Milk Processors' Payments in Trust; HB 2254

HB 2254 requires a milk processor to 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.

Definitions

The bill references the definitions of "association," "cooperative," "milk processor," and "milk producer" in continuing law. The bill also defines:

- "Milk producer" to also include any cooperative association that sells or markets milk on behalf of an individual milk producer;
- "Purchase price" is 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; and
- "Timely payment" is a payment made within three days following the payment due date under a milk marketing order or similar terms in a contract.

Trust and Escrow Requirements

Trusts

The bill requires a milk processor (processor) to hold in trust all payments received from the sale of milk for the benefit of the milk producer (producer) from whom the milk was purchased. This practice continues until the producer has received full payment of the purchase price for the milk. The funds placed in escrow are held in trust.

Escrow Account

The bill allows a producer who sells milk to a processor to require that processor to establish an escrow account for the benefit of the producer. If a producer requires the establishment of an escrow account, the processor then deposits all payments into the escrow account until the producer has received full payment.

Sum of money determination. The bill requires the processor to deposit into the account a sum of money determined by multiplying the total amount of all payments received by the processor from the sale of milk or dairy products by the fraction determined by dividing the total quantity of milk purchased by the processor for sale as milk or dairy products into the quantity of milk sold by the producer to the processor.

Full payment. The bill requires the processor to continue making payments into the escrow account until the producer has received full payment of the purchase price of the milk.

Establishment of account. The bill requires the escrow account to be established as a segregated, interest-bearing account in a financial institution located in Kansas, the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

Combination of accounts. If a processor is required to establish more than one escrow account for purposes of this bill, the processor may combine the accounts into a single account. If the accumulated funds in a combined escrow account are insufficient to pay all producers, the agent of the financial institution (agent) will distribute funds in proportion to the amount due each producer.

Distribution of funds. The bill requires the agent to distribute funds to producers upon proof of identity or, if required by an applicable federal milk marketing order, to the Federal Milk Administration.

Failure of timely payment. These provisions do not apply to a processor until there has been failure to make a timely payment to a producer.

Ownership of the Funds

The bill determines that funds held in trust by a processor or in an escrow account are the property of the producer.

Exemption

A processor is not required to establish an escrow account or maintain payments in trust for a payment if:

- Full payment of the purchase price is not received, and the producer does not give written notice to the processor by the end of the 30th business day after the final date for payment of the purchase price; or
- A payment instrument received by the producer is dishonored, and the producer does not give written notice to the processor by the end of the 15th business day after the day that the notice of dishonor was received.

Prohibition of Purchase

The bill prohibits a processor from purchasing raw milk from a producer unless:

- Payment of the purchase price is made according to the provisions prescribed by an applicable federal milk marketing order;
- Any additional provisions are agreed on by both the producer or the producer’s agent and the processor; and

- 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.

A payment delivered by a processor to the applicable federal milk market administrator on behalf of a producer in compliance with the terms of an applicable federal milk marketing order is considered to be delivery of payment to the producer.

Cooperative Associations

The bill does not apply to transactions between a cooperative association, while acting as a marketing agent, and its members.

Liability for Lack of Payment

A processor that fails to pay for raw milk, as provided by this act, is liable to the producer for:

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