 prescribed by an applicable federal milk marketing order;

23 (2) any additional provisions are agreed on by both the milk producer  
24 or such producer's agent and the milk processor; and

25 (3) the medium of exchange used is cash, a check for the full amount  
26 of the purchase price or a wire transfer of money in the full amount.

27 (b) For purposes of this act, a payment delivered by a milk processor  
28 to the applicable federal milk market administrator on behalf of a milk  
29 producer in compliance with the terms of an applicable federal milk  
30 marketing order is considered to be delivery of payment to the milk  
31 producer.

32 Sec. 4. This act does not apply to transactions between a cooperative  
33 association, while acting as a marketing agent, and its members.

34 Sec. 5. A milk processor who fails to pay for raw milk as provided by  
35 this act is liable to the milk producer for:

36 (a) The purchase price of the raw milk;

37 (b) interest on the purchase price at the highest legal rate, from the  
38 date that possession is transferred until the date that the payment is made  
39 in accordance with this act; and

40 (c) a reasonable attorney fee for the collection of the payment.

41 Sec. 6. This act shall take effect and be in force from and after its  
42 publication in the statute book.