

1985 Assembly Bill 730

Date of enactment: April 10, 1986
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1985 Wisconsin Act 226

AN ACT to amend 97.28 (4) and (6); and to repeal and recreate 100.03 of the statutes, relating to the licensing and regulation of food processing plants by the department of agriculture, trade and consumer protection, granting rule-making authority and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 97.28 (4) and (6) of the statutes are amended to read:

97.28 (4) ~~Before any~~ No license to operate a food processing plant may be issued or renewed by the department ~~or a city or county granted agent status under s. 97.41 to any food processing plant operator who buys or otherwise takes title to farm products from the producer of the products, except by payment to the producer of the full agreed price at the time of obtaining possession or control of the products, unless the applicant shall comply~~ complies with s. 100.03.

(6) Except as provided in sub. (6m), licenses issued to processors of farm produce expire on March 31 of each year. ~~No such license shall be granted or~~

~~renewed unless the applicant certifies that all growers who have supplied or contracted to supply farm produce to the licensee in any previous year of operation have been fully paid in cash at the agreed price.~~

SECTION 2. 100.03 of the statutes is repealed and recreated to read:

100.03 Food processing plant operators. (1) DEFINITIONS. In this section, unless the context requires otherwise:

(a) "Affiliate" means any officer, director or partner of a food processing plant operator, any firm or corporation owned or operated by an officer, director or partner of a food processing plant operator and any person acting as agent for a food processing plant operator, who is engaged in the business of buying farm products from, or contracting for the growing of

farm products by, a producer on behalf of the food processing plant operator.

(b) "Asset" means anything of value owned.

(c) "Balance sheet" means a statement of the assets, liabilities and equity on a specific date.

(d) "Certified financial statement" means a financial statement examined by an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442, and certified by the accountant as fairly representing business operations, financial positions and changes in financial condition of the food processing plant operator for which the statement is rendered.

(e) "Cooperative doing business on a cooperative pooling basis" means a cooperative association that, in accordance with its articles and bylaws, pays producers a prorated share of sales proceeds for the marketing year after a final accounting and the deduction of marketing expenses and retained earnings.

(f) "Current assets" means cash and assets, including trade or investment items, which may be readily converted into cash in the ordinary course of business within one year.

(g) "Current liabilities" means those liabilities which are due and payable within a period of one year.

(h) "Equity" means the excess of total assets over total liabilities. "Equity" represents the ownership interest of one or more persons who invested in the enterprise.

(i) "Equity statement" means a report of the change in equity from the beginning to the end of the accounting period.

(j) "Financial statement" means a financial statement that meets the requirements of sub. (3) (e).

(k) "Food processing plant" has the meaning specified in s. 97.28 (2) (a). "Food processing plant" does not include "retail food processing plant", as defined in s. 97.28 (2) (b).

(L) "Income statement" means a report of the financial results of business operations for a specific period.

(m) "Interim statement" means a financial statement prepared as of a date other than the end of a fiscal year.

(n) "Liability" means an obligation to pay money or other assets or to render a service to another person either now or in the future.

(o) "Maximum liability" means the largest amount of money owed to producers at any one time during the license year by a food processing plant operator and its subsidiaries and affiliates for farm products purchased or contracted for by the operator and its subsidiaries and affiliates.

(p) "Payment on delivery" means payment of the full agreed price when a producer delivers the produce to the food processing plant operator, subsidiary or affiliate, or payment of the full agreed price within 72 hours after delivery if the produce is graded.

(q) "Producer" means any person who produces and sells, or who grows under contract, raw or partly processed farm products.

(r) "Statement of changes in financial condition" means a report that summarizes the financing and investing activities of an entity, including funds generated from operations and changes in working capital.

(s) "Subsidiary" means a firm or corporation owned or controlled by a food processing plant operator and engaged in the business of buying farm products from, or contracting for the growing of farm products by, a producer on behalf of the food processing plant operator.

(t) "Verified financial statement" means a financial statement prepared by an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442 that is not certified by the accountant but that contains a notarized statement, signed and sworn to by the food processing plant operator or an officer of the operator, that the financial statement is correct.

(2) ANNUAL STATEMENTS. An applicant for an original or renewal food processing plant operator's license under s. 97.28 shall include with the application a sworn statement as to all of the following, and shall notify the department whenever he or she knows or has reason to believe that any of the information reported is no longer correct:

(a) Whether the applicant and its subsidiaries and affiliates will be acquiring any farm products from producers during the ensuing license year.

(b) Whether the applicant and its subsidiaries and affiliates will be making payment on delivery during the ensuing license year.

(c) The maximum liability during the previous license year, if applicable, and the anticipated maximum liability in the ensuing license year.

(d) Whether all producers who have supplied or contracted to supply farm products to the applicant, its subsidiaries and affiliates prior to February 1 of the current year have been fully paid in cash at the agreed price, including interest if applicable.

(e) Whether the applicant is a producer-owned cooperative doing business on a cooperative pooling basis with producers.

(3) FINANCIAL STATEMENTS. (a) Except as provided under par. (b):

1. An applicant for an original food processing plant operator's license under s. 97.28 shall file a financial statement with the department.

2. Each food processing plant operator shall file an annual financial statement with the department by the 15th day of the 4th month commencing after the close of the operator's fiscal year.

(b) Paragraph (a) does not apply to any applicant or operator who does any of the following:

1. Swears under sub. (2) (a) that he or she will not be acquiring any farm products from producers during the ensuing license year.

2. Swears under sub. (2) (b) that he or she will be making payment on delivery during the ensuing license year.

3. Files security with the department under sub. (5) (c) and (d).

4. Swears under sub. (2) (e) that he or she is a producer-owned cooperative doing business on a cooperative pooling basis with producers.

(c) Notwithstanding par. (b), the department may require any applicant or operator to file a financial statement or an interim statement at any time.

(d) 1. Beginning April 1, 1986, a financial statement filed under par. (a) by an applicant or operator spending more than \$250,000 on farm products during the license year, including amounts spent by any subsidiaries or affiliates, shall be certified. The financial statements of other applicants and operators shall be certified or verified.

2. An applicant or operator may satisfy the requirement under subd. 1 by filing the consolidated certified financial statement of the applicant's or operator's parent company, if the parent company guarantees to the department that it will pay the obligations of the applicant or operator and the applicant's or operator's subsidiaries and affiliates under sub. (4).

(e) All financial statements under this section shall consist of a balance sheet, income statement, equity statement, statement of changes in financial condition and any other information required by the department, and shall be prepared in conformity with generally accepted accounting principles. Each such statement shall disclose, separately and clearly, the maximum liability of the food processing plant operator, its subsidiaries and affiliates.

(f) Notwithstanding s. 19.35, a financial statement is not a public record and the department shall keep a statement closed to the public. The department may utilize and release a financial statement in an enforcement action, administrative hearing or court proceeding to the parties, the hearing officer or judicial officer and the jury, if appropriate. If the statement is introduced into evidence, it shall be sealed at the conclusion of the proceeding and shall not be disclosed as part of the public record of the proceeding.

(4) FULL PAYMENT REQUIRED. (a) The department may not grant or renew a food processing plant operator's license under s. 97.28 unless the applicant certifies that all producers who have supplied or contracted to supply farm products to the applicant or any subsidiary or affiliate of the applicant on or before December 31 of the current license year have been paid in cash at the agreed price under par. (b) or (c).

(b) Payment under par. (a) shall be made according to the terms of a written contract if the written con-

tract requires such payment under one of the following:

1. By January 31 of the current license year, for farm products delivered on or before December 31 of the current license year; and by the 15th day of the month following the month in which the farm products are delivered or within 30 days after completion of delivery and inspection, for farm products delivered after December 31 of the current license year.

2. After January 31 of the current license year for farm products delivered on or before December 31 of the current license year. This subdivision applies only if the contract terms regarding time of payment have been approved by the producers who supplied the farm products to the food processing plant during the previous growing season according to the procedure under this subdivision. The food processing plant operator shall notify all such producers of a meeting called for the purpose of approving the proposed contract. The notice shall include a mail-in ballot which the producer may use in lieu of attending the meeting. The contract shall be approved by majority vote of those producers voting on the question. The authorized representative of the food processing plant operator presiding at the meeting shall file with the department a sworn statement, on forms provided by the department, certifying the results of such ballot.

(c) If no written contract exists, or if the written contract does not contain the provisions required under par. (b) 1 or 2, payment under par. (a) shall be made by the 15th day of the month following the month in which the farm products are delivered.

(d) If the applicant is unable to satisfy the requirement under par. (a) solely because an amount payable to a producer is in dispute, the department may grant or renew the applicant's license if the applicant deposits in escrow with the department an amount equal to the amount in dispute, to be held by the department until the dispute is resolved.

(e) This subsection does not apply to a producer-owned cooperative doing business on a cooperative pooling basis with producers.

(5) PAYMENT ON DELIVERY; MINIMUM FINANCIAL STANDARDS; SECURITY. No person may operate a food processing plant, and the department may not, under s. 97.28, grant or renew the license of any food processing plant operator, that does not make payment on delivery unless the operator meets the minimum financial standards under par. (a) or files security with the department under par. (c):

(a) *Minimum financial standards.* The minimum financial standards are met if the food processing plant operator maintains all of the following:

1. A minimum ratio of current assets to current liabilities as follows:

a. Until March 31, 1987, a ratio of 1 to 1.

b. From April 1, 1987, to March 31, 1989, a ratio of 1.1 to 1.

c. On and after April 1, 1989, a ratio of 1.2 to 1.

2. Total assets in excess of total liabilities.

(b) *Notification.* A food processing plant operator shall notify the department whenever he or she knows or has reason to believe that he or she is not meeting the minimum financial standards under par. (a).

(c) *Security.* Security filed with the department under this paragraph shall be in one or more of the following forms:

1. A continuous surety bond payable to the department on a form approved by the department and endorsed by a surety company licensed to do business in this state.

2. A pledge of one or more of the following assets:

a. Cash or negotiable securities.

b. Stocks, bonds or other marketable securities at current market value.

c. Property readily convertible to cash, including sales inventory and accounts receivable, subject to such rights of possession or control over the security as the department considers necessary.

3. Irrevocable bank letters of credit issued for a term of at least 6 months beyond the date final payment is due the producer.

4. Personal surety bonds or other 3rd-party guarantees supported by a pledge of assets described under subd. 2.

5. A set-aside agreement or a food processing plant operator's trusteeship providing for the set aside of processed produce equivalent to not less than 30% of the produce obtained from producers, in trust for the producers. An agreement under this subdivision shall:

a. Provide that no part of such set-aside may be released by the trustee unless an amount equivalent to the value of the released portion has been paid to apply proportionally on the claims of producers or is paid to the trustees for such payment.

b. Designate the individual responsible for carrying out the agreement on behalf of the applicant and be signed by that individual and by a trustee approved by the department.

c. Provide that the trustee has on file with the secretary of state under chs. 401 to 409 a first security interest and lien on the inventory and accounts receivable.

d. Specify that the applicant agrees to pay all expenses of the trust.

(d) *Amount.* 1. Security filed under par. (c) 1 to 4 shall be in an amount equal to at least 75% of the anticipated maximum liability during the ensuing license year.

2. The department may require a food processing plant operator to file additional security if existing security falls below the amount required under subd. 1 because of depreciation or because of an increase in maximum liability. The department shall notify the operator, giving the reasons why additional security is required and specifying the amount. The additional security shall be filed within 30 days after receipt of

the notice, unless the department grants an extension. No extension may be granted in excess of 60 days.

(e) *Release of security.* 1. Except as provided under subd. 2, security filed under par. (c) may not be released until the food processing plant operator has achieved and maintained for 2 successive license years the minimum financial standards under par. (a) and has, through sound financial planning and management, demonstrated to the department's satisfaction a reasonable ability to meet producer payments when due.

2. Notwithstanding subd. 1, the department may release security if the operator's maximum liability has decreased and the department determines that there is little likelihood that such liability will be restored to former levels.

(6) **CLAIMS.** (a) Any person injured by the violation of this section by a food processing plant operator, subsidiary or affiliate may file with the department a verified proof of claim. Upon receipt of the claim or any other evidence of default, the department may order all interested creditors to file their verified proofs of claim before a certain date or be barred from participating in any recovery made by the department. Notice of the entry of the order shall be given by posting a copy on the premises described in the license and by publication of a class 3 notice, under ch. 985, in the affected area. The date of last insertion shall not be less than 30 days prior to the last date for the filing of such claims. The department shall make the necessary audit and by order allow or disallow all claims presented. Notice of allowance or disallowance and request for the payment within 30 days of the claims allowed shall be sent to the principal and surety by registered mail. The department may demand, collect and receive from the licensee or the trustee, or from the surety or sureties of either of them, the amount determined to be necessary to satisfy such claims. The department may commence an action for that purpose in the circuit court of the county in which the food processing plant is located. Upon receipt of the money to be applied to the satisfaction of such claims, the department shall distribute the money to the claimants in accordance with the order allowing claims, either in full or proportionally. No claims for the purchase price of any farm products the value of which was due and payable more than 60 days prior to the date the first written notice of default is received by the department shall be allowed under this section.

(b) The whole claim of any person against any food processing plant operator or its subsidiaries or affiliates on account of farm products sold or delivered to the operator, subsidiary or affiliate and any judgment on the claim shall be entitled to the same preference in any insolvency or other creditor's proceedings as is given by any law of this state to claims for labor. One claim may be filed for any number of producers and when so filed the preference shall be allowed on the amount due each producer. Such preference shall also

be given in bankruptcy proceedings to the extent permitted by the federal law. This section does not affect or impair any other lien, security or priority for the claim or judgment.

(c) The department may require that the claims of any officer, agent, partner or stockholder, or members of their families, against a food processing plant operator who has filed security under sub. (5) (c) 1 to 4 shall be subordinate to the prior interest or claims of producers.

(7) **LIABILITY.** (a) A food processing plant operator is liable to a producer if a subsidiary or affiliate of the operator fails to fully pay the producer, in cash and according to the terms of the contract between the subsidiary or affiliate and the producer, amounts owed the producer by the subsidiary or affiliate.

(b) Any corporation or cooperative that owns, controls or is the operator of a food processing plant is liable to a producer if the food processing plant fails to fully pay, in cash and according to the terms of the contract between the operator and the producer, amounts owed the producer by the operator. The department shall commence an action in the circuit court of the county in which the food processing plant is located to enforce this paragraph.

(8) **DENIAL OR REVOCATION OF LICENSE.** If the department determines that a food processing plant operator has violated this section, the department shall notify the operator of the determination by certified mail or personal service. If the food processing plant operator fails to correct the violation within 30 days after receipt of the notice, the department may summarily deny or revoke the operator's license. The order denying or revoking a license is subject to a right of hearing if requested by the operator within 10 days after the date the order is received, but enforcement of the order may not be stayed pending the hearing.

(9) **RULES.** The department may promulgate rules to implement and administer this section.

(10) **PENALTY.** Any person who violates this section or any rule promulgated or order issued under the authority of this section may be fined not less than \$100 nor more than \$10,000 or imprisoned for not more than one year or both.

SECTION 3. Effective dates. (1) Except as provided in subsection (2), this act takes effect on the day following publication.

(2) The treatment of section 100.03 of the statutes takes effect January 1, 1987.