

DAIRY ACT

Date of commencement: 1st March, 1971.

Date of Assent: 16th September, 1968.

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*An Act to provide for the control and improvement of the dairy industry
and its products and for incidental or connected matters.*

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Dairy Act, 1968.

Interpretation.

2. In this Act, unless the context otherwise requires –
“auditor” means an auditor whose qualifications are recognized by the law of any country as entitling him to practise as an auditor in that country;
“authorized officer” means an officer of the Government or of a local authority authorized by the Minister in writing;
“board” means the dairy board constituted under Part II;
“butter substitute” means renovated, milled, milk-blended or process butter containing not more than eighteen per centum of water and no fat except pure milk fat;
“calendar” means any period of twelve months commencing with the first day of January;
“chairman” means the chairman or, in his absence, the vice-chairman of the board;
“cheese factory” means any premises used for the manufacture of cheese;
“clarified butter” means the residual non rancid produce obtained solely from boiled butter or cream and containing butterfat and not more than 0.2 per centum moisture, and 0.1 per centum protein or other substance;
“condensed milk” means milk concentrated by the evaporation of a portion of its water content with or without the addition of sugar;
“cream depot” means a place or premises where cream is, pending consignment to a creamery collected, or deposited, for the purpose of weighing, sampling, grading or treatment;
“creamery” means any premises used for the manufacture of butter;
“creamery butter” means butter manufactured in a creamery;
“dairy” means any premises on which milk is produced for the purposes of sale;
“dairy product” means –
 - (a) milk, milk product, such milk powder or dried or condensed milk contained in sealed containers; or
 - (b) clarified butter, whey butter or other butter, cheese, cream or ice-cream; or
 - (c) margarine or other substitute for butter made from vegetable or animal fats or a combination of those fats;
“disqualified” means disqualified by section 5;
“dried milk” or “milk powder” means a dry substance produced by desiccation of milk;
“financial year” means any period of twelve months commencing with the first day of April;

“ice-cream” means the frozen product –

- (a) of water added to cream or milk with or without the addition of flavouring or other food; or
- (b) formed partly from water and cream or milk and intended for human consumption;

“meeting” means a meeting of the board;

“member” means a member of the board;

“milk” means pasteurized or other milk derived from cows but does not include-

- (a) a milk product, or
- (b) condensed or dried milk contained in sealed containers; or
- (c) milk which is produced for delivery to a place other than a place in an urban area, but included milk delivered to a milk purveyor or milk shop, whether inside or outside the urban area, and imported milk;

“milk-blended butter” means renovated and milled butters in the process of reworking in which are used –

- (a) water, milk or cream, or
- (b) a mixture or any of those, or
- (c) extraneous ingredients;

“milk product” means cream, or separated or skimmed milk or butter milk or sour milk;

“milk purveyor” means a person who sells milk or milk products on or from premises other than a dairy, or of a milk-shop for consumption off those premises;

“milk – shop” means premises other than –

- (a) a dairy, or
- (b) of a milk purveyor;

on or from which first-mentioned premises there are handled, kept, stored or exposed for sale or sold only milk or milk products, butter, eggs, cheese, ice-cream or honey;

“milled butter” means butter which is a mixture or blend of two or more butters or different grades, qualities or makes and which has been subjected to a process of reworking, either mechanically or otherwise, and has been mixed or blended at a place other than where it was originally manufactured or packed;

“minister” means the Minister for Agriculture;

“pasteurization” means –

- (a) the process of heating milk to a temperature of between 145 degrees and 150 degrees Fahrenheit, holding the milk at that temperature for a period of thirty minutes after that immediately cooling it to a temperature of between 40 degrees and 50 degrees Fahrenheit; or
- (b) the high temperature short time process;

“pasteurized milk” means milk which has been subjected to pasteurization;

“Permanent Secretary” means the Permanent Secretary of the Ministry of Agriculture;

“permit” means permit under section 18;

“prescribe” means to prescribe in accordance with section 16;

“process butter” means butter melted, clarified or refined and reworked by any kind of process with or without the addition of water, milk, cream, milk-fat or extraneous ingredients and made to resemble creamery butter;

“renovated butter” means butter so labeled, renewed or treated in any manner in premises other than those in which it was manufactured, so as to eliminate any defects and to restore it to a condition resembling creamery butter;

“sealed container” means a container so closed or sealed that access to the contents cannot be obtained without damage to the container;
“secretary” means the officer of the board who is appointed under section 11 (1);
“whey butter” means the product obtained by churning whey, or cream obtained from whey.

PART II

CONSTITUTION AND ADMINISTRATION OF THE DAIRY BOARD

Establishment of Dairy Board.

3. (1) There is hereby established a body corporate, to be known as the Dairy Board’ having perpetual succession.
- (2) The board may, subject to this Act sue and be sued in its corporate name and do all such things as are necessary for, or incidental to, the performance of its functions under this Act.

Membership.

4. (1) Subject to this Act, the Minister shall appoint, as members of the board –
 - (a) two individuals in his opinion representative of producers of milk or cream;
 - (b) one individual in his opinion representative of manufacturers of dairy products other than cream;
 - (c) one individual in his opinion representative of distributors of dairy products;
 - (d) three Government Officers, one of whom shall be a medical officer nominated by the Minister of Health;
 - (e) an officer of a local authority; and
 - (f) one individual, not being a public officer, or the spouse officer of a public officer, who in his opinion is representative of the consumers of dairy products.
Provided they are able and willing to perform the functions of a member.
- (2) The Minister shall, at the time of appointment, specify the period for which the member is to hold office.
- (3) The Board may, with the approval of the chairman, co-opt not more than two individuals to be temporary members who shall not have a vote at any meeting.
- (4) Notwithstanding sub-section (2)
 - (a) the Minister may at any time terminate the appointment of a member;
 - (b) a member may resign office by giving reasonable written notice to the Minister; and
 - (c) the Minister may reappoint a person whose period of office as member has expired and who is not disqualified.

Disqualification of members.

5. No person shall be appointed a member and if so appointed, shall cease to hold office, if –
 - (a) He is an unrehabilitated insolvent or an undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under a law for the time being in force in Swaziland or elsewhere; or
 - (b) under a law for the time being in force in Swaziland, he is certified to be insane or otherwise a adjudged to be of unsound mind; or,

- (c) within a period of five years immediately preceding the date of his appointment or during the period of his appointment, he has been convicted of an offence which has resulted in the imposition on him of a sentence of imprisonment of not less than six months duration, without the option of a fine, and he has not received a free pardon.

Chairman and vice-chairman

- 6. (1) For the purposes of the first meeting of the board the Minister shall appoint a member to be chairman.
- (2) Subject to sub-section (1), the board shall elect a member to be chairman and another member to be vice-chairman and to act as the chairman whenever the chairman is unable or unavailable to perform his functions.
- (3) During their membership the chairman and vice-chairman shall each hold office for one year but each may be re-elected if still a member or re-appointed as a member and if not disqualified.

Meetings and procedure.

- 7. (1) The board shall meet at least twice in a calendar year.
- (2) Four members, including either the chairman or the vice-chairman shall constitute a quorum at a meeting.
- (3) Except in regard to matters provided for by this Act the board shall at its first meeting make standing orders for the convening of meetings, and the procedure to be followed at meetings.
- (4) The chairman may call a special meeting at any time and shall call such meeting at the direction, at any time, of the Minister, or on the written request of at least five members.
- (5) If there is an equality of votes at a meeting, chairman shall exercise a casting vote as well as deliberative vote.
- (6) The decision of the majority of the members present and voting at a meeting shall be the decision of the board.
- (7) The board shall cause proper minutes of all meetings to be kept and, shall at the succeeding meeting confirm them if they are correct, or, rectify them if they are incorrect.

Allowances for members.

- 8. Members, other than those appointed under section 4(1) (d) and (e) shall receive, such allowances for their attendance at meetings, and for carrying out its functions from the funds of the board as it may, with the Minister's approval determine.

Committees.

- 9. (1) The board may from the members appoint one or more committees.
the chairman shall also perform the functions of the chairman of the committee
- (2) The board shall determine the functions of a committee but such functions shall not extend beyond the functions of the board.
- (3) The decision of a majority of the members of a committee shall be the decision of the committee.

Non-disclosure of information.

- 10. A member or an employee or agent of the board who discloses a decision of, or any other information concerning, the board, otherwise than connection with its administration, or with its approval, or as require by a court, shall be guilty of an offence.

Staff and agents.

11. (1) At the request of the board, the Permanent Secretary may appoint a manager of the board, a secretary to the board, and any other executive officer of the board .
- (2) Subject to sub-section (1), the board may employ other officers, employees and, agents, on such conditions as it may determine.
- (3) An officer appointed or employed in terms of sub-section (1) or (2) shall unless he is a public officer be remunerated out of the funds of the board.

PART III**FUNCTIONS OF THE BOARD*****General duties.***

- 12 The board shall-
- (a) organize the efficient, orderly and stable production of dairy products and regulate and develop their distribution and marketing;
 - (b) ensure that the quality of dairy products is of a standard suitable for public health;
 - (c) advise the Minister as to whether prices of dairy products should be fixed under section 23, and as to any other matter relating to the dairy industry;
 - (d) prescribe the types, grades and quantities of dairy products to be produced and sold in Swaziland, or exported;
 - (e) for the purpose of facilitating the efficient, orderly and stable production of dairy products and their marketing, communicate with and consult any person and authority ;
 - (f) institute and run an information service and advise producers as to the production and marketing of their dairy products.

General power

13. (1) In addition to its other powers under this Act, the board may, with the approval of the Minister, prescribe for the whole or different parts of Swaziland
- (a) that particulars of dairies are to be registered and the manner of registration;
 - (b) subject to paragraph (c), the manner of grading, branding or marking of articles intended as dairy products, or the wrappers on packages containing dairy products;
 - (c) the form of a stamp, brand or mark to be used in connection with the grading, branding or marking, of dairy products;
 - (d) the form of application, registration, certificates of inspection, analysis or examination or other documents to be used for the purposes of this Act;
 - (e) subject to the requirements of section 8 of the Constitution, the conditions upon which, and the manner in which, samples shall be taken for the purposes of inspection, analysis or other examination in accordance with this Act and the manner of dealing with, or disposing of, those sample;
 - (f) subject to paragraph (g), the use of preservatives and colouring or other foreign matter in dairy products;
 - (g) the composition and standards of rennet and of colouring matter which may be used in butter and cheese and the conditions of sale and use;
 - (h) the manner of disposing of dairy products condemned by the board;
 - (i) the manner of carrying out the grading and testing of dairy products;
 - (j) the manner of carrying out an examination of candidates for certificates in grading and testing dairy products;
 - (k) the patterns and standards of receptacles to be used in testing milk cream, thermometers and glass-ware;

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- (l) the standards and methods of production, distribution, storage, conveyance, packaging, manufacture and processing of dairy products;
 - (m) the returns to be rendered to the board by dealers in dairy products;
 - (n) the methods of packing dairy products, the nature and quality of the packages, the methods of weighing or measuring dairy products and the degree of accuracy of the weighing or measuring;
 - (o) the manner of handling, transporting and storing dairy products intended for use or consumption by a person other than the producer;
 - (p) the methods of handling, cleaning, maintaining and storing milking-machines;
 - (q) the methods of grading, sampling, and testing dairy products, and of recording the result;
 - (r) the manner in which a substance derived from milk is to be treated before its removal from a creamery, cheese factory, cream depot, condensed milk factory, butter-substitute factory or margarine factory;
 - (s) the standards, specifications and methods of operating, cow-sheds, dairies, milk-shops and dairy-processing plants; and
 - (t) the requirements to be met by milk purveyors, persons keeping cows, dairymen, milk-shop traders and workers connected with the handling of dairy products.
- (2) The Board may -
- (a) hire or otherwise acquire or erect buildings, plant and equipment;
 - (b) buy, sell, treat, grade, pack, store, process, adapt for sale, insure, advertise and transport a dairy product;
 - (c) accept money, goods and other property made available to the board by way of donation, or otherwise, and utilize them for the purposes of this Act;
 - (d) enter into agreements with other persons or authorities in connection with the production, handling, transportation, storage, manufacture, processing, pasteurization, sale, importation and exportation of dairy products;
 - (e) carry out surveys, investigations and research work related to the dairy industry or cause them to be carried out;
 - (f) with the approval of the Minister, borrow money to be used for the purposes of the board, and
 - (g) buy, hire, sell or otherwise deal in dairy animals, animal semen and dairy requisites.

Power to require information

14. (1) The board may, with the approval of the Minister prescribe the form and context of the records to be kept, and returns to be rendered to it, by any person engaged in the production, distribution, transportation, manufacture or processing of a dairy product.
- (2) The board may, in writing, require a person who, directly or indirectly, is engaged in an operation referred to in sub-section (1), or concerned with its cost, to supply it with such information concerning the operation, or the cost, as the case may be, as the board may reasonably require for the performance of its functions under this Act.

- (3) If the information so supplied discloses the affairs of a particular person engaged in the dairy industry the board, and every member, employee and agent thereof shall, on the communication of a request by that person to the board, treat the information as confidential.
- (4) Any person who without reasonable excuse, fails to supply information required under sub-section (2) or, who without just cause, fails to comply with sub-section (3) shall be guilty of an offence.

Powers of entry, etc

15. For the purposes of this Act any officer of the board or authorized office -
 - (a) enter a place or premises used for the production, storage, manufacture, processing or sale of a dairy product in order to inspect such place or premises or its contents;
 - (b) inspect the place or premises or its contents and there examine all books and documents found therein;
 - (c) with the permission of the owner or, otherwise, upon the payment of full compensation, take such samples of a dairy product as necessary in order to enable them to be examined, analyzed, tested or graded; and
 - (d) stop, search and inspect any vehicle known to the officer to be used for the transport of a dairy product or reasonably suspected by him to be so used.

Publication on prescription of the board

16. (1) Where the board prescribes anything under sections 13 (1) and 14 (1), it shall do so by notice published in the Gazette.
- (2) Unless a later date is specified therein such notice shall come into force on the date of publication thereof.
- (3) Such notice may provide that a person who contravenes it shall be guilty of an offence.

PART IV

LICENCES, PERMITS AND QUOTAS

Licences

17. (1) Without prejudice to the requirement to obtain a permit under this Part any person who, otherwise than in accordance with the conditions of a written licence issued by the local authority, carries on the business of a dairy, or a milk-shop, or a milk purveyor, shall be guilty of an offence.
- (2) An application for such licence shall be made in the manner and form required by the local authority.
- (3) If in accordance with this Part, a permit lapses, or is cancelled, a licence issued to the holder of such permit under this section shall also lapse.
- (4) A local authority shall refuse to grant a licence under this section in respect of a place other than fixed premises.
- (5) A local authority may, in its discretion, refuse or, as the case may be, suspend or cancel such licence if -
 - (a) the premises in question do not conform with the prescribed standards, or are found to be an insanitary condition; or
 - (b) the milk or milk products are conveyed under conditions which do not conform with the prescribed standards, or render them liable to contamination or infection; or

- (c) the milk or milk products are obtained from a person who does not hold a permit issued under this Part; or
 - (d) Milk or milk products which do not conform with the prescribed standards are sold or distributed; or
 - (e) in any other respect the conduct of the business does not comply with a notice under section 6; or
 - (f) there is any other failure to comply with a law.
- (6) A local authority shall notify the board in writing of all licences issued, revoked or suspended under this section.

Permits

18. (1) Notwithstanding any other law but subject to sections 20 and 22, a person who produces for sale a dairy product, or by way of business, manufactures, process a dairy product or brings a dairy product into Swaziland otherwise than in accordance with the conditions of a written permit issued by the board shall be guilty of an offence.
- (2) Subject to section 19 such permit may include conditions which the board deems necessary in the interest of the dairy industry and of the public generally.
- (3) If, in its opinion, the circumstances warrant it the board may in such permit provide for temporary changes in the conditions thereof.
- (4) An application for such permit shall be made in the manner and form required by the board.
- (5) The board-
- (a) Maintain one or more registers of permits in which shall be recorded the details of the maximum quotas determined in accordance with section 19; and
 - (b) make such registers available for inspection on such reasonable conditions as it may, having regard to its convenience and that of the public, determine.

Quotas.

19. The conditions of a permit may in appendixes include such maximum quotas for the sale of dairy products as the board may from time to time determine.

Exemptions from permit

20. On the recommendation of the board, the Minister may, by notice published in the Gazette -
- (a) exclude a dairy product from any of the provisions of section 18 and 19; and
 - (b) fix maximum quantities of specified dairy products which can be produced for sale or, by way of business, manufactured, processed or brought into Swaziland under partial or total exemption, as the case may be, from the provisions of those sections.

Variation or revocation of permit.

21. (1) If, in its opinion the operations of the holder of a permit constitute a danger to health, whether of human beings or animals the board shall forthwith revoke the permit, and, notify the person concerned in writing of such revocation directly to him, not later than a specified date to surrender his revoked permit to the board, for cancellation.
- (2) Any person who has been notified under sub-section (1)(b) and who fails to surrender his revoked permit shall be guilty of an offence.

- (3) If, in its opinion the holder of a permit is contravening a condition of the permit, the board shall serve a written notice on him calling upon him to comply with such conditions within such specified period as it considers reasonable.
- (4) If, after receipt of such notice, the holder fails, to comply with the condition within the specified period, the board may amend the permit or revoke it.
- (5) If under sub-section (4)(b) the board revokes a permit, sub-sections (1)(b) and (2) shall apply in the same manner as they apply to a revocation under sub-section (1).
- (6) If, for a reason other than that referred to in sub-section (1) or (3), the board decided to amend or revoke a permit, it shall, give the holder of the permit three months written notice of its intention to do so, and, at the same time, supply him with written reasons for its decision.
- (7) Any holder of a permit who is aggrieved by a notice given under sub-section (6)(a), or who is not satisfied with the reasons supplied under sub-section (6)(b), may appeal in writing not later than one month after receipt of the notice to the Minister.
- (8) On receipt of such appeal, the Minister shall consult the board regarding the reasons for its decision, and the appellant.
- (9) After such consultation, the Minister may disallow the appeal, or if, in his opinion, the decision of the board was unreasonable or not in the public interest direct the board to revoke its notice, or amend it on such conditions as he may determine.
- (10) On receipt of the decision on appeal, the board shall forthwith inform the holder of the permit thereof.
- (11) Pending the decision of appeal, the board shall not take any action proposed in its notice.
- (12) Nothing in this section shall be construed as taking away any right of any person who is aggrieved by a decision of the board or of the Minister to appeal to a court.

Rights of certain person

22. (1) On appointing a board for the first time in terms of section 4, the Minister shall publish a notice in the Gazette requiring every person who, either by himself or through servants or agents produces a dairy product for sale, or, by way of business, manufactures or processes a specified dairy products or bring it into Swaziland, to give the board written advice of such production or other business not later than sixty days after such notice.
- (2) On receipt of the written advice from such person the board shall obtain full details of his business from him and then forthwith issue with an unconditional permit.

Control of marketing.

23. (1) If, in the opinion of the board, the action is desirable in the interests of orderly marketing or public health, it may serve a written direction on the holder of a permit who is a producer requiring him to –
 - (a) sell, to the board or its agent, all or part of his milk or cream produced for sale; or
 - (b) dispatch, or make available, to the board or its agent, all or part of his milk or cream so produced so as to facilitate distribution or for the purpose of pasteurization or other treatment.

- (2) The holder of a permit who is aggrieved by any such direction may appeal in writing to the Minister not later than one month after receipt of such direction.
- (3) Section 21(8) – (12) inclusive shall apply to such appeal.

PART V

PRICE CONTROL

Maximum and minimum prices.

24. (1) After consultation with the board, the Minister may, by notice published in the Gazette, fix a maximum price, or a minimum price, or both, for the sale of dairy products in Swaziland.
- (2) In so doing, the Minister may fix a different price to be paid -
 - (a) to a producer or a producer-distributor or to or by the board, a processor or manufacturer or by a consumer; or
 - (b) in different parts of Swaziland, or
 - (c) for different types or grades of a dairy product; or
 - (d) for different sources of a dairy product; or
 - (e) during different times of the year.
- (3) On the recommendation of the board, the Minister may, by the same or a like notice, provide for exemption from the requirements of a notice published under sub-section (1).
- (4) A person who buys, or sells, a dairy product at a price in excess of, or less than, that fixed by a notice published under this section shall be guilty of an offence.

PART VI

FINANCE

Levies.

25. (1) The Minister may, on the recommendation of the board and by notice published in the Gazette, impose a levy on processors, producers or manufacturers, of a dairy product which shall be used as provided by sub-section (3).
- (2) Such levy shall be paid to the board at such time, and in such manner as is specified in the notice.
- (3) The board shall use a levy for the purpose of meeting the expenses of the board and supporting and improving the dairy industry in Swaziland.

Funds of the board.

26. (1) The board may, with the approval of the Minister, establish and operate such stabilization funds, special funds, revenue funds and other funds as it deems necessary for the purposes of this Act, or otherwise, in the interests of the dairy industry of Swaziland.
- (2) The board may, establish such accounts in its name and at banks in Swaziland as it deems necessary or convenient for the exercise of its functions.
- (3) The board may make payments from its funds by way of incentives, subsidies, price-support, purchases, rentals, the meeting of obligations under contracts, and for any other purpose designed to benefit the dairy industry of Swaziland.
- (4) The board may, with the approval of the Minister, invest such of its funds as not immediately required for its purposes or under this Act on deposit with a bank or a building society, and in securities and other forms of investment.

Accounts of the board.

27. (1) The board shall –
- (a) keep proper books of account and related books, including –
- (i) annual statements of income and expenditure, and
- (ii) balance-sheets made up to the end of each financial year and showing, in detail, its assets and liabilities, relating to its undertakings and other activities and its funds and other property;
- (b) prepare and submit to the Minister such other accounts, estimates and information as he requires.
- (2) In order to maintain the accounts of the board -
- the Minister shall, at its request, appoint one or more Government officers who are able and willing to maintain them; or
- (a) in default of such appointment, it shall employ its own staff.
- (3) The board may, with the consent of the Minister and subject to such conditions as he thinks fit borrow money, and mortgage or otherwise charge its property.

Audit and report.

28. (1) The board shall appoint an auditor, approved by the Minister, to audit annually its statements of account for its financial year and remunerate him out of its funds.
- (2) The auditor shall report to the board and the Director of Audit and shall state whether he has obtained all the information and explanations required by him, and whether in his opinion, the balance sheet contained in the statements is so drawn up as to give a true and fair view of the state of affairs and profit and loss of the board according to the best of his belief as a result of the information and explanations given to him and as shown in the books of the board.
- (3) The auditor -
- (a) shall at all reasonable times be afforded access to the books, accounts and vouchers of the board, and
- (b) may require, from the board, its members, officers and other servants, such information and explanations as are necessary or expedient for the performance of his functions.

- (4) As soon as possible after an audit in accordance with this section, the board shall furnish the Minister with a report on its operations during the preceding financial year, and deliver, to him, a copy of the duly audited statements of account for the year and the report of the auditor thereon.
- (5) In addition to making his report to the board and the Director of Audit, the auditor shall give the Minister, or the Director of Audit, or the board, any statement or explanation desired by him or it, as the case may be, with respect to its accounts.
- (6) The Minister shall, annually, lay on the tables of the House of Assembly and the Senate –
 - (a) a copy of the said duly audited statements of account for the preceding financial year;
 - (b) the relevant report of the auditor, and
 - (c) the relevant report of the board.

Minister's power as to charges.

29. The Minister may, by notice published in the Gazette, authorize charges which the board may make for the grading or testing of a dairy product, or any other service carried out pursuant to this Act.

PART VII

GENERAL

Certain regulations deemed to have been prescribed by the board.

30. Notwithstanding section 55 of the Town Management Proclamation 1964 (N0.4 of 1964), regulations 140 to 143, inclusive, and Part VIII, the Urban Areas Regulations, 1962 (published under Government Notice Number 88 of 1962), in so as they are not repugnant to, or inconsistent with, the objects of this Act shall be deemed to have been prescribed by the board and shall be construed with such modifications, adaptations, qualifications and exceptions as are necessary for the purposes of this Act, and, until amended or replaced by any notice or a regulation made under this Act shall be administered and enforced by the board.

Penalties.

31. Any person who commits an offence under this Act shall be liable on conviction to a fine of one hundred rand or, in default of payment thereof to three months imprisonment.

Regulations.

32. The Minister may, after consultation with the board, make regulations for the better carrying out of the objects of this Act.

Savings as to other laws.

33. Nothing in this Act shall be construed as absolving a person from compliance with any other law affecting his business as milk purveyor or his milk-shop or dairy.