

Representative Kerry W. Gibson proposes the following substitute bill:

UTAH DAIRY ACT AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kerry W. Gibson

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends the Utah Dairy Act to allow the sale of raw milk under certain conditions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits cow-share programs; and
- ▶ allows a producer to sell raw milk at a self-owned retail store if certain requirements are met.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-3-1, as enacted by Chapter 2, Laws of Utah 1979

4-3-10, as enacted by Chapter 2, Laws of Utah 1979

4-3-14, as last amended by Chapter 358, Laws of Utah 2004



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **4-3-1** is amended to read:

4-3-1. Definitions.

As used in this chapter:

(1) "Adulterated" means any dairy product which:

(a) contains any poisonous or deleterious substance that may render it injurious to health;

(b) has been produced, prepared, packaged, or held under unsanitary conditions, or where it may have become contaminated or where it may have become diseased or injurious to health;

(c) contains any food additive that is unsafe within the meaning of Section 409 of the Federal Food, Drug and Cosmetic Act;

(d) contains any filthy, putrid, or decomposed substance, or fresh fluid milk which contains lactic acid at or above the level of .18 of 1%, or cream with a lactic acid level at or above .8 of 1%, or which is otherwise unfit for human food;

(e) is the product of a diseased animal or an animal which died otherwise than by slaughter, or an animal fed upon uncooked offal;

(f) has intentionally been subjected to radiation, unless the use of the radiation is in conformity with a regulation or exemption promulgated by the department; or

(g) has any valuable constituent omitted or abstracted, or which has any substance substituted in whole or in part therefor, or which has damage or inferiority concealed in any manner, or which has any substance added, mixed, or packed with the product to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value.

(2) "Cow-share program" means a program in which a person acquires an undivided interest in a milk producing hoofed mammal through an agreement with a producer that includes:

(a) a bill of sale for an interest in the mammal;

(b) a boarding arrangement under which the person boards the mammal with the producer for the care and milking of the mammal; and

(c) an arrangement under which the person receives raw milk for personal

57 consumption.

58 [~~(2)~~] (3) "Dairy product" means any product derived from raw or pasteurized milk.

59 [~~(3)~~] (4) "Distributor" means any person who distributes a dairy product.

60 [~~(4)~~] (5) "Filled milk" means any milk, cream, or skimmed milk, whether condensed,
61 evaporated, concentrated, powdered, dried, or desiccated, which has fat or oil other than milk
62 fat added, blended, or compounded with it so that the resultant product is an imitation or
63 semblance of milk, cream, or skimmed milk. It does not include any distinctive proprietary
64 food compound which is prepared and designated for feeding infants and young children which
65 is customarily used upon the order of a licensed physician; provided, that the word "milk" does
66 not appear in the product name or in any statement on the label, and that the label conforms
67 with the food labeling requirements.

68 [~~(5)~~] (6) "Frozen dairy products" mean dairy products normally served to the consumer
69 in a frozen or semifrozen state.

70 [~~(6)~~] (7) "Grade A milk," "grade A milk products," and "milk" for the purposes of this
71 chapter have the same meaning that is accorded such terms in the federal standards for grade A
72 milk and grade A milk products unless modified by regulations of the department.

73 [~~(7)~~] (8) "License" means a document allowing a person or plant to process,
74 manufacture, supply, test, haul, or pasteurize milk or milk products or conduct such other
75 activity as specified by the license.

76 [~~(8)~~] (9) "Manufacturer" means any person who processes milk in such a way that its
77 character is changed.

78 [~~(9)~~] (10) "Manufacturing milk" means milk used in the production of non-grade A
79 dairy products.

80 [~~(10)~~] (11) "Misbranded" means any dairy product whose label is false or misleading in
81 any particular, or whose label or package fails to conform to any federal regulation adopted by
82 the department which pertains to packaging and labeling. It also means:

83 (a) any dairy product in final packaged form manufactured in this state which does not
84 bear the manufacturer's, packer's, or distributor's name, address, and plant number, if
85 applicable; and, a clear statement of the product's common or usual name, quantity, and
86 ingredients, if applicable, and any other information required by regulation of the department;

87 (b) any butter in consumer package form that is not at least B grade, or that does not

88 meet the grade claimed on the package, measured by U.S.D.A. butter grade standards;

89 (c) any imitation butter made in whole or in part from material other than wholesome
90 milk or cream, except clearly labeled "margarine";

91 (d) renovated butter unless the words "renovated butter," in letters not less than
92 1/2-inch in height appear on each package, roll, square, or container of such butter; or

93 (e) any dairy product in final packaged form which makes nutritional claims or adds or
94 adjusts nutrients that are not so labeled.

95 [~~(11)~~] (12) "Pasteurization" means any process which renders dairy products practically
96 free of disease organisms and is accepted by federal standards.

97 [~~(12)~~] (13) "Permit or certificate" means a document allowing a person to market milk.

98 [~~(13)~~] (14) "Plant" means any facility where milk is processed or manufactured.

99 [~~(14)~~] (15) "Processor" means any person who subjects milk to a process.

100 [~~(15)~~] (16) "Producer" means a person who owns [~~cows~~] a cow or other milk producing
101 hoofed mammal that [~~produce~~] produces milk for consumption by persons other than the
102 producer's family, employees, or nonpaying guests.

103 [~~(16)~~] (17) "Raw milk" means unpasteurized milk.

104 [~~(17)~~] (18) "Renovated butter" means butter that is reduced to a liquid state by melting
105 and drawing off such liquid or butter oil and churning or otherwise manipulating it in
106 connection with milk or any product of milk.

107 [~~(18)~~] (19) "Retailer" means any person who sells or distributes dairy products directly
108 to the consumer.

109 Section 2. Section **4-3-10** is amended to read:

110 **4-3-10. Unlawful acts specified.**

111 It is unlawful for any person in this state to:

112 (1) operate a plant without a license issued by the department;

113 (2) market milk without a permit or certificate issued by the department;

114 (3) manufacture butter or cheese, pasteurize milk, test milk for payment, or haul milk

115 in bulk without a special license to perform the particular activity designated in this Subsection

116 (3); provided, that if more than one person working in a plant is engaged in the performance of

117 a single activity designated in this Subsection (3), it is sufficient if the person who directs the

118 activity is licensed[-];

119 (4) manufacture, distribute, sell, deliver, hold, store, or offer for sale any adulterated or
120 misbranded dairy product;

121 (5) manufacture, distribute, sell, deliver, hold, store, or offer for sale any dairy product
122 without a license, permit, or certificate required by this chapter;

123 (6) sell or offer for sale any milk not intended for human consumption unless it is
124 denatured or decharacterized in accordance with the regulations of the department;

125 (7) manufacture, distribute, sell, or offer for sale any filled milk labeled as milk or as a
126 dairy product;

127 (8) keep any animals with brucellosis, tuberculosis, or other infectious or contagious
128 diseases communicable to humans in any place where they may come in contact with cows or
129 other milking animals;

130 (9) draw milk for human food from cows or other milking animals that are infected
131 with tuberculosis, running sores, communicable diseases, or from animals that are fed feed that
132 will produce milk that is adulterated;

133 (10) accept, or process milk from any producer without verification that the producer
134 holds a valid permit or certification or, if milk is accepted from out of the state, without
135 verification that the producer holds a permit or certification from the appropriate regulatory
136 agency of that state;

137 (11) use any contaminated or unclean equipment or container to process, manufacture,
138 distribute, deliver, or sell a dairy product;

139 (12) remove, change, conceal, erase, or obliterate any mark or tag placed upon any
140 equipment, tank, or container by the department; except, for the purpose of cleaning and
141 sanitizing it;

142 (13) use any tank or container used for the transportation of milk or other dairy
143 products which is unclean or contaminated;

144 (14) refuse to allow the department to take samples for testing; [~~or~~]

145 (15) prohibit adding vitamin compounds in the processing of milk and dairy products
146 in accordance with regulations of the department[-]; or

147 (16) own, operate, organize, or otherwise participate in a cow-share program where the
148 milk producing hoofed mammal is located in Utah.

149 Section 3. Section **4-3-14** is amended to read:

150 **4-3-14. Sale of raw milk prohibited -- Exceptions -- Suspension of producer's**
151 **permit -- Severability not permitted.**

152 (1) As used in this section:

153 (a) "Batch" means all the milk emptied from one bulk tank and bottled in a single day.

154 (b) "Self-owned retail store" means a retail store:

155 (i) of which the producer owns at least 51% of the value of the real property and
156 tangible personal property used in the operations of the retail store; or

157 (ii) for which the producer has the power to vote at least 51% of any class of voting
158 shares or ownership interest in the business entity that operates the retail store.

159 ~~[(1)]~~ (2) Raw milk may be sold if:

160 (a) the producer obtains a permit from the department to produce milk under
161 Subsection 4-3-8(2);

162 (b) the sale and delivery of the milk is made upon the premises where the milk is
163 produced, except as provided by Subsection (3);

164 (c) it is sold to consumers for household use and not for resale;

165 (d) it is bottled or packaged under sanitary conditions and in sanitary containers on the
166 premises where the milk is produced;

167 (e) it is labeled "raw milk" and meets the labeling requirements under 21 C.F.R. Parts
168 101 and 131 and rules established by the department;

169 (f) it is:

170 (i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being
171 drawn from the animal;

172 (ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the
173 animal; and

174 (iii) maintained at 41 degrees Fahrenheit or a lower temperature until it is delivered to
175 the consumer;

176 (g) the bacterial count of the milk does not exceed~~[: (1)]~~ 20,000 colony forming units
177 per milliliter~~[-or if individual colonies are counted, a direct microscopic count in excess of~~
178 ~~20,000 colony forming units per milliliter; or];~~

179 ~~[(ii) if individual organisms are counted, 80,000 bacteria per milliliter;]~~

180 (h) the bacterial plate count and the coliform count of the milk meet the bacterial and

181 coliform enforcement standards for grade A pasteurized milk;

182 (i) the production of the milk conforms to departmental rules for the production of
183 grade A milk;

184 (j) all dairy animals on the premises are:

185 (i) permanently and individually identifiable; and

186 (ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

187 (k) any person on the premises performing any work in connection with the production,
188 bottling, handling, or sale of the [raw] milk is free from communicable disease.

189 ~~[(2)(a) The department shall suspend a permit to produce raw milk issued under
190 Subsection 4-3-8(2) if a milk producer violates any provision of Subsection (1).]~~

191 ~~[(b) The department may reissue a permit to produce raw milk which has been
192 suspended under Subsection (2)(a) if the producer has complied with all of the requirements of
193 Subsection (1).]~~

194 (3) A producer may sell raw whole milk at a self-owned retail store, which is properly
195 staffed, if, in addition to the requirements of Subsection (2), the producer:

196 (a) transports the milk from the premises where the milk is produced to the self-owned
197 retail store in a refrigerated truck where the milk is maintained at 41 degrees Fahrenheit or a
198 lower temperature;

199 (b) retains ownership of the milk until it is sold to the final consumer, including
200 transporting the milk from the premises where the milk is produced to the self-owned retail
201 store without any:

202 (i) intervening storage;

203 (ii) change of ownership; or

204 (iii) loss of physical control;

205 (c) stores the milk at 41 degrees Fahrenheit or a lower temperature in a display case
206 equipped with a properly calibrated thermometer at the self-owned retail store;

207 (d) places a sign above the display case at the self-owned retail store that reads, "Raw
208 Unpasteurized Milk";

209 (e) labels the milk with:

210 (i) a date, no more than nine days after the milk is produced, by which the milk should
211 be sold;

- 212 (ii) the statement "Raw milk, no matter how carefully produced, may be unsafe.";
- 213 (iii) handling instructions to preserve quality and avoid contamination or spoilage; and
- 214 (iv) any other information required by rule;
- 215 (f) refrains from offering the milk for sale until:
- 216 (i) each batch of milk is tested for standard plate count and coliform count from an
- 217 official sample taken at the self-owned retail store and tested by a third party certified by the
- 218 department; and
- 219 (ii) the test results meet the minimum standards established for those tests;
- 220 (g) maintains a database of the milk sales;
- 221 (h) refrains from offering any pasteurized milk at the retail store;
- 222 (i) ensures that the plant and retail store complies with Title 4, Chapter, 5, Utah
- 223 Wholesome Food Act, and the rules governing food establishments enacted under Section
- 224 4-5-9;
- 225 (j) participates in a hazard analysis critical control point system as designed by the
- 226 United States Food and Drug Administration;
- 227 (k) conducts monthly tests on a sample taken from a batch of milk for:
- 228 (i) Listeria monocytogenes;
- 229 (ii) Salmonella typhimurium;
- 230 (iii) Salmonella dublin;
- 231 (iv) Campylobacter jejuni; and
- 232 (v) E.Coli 0157:H7; and
- 233 (l) complies with all applicable rules adopted as authorized by this chapter.
- 234 (4) The person conducting the tests required by Subsection (3) shall send a copy of the
- 235 test results to the department as soon as the test results are available.
- 236 (5) (a) The department shall adopt rules, as authorized by Section 4-3-2, governing the
- 237 sale of raw whole milk at a retail store.
- 238 (b) The rules adopted by the department shall include rules regarding:
- 239 (i) permits;
- 240 (ii) building and premises requirements;
- 241 (iii) sanitation and operating requirements, including bulk milk tanks requirements;
- 242 (iv) additional tests, including a test for pathogens;

243 (v) frequency of inspections, including random cooler checks;

244 (vi) record keeping; and

245 (vii) packaging and labeling.

246 (c) (i) The department shall establish a fee for the tests and inspections required by this
247 section and by rule by following the procedures and requirements of Section 63-38-3.2.

248 (ii) Notwithstanding Section 63-38-3.2, the department shall retain the fees as
249 dedicated credits and may only use the fees to administer and enforce this section.

250 (6) (a) The department shall suspend a permit issued under Section 4-3-8 if a producer
251 violates any provision of this section or any rules adopted as authorized by this section.

252 (b) The department may reissue a permit that has been suspended under Subsection
253 (6)(a) if the producer has complied with all of the requirements of this section and rules
254 adopted as authorized by this section.

255 (7) Beginning in 2008, the Department of Health and the Department of Agriculture
256 and Food shall report on or before November 30 every other year to the Natural Resources,
257 Agriculture, and Environment Interim Committee and the Health and Human Services Interim
258 Committee on any health problems resulting from the sale of raw whole milk at retail stores.

259 (8) (a) If any subsection of this section or the application of any subsection to any
260 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,
261 the remainder of the section may not be given effect without the invalid subsection or
262 application.

263 (b) The provisions of this section may not be severed.

H.B. 311 1st Sub. (Buff) - Utah Dairy Act Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Due to the requirement to perform a series of testing on a regular basis, there will be additional costs to producers who choose to sell raw milk in retail settings.

1/29/2007, 11:36:40 AM, Lead Analyst: Djambov, I.

Office of the Legislative Fiscal Analyst