A bill to require individuals, hospitals, human milk banks, and human milk banking companies to comply with certain standards; to provide for education and support of certain breastfeeding mothers; to prescribe certain duties for state departments and agencies; and to prescribe penalties for the violation of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(a) "Adulterated" means breast milk that is any of the following:

(i) Has been improperly processed, including, but not limited to, improper or unknown storage temperatures after receipt by a human milk bank or human milk banking company or improper pasteurization times or temperatures based on the pasteurized milk ordinance as that term is defined in section 1 of the grade A milk

(ii) Is contaminated with any poisonous or deleterious substance that may render the human milk injurious to the health of a human infant, including, but not limited to, nicotine, antibiotics, pathogens, chemicals, or foreign material as set forth by the department in the rules promulgated under this act.

(iii) Any other condition that creates a risk to the public health, safety, or welfare.

(b) "Community benefit" means a program or activity that provides treatment or promotes health and healing as a response to identified community needs.

(c) "Department" means the department of agriculture and rural development.

(d) "Director" means the director of the department.

(e) "Distribution" means removal of human milk from a human milk bank or human milk banking company to any other location for processing or storage or for the purpose of providing human milk to a hospital or selling human milk to another entity.

(f) "Donor" means a lactating woman who voluntarily contributes her own expressed breast milk to a human milk bank or human milk banking company for use by an infant or child other than her own. A donor may be provided supplies reasonably necessary for safe milk expression, storage, or transport under this act.

(g) "Hospital" means that term as defined in section 5883 of the public health code, 1978 PA 368, MCL 333.5883.

(h) "Human milk bank" means an organized service for community benefit, a member in good standing of the Human Milk Banking
Association of North America, a hospital based or affiliated organization, or other not-for-profit organization that is focused on procuring, processing, storing, and distributing human milk for use by those most in need, including, but not limited to, medically fragile, low birth weight, preterm babies, new mothers with delayed lactation, infants recovering from serious gut complications and surgery, or directly to a parent or entity with a prescription order, who is unable to nurse or is in need of additional human milk to support the child.

(i) "Human milk banking company" means a company, organization, or cooperative that engages in the practice of providing remuneration to lactating women for their expressed human milk or otherwise collects human milk. Remuneration does not include receipt of a breast pump or other supplies reasonably necessary for safe milk expression, storage, or transport.

(j) "Processing" means the use of rigorous protocols and requirements based on scientific evidence and recommendation from the Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention required to prepare, identify, and label human milk in accordance with FDA requirements for use by the patient.

(k) "Procuring" means obtaining human milk.

(l) "Storage" means holding human milk in connection with procuring or processing it before distribution.

Sec. 2. (1) Procuring, processing, storing, distributing, or using human milk for the purpose of infant human consumption from a human milk bank is a rendering of a service and not the sale of
human milk for profit or financial gain.

(2) An individual, a hospital, a human milk bank, or a human milk banking company that procures, processes, stores, or distributes human milk from a mother to nourish a child other than her own shall not provide adulterated human milk for the purpose of human consumption and shall comply with the standards set forth by the department and the rules promulgated by the department under this act. An individual, a hospital, a human milk bank, or a human milk banking company that knowingly provides adulterated human milk is guilty of 1 or more of the following:

(a) If the violation does not result in physical injury or death, a state civil infraction and may be ordered to pay a civil fine of not more than $5,000.00.

(b) If the violation results in physical injury, a felony punishable by imprisonment for not more than 5 years, or a fine of not more than $10,000.00 plus twice the amount of any economic benefit associated with the violation, or both. For the purpose of this subdivision and subdivision (c), "economic benefit" includes any collection or processing fee related to the violation.

(c) If the violation results in death, a felony punishable by imprisonment for not more than 15 years, or a fine of not more than $15,000.00 plus twice the amount of any economic benefit associated with the violation, or both.

(3) Subsection (2) does not prohibit an individual, a hospital, a human milk bank, or a human milk banking company from being charged with, convicted of, or punished for any other violation of law committed by that individual, hospital, human milk bank, or human milk banking company.
bank, or human milk banking company while knowingly violating or
knowingly attempting to violate subsection (2), including the
underlying offense.

(4) If a woman provides human milk to a hospital, human milk
bank, or human milk banking company, that woman must be screened
for use of prescription drugs as determined by the department and
the milk must be tested for common drugs of abuse, including, but
not limited to, nicotine before the milk may be allowed for use
under this act. Screening and testing are not required on human
milk collected from a mother exclusively for her own child.

Sec. 3. (1) An individual, a human milk bank, or a human milk
banking company that provides human milk for the purpose of human
consumption shall not provide raw human milk for the purpose of
human consumption and must comply with the department's rules
promulgated under this act. An individual, a human milk bank, or a
human milk banking company that knowingly violates this subsection
is responsible for or guilty of the following:

(a) If the violation does not result in physical injury or
death, a state civil infraction and may be ordered to pay a civil
fine of not more than $5,000.00.

(b) If the violation results in physical injury, a felony
punishable by imprisonment for not more than 5 years, or a fine of
not more than $10,000.00 plus twice the amount of any economic
benefit associated with the violation, or both. For the purpose of
this subdivision and subdivision (c), "economic benefit" includes
any collection or processing fee related to the violation.

(c) If the violation results in death, a felony punishable by
imprisonment for not more than 15 years, or a fine of not more than $15,000.00 plus twice the amount of any economic benefit associated with the violation, or both.

(2) Subsection (1) does not prohibit an individual, a human milk bank, or a human milk banking company from being charged with, convicted of, or punished for any other violation of law committed by that individual, human milk bank, or human milk banking company while knowingly violating or knowingly attempting to violate subsection (1), including the underlying offense.

Sec. 4. An individual, a human milk bank, or a human milk banking company working with breastfeeding mothers in this state shall only accept human milk from a mother who is at least 180 days postpartum unless an exception is provided by authorization from a licensed medical professional working directly with the mother within the scope of his or her practice. An individual, a human milk bank, or a human milk banking company that knowingly violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $5,000.00.

Sec. 5. A human milk bank or human milk banking company shall provide lactation support and education to mothers who are providing human milk to ensure that the needs of nursing children of participating mothers are the priority and that those nursing children are adequately nourished by the mother's own milk. Lactation support and education may include, but is not limited to, working with hospital-based or community-based lactation support groups.

Sec. 6. (1) An individual, human milk bank, or human milk
banking company operating or doing business in this state shall, whenever possible, make every effort to ensure that human milk produced by and collected from mothers in this state is utilized to provide human milk for the vulnerable, premature, or ill infants in this state, or for distribution to foster parents or adoptive parents in this state who wish to provide human milk for their foster or adoptive newborn infant children.

(2) A human milk bank or human milk banking company operating in this state shall disclose to participating mothers what it does with all of the procured human milk, regardless of whether the human milk is accepted or rejected in a manner to be determined by the department in conjunction with human milk banks and human milk banking companies.

Sec. 7. (1) The director has free access at reasonable hours to any hospital, human milk bank, or human milk banking company, including a vehicle used to transport or hold human milk, for the purpose of evaluating that hospital, human milk bank, or human milk banking company, or vehicle to determine if this act or rules promulgated under this act are being violated. The director may secure samples of any human milk, after paying or offering to pay for the samples, to determine if this act or rules promulgated under this act are being violated.

(2) The director may examine the records of the hospital, human milk bank, or human milk banking company, to obtain pertinent information about the human milk, supplies, and equipment purchased, received, or used by, or persons employed by, the hospital, human milk bank, or human milk banking company, or
(3) The director may take photographs or copy records as part of an evaluation. If a hospital, human milk bank, or human milk banking company identifies by written document or mark that a certain area or record contains visible trade secrets, the director shall identify any photographs of that area or copies of that record as being confidential and shall diligently protect the confidentiality.

Sec. 8. (1) When necessary for the enforcement of this act, the director may seize without formal warrant any human milk found to be distributed, held for distribution, or exposed for sale in violation of this act or rules promulgated under this act.

(2) If the director finds or has probable cause to believe that any human milk is adulterated or so misbranded as to be dangerous to public health or fraudulent, within the meaning of this act, he or she shall affix to the human milk a tag or other appropriate marking giving notice that the human milk is, or is suspected of being, adulterated or misbranded and has been seized or embargoed. A person shall not remove or dispose of the human milk tagged or marked as embargoed or seized, by sale or otherwise, until permission for removal or disposal is given by the director or a court of competent jurisdiction.

(3) If human milk seized or embargoed under subsection (1) or (2) is determined by the director to be adulterated or misbranded, he or she shall cause a petition to be filed in the circuit court in whose jurisdiction the human milk is seized or embargoed for a complaint for condemnation of the human milk. Seized or embargoed
human milk shall be stored safely and at appropriate temperatures during the period of investigation. Seized or embargoed human milk may be destroyed at the expense of the claimant of the human milk, under the supervision of the director, and the court may order the payment of the costs, fees, storage, and other proper expenses by the claimant of the human milk or his or her agents. If the court finds that adulteration or misbranding can be corrected by proper labeling or processing of the human milk, after entry of the order; payment of the costs, fees, and expenses; and execution of a good and sufficient bond conditioned that the human milk be labeled or processed properly, the court may direct the human milk to be delivered to the claimant for labeling or processing under the director's supervision. The claimant shall pay the expense of the supervision. The human milk shall be returned to the claimant of the human milk on the representation to the court by the director that the human milk is no longer in violation of this act and that the expenses of supervision have been paid. If the director determines that the human milk seized or embargoed is not adulterated or misbranded, he or she shall remove the tag or other marking. If, within the course of the investigation, previously unadulterated human milk becomes adulterated, the state shall pay the commercial value of the loss to the individual, hospital, human milk bank, or human milk banking company from which the human milk was seized or embargoed.

Sec. 9. This act does not apply to mother-to-mother human milk sharing groups or mothers feeding their own children.

Enacting section 1. This act takes effect 90 days after the
date it is enacted into law.

Enacting section 2. This act does not take effect unless Senate Bill No.____ or House Bill No.____ (request no. 00612'15 a) of the 98th Legislature is enacted into law.