

Senator David P. Hinkins proposes the following substitute bill:

RAW MILK AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill modifies provisions relating to the sale of raw milk.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows the sale of raw milk from a mobile unit under certain conditions;
- ▶ allows the sale of a limited amount of raw milk to be exempt from certain regulations; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-3-503, as renumbered and amended by Laws of Utah 2017, Chapter 345

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



26 Section 1. Section 4-3-503 is amended to read:

27 **4-3-503. Sale of raw milk -- Suspension of producer's permit -- Severability not**
28 **permitted.**

29 (1) As used in this section:

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

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

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

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

36 (2) ~~[Raw]~~ Except as provided in Subsection (5), raw milk may be manufactured,
37 distributed, sold, delivered, held, stored, or offered for sale if:

38 (a) the producer obtains a permit from the department to produce milk under
39 Subsection 4-3-301(5);

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

42 (c) the raw milk is sold to consumers for household use and not for resale;

43 (d) the raw milk is bottled or packaged under sanitary conditions and in sanitary
44 containers on the premises where the raw milk is produced;

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

47 (f) the raw milk is:

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

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

52 (iii) maintained at 41 degrees Fahrenheit or a lower temperature until the raw milk is
53 delivered to the consumer;

54 (g) the bacterial count of the raw milk does not exceed 20,000 colony forming units per
55 milliliter;

56 (h) the coliform count of the raw milk does not exceed 10 colony forming units per

57 milliliter;

58 (i) the production of the raw milk conforms to departmental rules for the production of
59 grade A milk;

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

61 (i) permanently and individually identifiable; and

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

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

65 (3) A producer may distribute, sell, deliver, hold, store, or offer for sale raw milk at a
66 self-owned retail store, which is properly staffed, or from a mobile unit where the raw milk is
67 maintained through mechanical refrigeration at 41 degrees Fahrenheit or a lower temperature,
68 if, in addition to the requirements of Subsection (2), the producer:

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

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

75 (i) intervening storage;

76 (ii) change of ownership; or

77 (iii) loss of physical control;

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

80 (d) places a sign above each display case that contains raw milk at the self-owned retail
81 store that:

82 (i) is prominent;

83 (ii) is easily readable by a consumer;

84 (iii) reads in print that is no smaller than .5 inches in bold type, "This milk is raw and
85 unpasteurized. Please keep refrigerated"; and

86 (iv) meets any other requirement established by the department by rule;

87 (e) labels the raw milk with:

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

90 (ii) the statement "Raw milk, no matter how carefully produced, may be unsafe.";

91 (iii) handling instructions to preserve quality and avoid contamination or spoilage;

92 (iv) by January 1, 2017, a specific colored label as determined by the department by
93 rule; and

94 (v) any other information required by rule;

95 (f) refrains from offering the raw milk for sale until:

96 (i) the department or a third party certified by the department tests each batch of raw
97 milk for standard plate count and coliform count; and

98 (ii) the test results meet the minimum standards established for those tests;

99 (g) (i) maintains a database of the raw milk sales; and

100 (ii) makes the database available to the Department of Health during the self-owned
101 retail store's business hours for purposes of epidemiological investigation;

102 (h) ensures that the plant and retail store complies with Chapter 5, Utah Wholesome
103 Food Act, and the rules governing food establishments enacted under Section [~~4-5-401~~

104 4-5-301]; and

105 (i) complies with all applicable rules adopted as authorized by this chapter.

106 (4) A producer may distribute, sell, deliver, hold, store, or offer for sale raw milk and
107 pasteurized milk at the same self-owned retail store if:

108 (a) the self-owned retail store is properly staffed; and

109 (b) the producer:

110 (i) meets the requirements of Subsections (2) and (3);

111 (ii) operates the self-owned retail store on the same property where the raw milk is
112 produced; and

113 (iii) maintains separate, labeled, refrigerated display cases for raw milk and pasteurized
114 milk.

115 (5) A producer may, without meeting the requirements of Subsection (2), sell up to 120
116 gallons of raw milk per month if:

117 (a) the sale is directly to an end consumer, for household use and not for resale;

118 (b) the sale and delivery of the milk is made upon the premises where the milk is

- 119 produced;
- 120 (c) the producer labels the raw milk with:
- 121 (i) the producer's name and address;
- 122 (ii) a date, no more than nine days after the raw milk is produced, by which the raw
- 123 milk should be sold;
- 124 (iii) the statement "This raw milk has not been licensed or inspected by the state of
- 125 Utah. Raw milk, no matter how carefully produced, may be unsafe."; and
- 126 (iv) handling instructions to preserve quality and avoid contamination or spoilage;
- 127 (d) the raw milk is:
- 128 (i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being
- 129 drawn from the animal; and
- 130 (ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the
- 131 animal;
- 132 (e) the producer conducts a monthly test ensuring the coliform count of the raw milk
- 133 does not exceed 10 colony-forming units per milliliter;
- 134 (f) all dairy animals on the producer's premises are free of tuberculosis, brucellosis, and
- 135 other diseases carried through milk;
- 136 (g) the producer maintains records of tests and sales for a minimum of two years; and
- 137 (h) the producer notifies the department of the producer's intent to sell raw milk
- 138 pursuant to this Subsection (5) and includes in the notification the producer's name and
- 139 address.
- 140 ~~[(5)]~~ (6) A person who conducts a test required by Subsection (3) shall send a copy of
- 141 the test results to the department as soon as the test results are available.
- 142 ~~[(6)]~~ (7) (a) The department shall adopt rules, as authorized by Section 4-3-201,
- 143 governing the sale of raw milk at a self-owned retail store.
- 144 (b) The rules adopted by the department shall include rules regarding:
- 145 (i) permits;
- 146 (ii) building and premises requirements;
- 147 (iii) sanitation and operating requirements, including bulk milk tanks requirements;
- 148 (iv) additional tests;
- 149 (v) frequency of inspections, including random cooler checks;

150 (vi) recordkeeping; and

151 (vii) packaging and labeling.

152 (c) (i) The department shall establish and collect a fee for the tests and inspections
153 required by this section and by rule in accordance with Section 63J-1-504.

154 (ii) Notwithstanding Section 63J-1-504, the department shall retain the fees as
155 dedicated credits and may only use the fees to administer and enforce this section.

156 [~~(7)~~] (8) (a) The department shall suspend a permit issued under Section 4-3-301 if:

157 (i) two out of four consecutive samples or two samples in a 30-day period violate
158 sample limits established under this section; or

159 (ii) a producer violates a provision of this section or a rule adopted as authorized by
160 this section.

161 (b) The department may reissue a permit that has been suspended under Subsection
162 [~~(7)~~] (8)(a) if the producer has complied with all of the requirements of this section and rules
163 adopted as authorized by this section.

164 [~~(8)~~] (9) (a) If any subsection of this section or the application of any subsection to any
165 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,
166 the remainder of the section may not be given effect without the invalid subsection or
167 application.

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

169 (10) Nothing in this chapter shall be construed to impede the Department of Health or
170 the Department of Agriculture and Food in investigation of foodborne illness.

171 (11) The department shall issue a cease and desist order to a producer linked to a
172 foodborne illness and shall stop sale on milk currently being sold.

173 (12) The order shall remain in effect until the department verifies that the producer:

174 (a) adheres to all of the provisions of this section; and

175 (b) has three consecutive clean tests of the milk.

176 (13) In addition to the provisions of Subsections (11) and (12), if a producer's milk
177 product has been linked to a foodborne illness outbreak, and the department finds that the
178 producer has violated the applicable provisions of this section, the department may impose
179 upon the producer the following administrative penalties:

180 (a) upon the first violation, a penalty of no more than \$300;

- 181 (b) upon a second violation, a penalty of no more than \$750; and
182 (c) upon a third or subsequent violation a penalty of no more than \$1,500.