

HOUSE BILL NO. 418

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DAVIDSON.

1245H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 416.410, 416.415, 416.420, 416.425, 416.430, 416.435, 416.440, 416.445, 416.450, 416.455, 416.460, 416.465, 416.470, 416.475, 416.480, 416.485, 416.490, 416.495, 416.500, 416.505, 416.510, 416.515, 416.520, 416.525, 416.530, 416.535, 416.540, 416.545, 416.550, 416.555, and 416.560, RSMo, relating to unfair milk sales practices.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 416.410, 416.415, 416.420, 416.425, 416.430, 416.435, 416.440, 416.445, 416.450, 416.455, 416.460, 416.465, 416.470, 416.475, 416.480, 416.485, 416.490, 416.495, 416.500, 416.505, 416.510, 416.515, 416.520, 416.525, 416.530, 416.535, 416.540, 416.545, 416.550, 416.555, and 416.560, RSMo, are repealed, to read as follows:

~~[416.410. As used in sections 416.410 to 416.560 the following terms are construed to have the following meanings, except in those instances where the context clearly indicates otherwise:~~

~~(1) "Bulk milk", milk in bulk form, in cans, tank cars or tank trucks that is furnished to a processor for the purpose of processing and manufacture into milk products;~~

~~(2) "Bulk milk handler", any person engaged in the business of transferring title to bulk milk to a processor, except a cooperative association organized under the laws of this state;~~

~~(3) "Cost to the bulk milk handler", the price paid dairy farmers for the milk, plus receiving plant charge or a reasonable charge to cover all costs of operating his own receiving plant, plus transportation cost to the point of delivery to the purchaser;~~

~~(4) "Cost to the processor or distributor", the price paid for raw materials, plus the cost of doing business, which shall include labor, salaries~~

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 ~~paid executives and officers, rent, interest, depreciation, power, supplies,~~
 17 ~~maintenance of equipment, selling costs, advertising, transportation and~~
 18 ~~delivery costs, credit losses, all types of permits and license fees, all taxes,~~
 19 ~~insurance, and all overhead expenses of the processor or distributor;~~

20 (5) ~~"Cost to the retailer", the invoice price paid by the retailer plus the~~
 21 ~~retailer's cost of doing business. In the absence of specific evidence the cost of~~
 22 ~~doing business shall be presumed to be eight percent of the invoice price, and~~
 23 ~~this cost shall be calculated to the nearest half cent per sales unit;~~

24 (6) ~~"Director", the director of the department of agriculture;~~

25 (7) ~~"Distributor", any person, other than a bulk milk handler, engaged~~
 26 ~~in the business of transferring title within the state to milk products for a~~
 27 ~~consideration, where the product is to be sold for resale or further processing;~~

28 (8) ~~"Market milk", milk disposed of in fluid form and which is~~
 29 ~~approved by an appropriate city, county or state health authority for~~
 30 ~~distribution and sale in fluid form in any part of the state of Missouri;~~

31 (9) ~~"Milk products", market milk, pasteurized milk, vitamin D milk,~~
 32 ~~homogenized milk, flavored milk or flavored milk drinks, sweet cream,~~
 33 ~~whipping cream, homogenized cream, skim milk, buttermilk, and cultured~~
 34 ~~buttermilk;~~

35 (10) ~~"Nonprocessing retailer", any person, not a processor, engaged in~~
 36 ~~the business of transferring title within the state to milk products for a~~
 37 ~~consideration where such product is to be used or consumed by the purchaser~~
 38 ~~and is not to be resold or used for the purpose of manufacture or further~~
 39 ~~processing;~~

40 (11) ~~"Processor", any person engaged in the business of processing or~~
 41 ~~packaging bulk milk or other materials into milk products.]~~

2 ~~[416.415. 1. No processor or distributor shall, with the intent or with~~
 3 ~~the effect of unfairly diverting trade from a competitor, or of otherwise~~
 4 ~~injuring a competitor, or of destroying competition, or of creating a monopoly,~~
 5 ~~advertise, offer to sell or sell within the state of Missouri, at wholesale or~~
 6 ~~retail, any milk product for less than cost to the processor or distributor.~~

7 ~~2. Proof of the advertising, offer to sell or sale of milk products by a~~
 8 ~~processor or distributor for less than cost to the processor or distributor is~~
 9 ~~prima facie evidence of a violation of this section.~~

10 ~~3. A profit from the sale of products other than milk products is not~~
 11 ~~used in cost computation to subsidize or lower the cost of doing business with~~
~~respect to milk products.]~~

2 ~~[416.420. 1. No processor or distributor shall, with the intent or with~~
 3 ~~the effect of unfairly diverting trade from a competitor, or of otherwise~~
 4 ~~injuring a competitor, or of destroying competition, discriminate in price in the~~
 5 ~~sale of any milk product furnished from the same plant between any of the~~
 6 ~~towns, cities, municipalities or counties of this state; except that no violation~~
 7 ~~results from different prices which reflect, in the case of a processor, the actual~~
 8 ~~transportation cost from point of processing to point of sale, and, in the case of~~
 9 ~~a distributor, the actual transportation cost from point of purchase to point of~~
~~resale.~~

10 2. ~~Proof of the advertising, offer for sale or sale of any milk products~~
 11 ~~furnished from the same plant in any town, city, municipality, or county at~~
 12 ~~prices less than advertised, offered for sale, or sold in any other town, city,~~
 13 ~~municipality or county by the processor or distributor, which cannot be~~
 14 ~~accounted for by the difference in the transportation costs is prima facie~~
 15 ~~evidence of a violation of this section.]~~

2 ~~[416.425. 1. No nonprocessing retailer shall, with the intent or with~~
 3 ~~the effect of unfairly diverting trade from a competitor, or otherwise injuring a~~
 4 ~~competitor, or of destroying competition, or of creating a monopoly, advertise,~~
 5 ~~offer to sell or sell within the state of Missouri, any milk product for less than~~
 6 ~~cost to the retailer.~~

7 2. ~~Proof of the advertising, offer to sell or sale of milk products by a~~
 8 ~~nonprocessing retailer is prima facie evidence of a violation of this section.]~~

2 ~~[416.430. 1. No bulk milk handler shall, with the intent or with the~~
 3 ~~effect of unfairly diverting trade from a competitor, or of otherwise injuring a~~
 4 ~~competitor, or of destroying competition, or of creating a monopoly, advertise,~~
 5 ~~offer to sell or sell within the state of Missouri, bulk milk, raw or pasteurized,~~
 6 ~~that is intended for the processing of any milk product for less than the cost to~~
 7 ~~the bulk milk handler.~~

8 2. ~~Proof of the advertising, offer to sell or sale of bulk milk by a bulk~~
 9 ~~milk handler for less than cost to the bulk milk handler is prima facie evidence~~
 10 ~~of a violation of this section.]~~

2 ~~[416.435. 1. No person shall, with the intent or with the effect of~~
 3 ~~unfairly diverting trade from a competitor, or of otherwise injuring a~~
 4 ~~competitor or of destroying competition, or of creating a monopoly, advertise,~~
 5 ~~offer to sell or sell any milk product with any other commodity or service at a~~
 6 ~~combined price which is less than the aggregate of the prices for which the~~
 7 ~~milk product and the other commodity or service are offered for sale.~~

8 2. ~~Proof of the advertising, offer to sell or sale of the milk product and~~
 9 ~~any other commodity or service at a combined price which is less than the~~
 10 ~~aggregate of the price for which the milk product and the other commodity or~~
 11 ~~service are offered for sale is prima facie evidence of a violation of this~~
 12 ~~section.]~~

2 ~~[416.440. 1. No milk processor or distributor shall, with the intent or~~
 3 ~~with the effect of unfairly diverting trade from a competitor, or of otherwise~~
 4 ~~injuring a competitor, or of destroying competition, or of creating a monopoly,~~
 5 ~~give or offer to give any milk product purchaser any rebate, discount, free~~
 6 ~~service or services, advertising allowance, pay for advertising space used~~
 7 ~~jointly, donation, free merchandise, rent on space used by the retailer for~~
 8 ~~storing or displaying the milk processor's or distributor's merchandise,~~
 9 ~~financial aid, free equipment, or any other thing of value; except the bona~~
 10 ~~fade return by a cooperative association to its members on a patronage basis of~~
 11 ~~the savings realized on products sold and distributed to the members or~~
 12 ~~patrons.~~

12 2. ~~Proof of the giving or offer to give anything of value is prima facie~~
 13 ~~evidence of a violation of this section.~~

14 3. ~~No milk product purchaser shall accept from any milk processor or~~
 15 ~~distributor any rebate, discount, free service or services, any advertising~~
 16 ~~allowance, pay for advertising space used jointly, donation, free merchandise,~~
 17 ~~rent on space used by retailer for storing or displaying the milk processor's or~~
 18 ~~distributor's merchandise, financial aid, free equipment, or any other thing of~~
 19 ~~value; except the bona fide receipt from a cooperative association of a~~
 20 ~~patronage refund based on the patronage of the purchaser with the cooperative~~
 21 ~~association.~~

22 4. ~~Proof of the acceptance of any thing of value by any milk product~~
 23 ~~purchaser is prima facie evidence of the violation of this section.~~

24 5. ~~This section does not prevent a processor or distributor from~~
 25 ~~furnishing point-of-sale advertising material to a retailer without cost for the~~
 26 ~~promotion of the sale of the processor's or distributor's products.~~

27 6. ~~This section does not prevent a discount of two percent or less for~~
 28 ~~payment on or before a certain date.]~~

2 ~~[416.445. The provisions of sections 416.415 to 416.430 do not apply~~
 3 ~~to advertisements, offers to sell or sales where:~~

4 ~~(1) The sales are made in an isolated transaction and not in the usual~~
 5 ~~course of business;~~

6 ~~(2) The merchandise is damaged;~~

7 ~~(3) The items are sold upon the final liquidation of any business;~~

8 ~~(4) The items are sold for charitable purposes or to unemployment~~
 9 ~~relief agencies;~~

10 ~~(5) The items are sold by an officer acting under the direction of any~~
 11 ~~court;~~

12 ~~(6) The price of the item is made in good faith to meet the equally~~
 13 ~~lower price of competition, provided however, the person charged with a~~
 14 ~~violation of this section further affirmatively proves the reduction in price is~~
 15 ~~not made with the intent or with the effect of unfairly diverting trade from a~~
 16 ~~competitor, or of otherwise injuring a competitor, or of destroying~~
 17 ~~competition, or of creating a monopoly, and unless such is affirmatively~~
 18 ~~shown, the court shall enter its order enjoining the violation as charged.]~~

2 ~~[416.450. In any case in which a complaint is made in writing to the~~
 3 ~~director by a person claiming to be injured because milk products are being~~
 4 ~~offered for sale or sold in violation of the provisions of sections 416.410 to~~
 5 ~~416.560, or in which such violations are apparent to the director, the director~~
 6 ~~shall forthwith cause an investigation to be made of the complaint, and if, in~~
 7 ~~the judgment of the director, the investigation reveals that there is probable~~
 8 ~~cause for the complaint, the director shall call upon the attorney general or the~~
 9 ~~prosecuting attorney of any county in which a violation of the provisions of~~
 10 ~~sections 416.410 to 416.560 occurs to institute an injunction suit in a court of~~
 11 ~~competent jurisdiction of the county in which the alleged violations took place~~
 12 ~~to restrain the violations of sections 416.410 to 416.560 as may be revealed by~~

12 the investigation; and it is the duty of the attorney general or prosecuting
13 attorney to institute and prosecute the injunction suits.]

2 [416.455. Any person who is injured in business or property by reason
3 of another person's violation of any provision of sections 416.410 to 416.560
4 may intervene in the suit for injunction instituted pursuant to section 416.450
5 against the other person or he may bring a separate action and recover three
6 times the actual damages sustained as a result of the violation, together with
7 the costs of the suit, or may sue to enjoin the violation of any provision of
sections 416.410 to 416.560.]

2 [416.460. The director is authorized and directed to promulgate rules
3 and regulations to carry out the purposes of sections 416.410 to 416.560. No
4 rule or portion of a rule promulgated under the authority of this chapter shall
5 become effective unless it has been promulgated pursuant to the provisions of
section 536.024.]

2 [416.465. 1. In making investigations pursuant to section 416.450, the
3 director is authorized and empowered to administer oaths and to issue
4 subpoenas for persons and pertinent operating records. In case of failure or
5 refusal to obey a subpoena issued to any person, any court of competent
6 jurisdiction within the county in which the investigation is carried on or in
7 which the person guilty of failure or refusal to obey is found or resides or
8 transacts business or has his principal place of business, upon application by
9 the director, may issue an order requiring the person to appear before the
10 director, there to produce evidence, or to give testimony touching the matter
under investigation.

11 2. Any person willfully failing to obey an order of the court is guilty of
12 contempt of court and shall be proceeded against as provided by law.]

2 [416.470. In examining books and records, the director has authority
to employ any recognized accounting firm or cost finding organization.]

2 [416.475. 1. Upon the filing of the complaint with the director, the
3 director shall require of the complainant, a bond in the sum of one thousand
4 dollars to defray the expenses of the necessary investigation incident to the
5 complaint.

6 2. In the event the investigation discloses a violation of sections
7 416.410 to 416.560, and a court action is necessary to secure relief, the surety
8 is released from his liability under the bond, and in an injunction suit brought
9 by the attorney general or the prosecuting attorney as provided in section
10 416.450, the cost of the investigation is a part of the cost against the defendant
11 in the suit, if he is found to have violated the provisions of sections 416.410 to
12 416.560.

13 3. In the event the complaint is found not to involve actionable
14 violation, the complainant is required to defray the necessary expenses of the
investigation, but not to exceed the sum of one thousand dollars.]

2 ~~[416.480. The remedies provided for in sections 416.410 to 416.560~~
3 ~~are exclusive and no criminal fines or penalties shall be imposed for violation~~
 ~~of sections 416.410 to 416.560.]~~

2 ~~[416.485. Any action arising under sections 416.410 to 416.560,~~
3 ~~whether in law or equity, shall be commenced within two years after the right~~
 ~~of action first accrues or is forever barred.]~~

2 ~~[416.490. 1. It is unlawful for any person to operate a milk or milk~~
3 ~~products manufacturing or processing plant or to act as a distributor within this~~
4 ~~state unless licensed under the provisions of sections 416.410 to 416.560;~~
5 ~~provided, however, that no such license shall be required for the distribution of~~
 ~~cottage cheese.~~

6 ~~2. Each license is issued on July first of each year and must be~~
7 ~~conspicuously posted in the place of business to which it applies. A license is~~
8 ~~issued upon satisfactory application to the director, accompanied by a license~~
9 ~~fee based upon the amount of sales during the previous calendar year ending~~
10 ~~on December thirty first of milk products except cottage cheese, and the~~
11 ~~license fee is equivalent to not more than one-half cent per hundred weight of~~
12 ~~the sales of milk products.~~

13 ~~3. The director shall set the amount of the license fee for~~
14 ~~manufacturing and processing plants at least yearly, upon hearing, not to~~
15 ~~exceed one-half cent per hundred weight, and may set a licensing fee for~~
16 ~~distributors not to exceed three dollars per year or in the amount only as is~~
17 ~~necessary to carry out the provisions of sections 416.410 to 416.560.~~

18 ~~4. The director is hereby authorized and empowered to suspend or~~
19 ~~revoke the license of any person who acts as a distributor or who operates a~~
20 ~~milk or milk products manufacturing or processing plant which is subject to~~
21 ~~the provisions of sections 416.410 to 416.560 and whether located inside or~~
22 ~~outside the state of Missouri, or to refuse to issue a license to any applicant~~
23 ~~therefor if the director, after a public hearing, has found that the applicant has~~
24 ~~violated any of the provisions of sections 416.410 to 416.560, or the rules and~~
25 ~~regulations adopted hereunder. No rule or portion of a rule promulgated under~~
26 ~~the authority of sections 416.410 to 416.560 shall become effective unless it~~
27 ~~has been promulgated pursuant to the provisions of section 536.024. Any~~
28 ~~applicant shall have full rights to counsel, to produce witnesses in his behalf at~~
29 ~~the hearing, and to have ten days' notice in writing of the date, time and place~~
30 ~~of the hearing, and the charges and grounds upon which his license is sought to~~
31 ~~be revoked or suspended, or to be refused a license. The order of suspension,~~
32 ~~revocation, or refusal to issue a license, shall not become final until ten days~~
33 ~~after the date thereof, and after the party to the proceeding has been notified in~~
34 ~~writing of the action of the director. Any party to the proceedings that is~~
35 ~~aggrieved by any final decision or order of the director may appeal the order in~~
36 ~~the manner provided for appeals in the administrative procedure law of~~
37 ~~Missouri.]~~

2 ~~[416.495. 1. All moneys collected and received by the director, arising~~
 ~~from any license fees established pursuant to sections 416.410 to 416.560,~~

3 shall be paid into the state treasury and shall, by the state treasurer, be placed
4 in a separate fund to be known as the "Milk Control Fund" which is hereby
5 established.

6 2. No money shall be paid out of this fund except by appropriations of
7 the general assembly for the administration of sections 416.410 to 416.560.]

2 [~~416.500. Any person who acts as a distributor or who operates a milk
3 or milk products manufacturing or processing plant located outside of this
4 state and sells, offers for sale or distributes milk or milk products in this state
5 shall pay the license fee provided for in sections 416.410 to 416.560 on all
6 sales in this state of milk products except cottage cheese, and shall be subject
7 to all of the provisions of sections 416.410 to 416.560.]~~

2 [~~416.505. In any case where a person acts as a distributor or operates a
3 milk processing plant within this state or such a plant located outside this state
4 and is making sales within this state without having first obtained a license as
5 provided in sections 416.410 to 416.560, the attorney general or the
6 prosecuting attorney shall bring suit in a court of competent jurisdiction
7 within the county in which the violation occurs to enjoin the sales or
8 distribution of milk or milk products. In addition, the director, or his
9 authorized agents or representatives are authorized and empowered to issue
10 and enforce a written or printed "stop sale" order to the owner or custodian of
11 the milk products. The order shall prohibit the further sale of the milk
12 products until the provisions of sections 416.410 to 416.560 have been
13 complied with. The owner or custodian of the milk products shall have the
14 right to appeal from the order to the circuit court of the county or city in which
15 the milk products are located, praying for a judgment as to the justification of
16 such order and for the discharge of the milk products from the order
prohibiting the sale in accordance with the findings of the court.]~~

2 [~~416.510. The performance of any act subject to the provisions of
3 sections 416.410 to 416.560 by a person who is a nonresident of this state shall
4 be deemed:~~

5 (1) ~~An agreement by him that he, his executor, administrator,
6 successor, assign, or other legal representative, shall be subject to the
7 jurisdiction of the courts of this state in all actions and proceedings brought
8 against him, his executor, administrator, successor, assign, or other legal
9 representative, by either the state of Missouri or a resident or nonresident
10 plaintiff for violation of the provisions of sections 416.410 to 416.560; and~~

11 (2) ~~An appointment by the nonresident, his executor, administrator,
12 successor, assign, or other legal representative of the state of Missouri, as his
13 lawful attorney and agent upon whom may be served all process in suits
14 pertaining to the actions and proceedings; and~~

15 (3) ~~An agreement by the nonresident that any process in any suit so
16 served shall be of the same legal force and validity as if personally served in
this state.]~~

2 ~~[416.515. All process in suits brought under the provisions of sections~~
 3 ~~416.410 to 416.560 shall be in form and substance the same as now provided~~
~~for in suits against residents of this state.]~~

2 ~~[416.520. 1. Service of process in suits brought under the provisions~~
 3 ~~of sections 416.410 to 416.560 shall be made by delivering a copy of the~~
 4 ~~summons, with a copy of the petition attached, together with a remittance of~~
 5 ~~two dollars, to the secretary of state of Missouri at his office, or in his absence,~~
 6 ~~to the chief clerk of the secretary of state, at his office, and the service shall be~~
 7 ~~sufficient service upon the nonresident.~~

8 ~~2. The secretary of state shall immediately mail to the defendant, and~~
 9 ~~to each of them if there be more than one, by restricted, registered or certified~~
 10 ~~mail, addressed to the defendant at his last known address, residence or place~~
~~of abode a notice of the service and a copy of the process and petition.]~~

2 ~~[416.525. The notification provided for in section 416.520 shall be~~
~~substantially in the following form, to wit:~~

3 ~~To (here insert the name of each defendant and his residence, the last~~
 4 ~~known place of abode as definitely as known): You will take notice that~~
 5 ~~original process in suit against you, a copy of which is hereto attached,~~
 6 ~~was duly served upon you at Jefferson City, Cole County, Missouri, by~~
 7 ~~-serving same on the Secretary of State of the State of Missouri, or his~~
 8 ~~Chief Clerk. Dated at _____, Missouri, this _____ day of _____,~~
 9 ~~20_____.~~

10 _____
 11 ~~Secretary of State]~~

2 ~~[416.530. In lieu of mailing the notification to the defendant in a~~
 3 ~~foreign state, plaintiff may cause said notification to be personally served in~~
 4 ~~the foreign state on the defendant by an adult person not a party to the suit by~~
 5 ~~delivering said notification to the defendant or by offering to make the~~
 6 ~~delivery in case defendant refuses to accept same, or by having said~~
 7 ~~notification served on defendant by an officer duly qualified to serve legal~~
 8 ~~process in the state or jurisdiction where the defendant is found and the~~
 9 ~~officer's return showing the service to have been made, filed in the case on or~~
 10 ~~before the return day of the process, or within such further time as the court~~
 11 ~~may allow. Upon the service a general judgment may be taken against~~
~~defendant or defendants.]~~

2 ~~[416.535. Proof of the mailing or personal delivery of said notification~~
 3 ~~to the nonresident by an adult person not an officer serving same shall be made~~
 4 ~~by affidavit of the party doing said acts. All affidavits of service shall be~~
 5 ~~endorsed upon or attached to the original papers to which they relate and~~
 6 ~~including the returned registry receipt shall be forthwith filed with the court in~~
~~which the action is filed and pending.]~~

2 ~~[416.540. The foregoing provisions relative to service of process in~~
3 ~~suits against nonresidents shall not be deemed to prevent actual personal~~
4 ~~service in this state upon a nonresident in the time, manner, form, or under the~~
5 ~~conditions provided for service on residents, and nothing contained in sections~~
6 ~~416.410 to 416.560 shall be construed as in any manner limiting, affecting or~~
7 ~~repealing any cause of action, right, or method of procedure now provided by~~
8 ~~law, but the provisions of said sections are cumulative and in addition to any~~
~~existing right, remedy, cause of action, and method of procedure.]~~

2 ~~[416.545. Except as otherwise provided under sections 416.450 and~~
3 ~~416.455, any suit brought under the provisions of sections 416.410 to 416.560~~
4 ~~shall be filed in the county in which the cause of action accrues or in the~~
5 ~~county where the plaintiff resides, and if there be other defendants in the action~~
6 ~~who are residents of the state of Missouri, then the action shall be brought in~~
7 ~~any county in which any one of said defendants resides, or in the county within~~
~~which the plaintiff resides and the defendant may be found.]~~

2 ~~[416.550. The court in which the action is pending shall grant such~~
3 ~~continuance to a nonresident defendant as may be proper to afford him~~
4 ~~reasonable opportunity to defend the action.]~~

2 ~~[416.555. It shall be the duty of the secretary of state to keep a record~~
3 ~~of all process served upon him, or his chief clerk, under the provisions of~~
4 ~~sections 416.410 to 416.560, which record will show the day and hour of~~
~~service of every process.]~~

2 ~~[416.560. The fee of two dollars paid by plaintiff to the secretary of~~
3 ~~state under section 416.520 at the time of service of the process shall be taxed~~
4 ~~as part of plaintiff's costs if he prevails in the action or proceeding.]~~

✓