

HOUSE BILL No. 2254

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

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

Section 1. As used in this act:

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

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

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

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

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

(2) "Milk producer" includes any cooperative association that sells or markets milk on behalf of a person described in paragraph (1).

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

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

Sec. 2. (a) (1) Except as provided by subsections (b) and (d), a milk processor shall hold in trust all payments received from the sale of milk for the benefit of the milk producer from whom the milk was purchased until the milk producer has received full payment of the purchase price for the milk.

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

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

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

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

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

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

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

(C) If the funds accumulated in a combined escrow account are

insufficient to pay all the milk producers who have not received full payment and for whose benefit the account was established, the agent of the institution with whom the escrow account is established shall distribute the funds in proportion to the amount then due to each milk producer.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The purchase price of the raw milk;
- (b) interest on the purchase price at the highest legal rate, from the date that possession is transferred until the date that the payment is made in accordance with this act; and
- (c) a reasonable attorney fee for the collection of the payment.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.