

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1056

By: Representatives George and Ramsey

For An Act To Be Entitled

"AN ACT TO PERMIT DAIRY FARMERS TO REQUIRE MILK PROCESSORS TO ESTABLISH ESCROW ACCOUNTS FOR THE PAYMENT OF PURCHASES OF RAW MILK; TO EXEMPT COOPERATIVE ASSOCIATIONS FROM THE APPLICATION OF THE LAW; TO MAKE CERTAIN ACTIONS ILLEGAL; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Cooperative association" means any group in which farmers act together in the market preparation, processing, or marketing of farm products or any association organized under Subchapter 1 of Chapter 2 of Title 2 [Ark. Code Ann. 2-2-101 et seq.], Subchapter 4 of Chapter 2 of Title 2 [Ark. Code Ann. 2-2-401 et seq.], or Subchapter 1 of Chapter 30 of Title 4 [Ark. Code Ann. 4-30-101 et seq.] of the Arkansas Code of 1987, Annotated;

(2) "Dairy farmer" means a farmer engaged in the business of producing milk for sale to milk processors or to a cooperative association of which the dairy farmer is a member.

(3) "Escrow account agent" means an entity within this state which is insured either by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(4) "Milk processor" means a person who operates a milk, milk products, or frozen desserts processing plant that is located in the state of Arkansas.

(5) "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 dairy farmer for a purchase of raw milk.

SECTION 2. (a) (1) Pursuant to the provisions of this section, a dairy farmer from whom milk was purchased by a milk processor, may require the milk

processor to establish an escrow account for the benefit of the dairy farmer for the payment of the purchase price of milk as specified in subdivision (a) (2) of this section.

(2) A dairy farmer may require the milk processor to establish an escrow account only if:

(A) The dairy farmer has failed to receive payment of the purchase price for the milk and the dairy farmer has given written notice by registered mail, return receipt requested, to the milk processor by the end of the 30th day after the final date for payment of the purchase price that such payment has not been received; or

(B) A payment instrument received by the dairy farmer from the milk processor has been dishonored and the dairy farmer has given written notice by registered mail, return receipt requested, to the milk processor by the end of the 15th business day after the day that the notice of dishonor was received.

The notice specified by subdivisions (a) (2) (A) and (a) (2) (B) of this section shall require that an escrow account be established and that the payment received from the sale of any milk or dairy product as specified in subsection (b) of this section shall be deposited in the escrow account until such dairy farmer has received full payment of the purchase price for the milk.

(b) (1) The milk processor shall deposit, upon receipt, into the escrow account a proportional share of all payments received from the sale of milk or dairy products by the milk processor which is equal to the amount of the milk sold by the dairy farmer to the processor in proportion to the total amount of milk purchased for the sale of the milk and dairy products by the milk processor. Such payments shall be deposited in the escrow account until the dairy farmer has received full payment for the purchase price for the milk.

(2) The escrow account shall be a segregated interest bearing account and shall be established for the benefit of the dairy farmer. Upon sufficient proof of identification, the escrow account agent shall promptly pay to the dairy farmer any sum accumulated for his benefit in the escrow account.

(c) (1) If any milk processor is required to establish more than one escrow account by operation of the provisions of this section, then the monies accruing may all be commingled in a single account.

(2) The commingled monies accumulated in the account shall be distributed to each dairy farmer in the amount due to each.

(3) If the commingled monies accumulated in the account are insufficient to pay all the dairy farmers, the escrow account agent shall distribute the monies so accumulated in proportion to the current amount due each.

(d) For the purposes of this section, the monies held by the escrow account agent shall be deemed to be the property of the dairy farmer, or dairy farmers if such monies have been commingled, in the current amount due to each or in proportion to the amount due each.

SECTION 3. A milk processor shall not purchase raw milk from a dairy farmer unless:

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

(2) Any additional provisions are agreed on by both the dairy farmer or his 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.

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

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

(1) The purchase price of the raw milk;

(2) Interest on the purchase price at the rate fixed by law for civil judgments commencing from the date possession is transferred until the date the payment is made in accordance with this act; and

(3) A reasonable attorney's fee for the collection of the payment.

SECTION 6. Any milk processor failing to establish an escrow account upon receipt of notification of a dairy farmer pursuant to the provisions of this act or who fails to continue to make such payments until the dairy farmer has received full payment of the purchase price, upon conviction shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of

not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed one (1) year or both such fine and imprisonment.

SECTION 7. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 8. All laws and parts of laws in conflict with this act are hereby repealed.