

Representative Kim F. Coleman proposes the following substitute bill:

RAW MILK PRODUCTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill provides for the manufacturing, distribution, and sale of certain products produced from raw milk under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows the manufacturing, distribution, and sale of certain products produced from raw milk under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-3-301, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-3-503, as last amended by Laws of Utah 2018, Chapter 279



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

27 Section 1. Section **4-3-301** is amended to read:

28 **4-3-301. Licenses and permits -- Application -- Fee -- Expiration -- Renewal.**

29 (1) Application for a license to operate a plant, manufacture butter or cheese,
30 pasteurize milk, test milk for payment, haul milk in bulk, or for the wholesale distribution of
31 dairy products shall be made to the department upon forms prescribed and furnished by ~~[it]~~ the
32 department.

33 (2) Upon receipt of a proper application, compliance with ~~[aH]~~ the applicable rules, and
34 payment of a license fee determined by the department according to Subsection **4-2-103(2)**, the
35 commissioner, if satisfied that the public convenience and necessity and the industry will be
36 served, shall issue an appropriate license to the applicant subject to suspension or revocation
37 for cause.

38 (3) ~~[Each]~~ A license issued under this section expires at midnight on December 31 of
39 each year.

40 (4) A license to operate a plant, manufacture butter or cheese, pasteurize milk, test milk
41 for payment, haul milk in bulk, or for the wholesale distribution of dairy products, is renewable
42 for a period of one year upon the payment of an annual license renewal fee determined by the
43 department according to Subsection **4-2-103(2)** on or before December 31 of each year.

44 (5) ~~[Application]~~ Notwithstanding the requirements of Subsection (1), application for a
45 permit or certificate to produce milk or a raw milk product, as that term is defined in Section
46 4-3-503, shall be made to the department on forms prescribed and furnished by ~~[it]~~ the
47 department.

48 (6) (a) Upon receipt of a proper application and compliance with ~~[aH]~~ applicable rules,
49 the commissioner shall issue a permit entitling the applicant to engage in the business of
50 producer, subject to suspension or revocation for cause.

51 (b) ~~[No]~~ A fee may not be charged by the department for issuance of a permit or
52 certificate.

53 Section 2. Section **4-3-503** is amended to read:

54 **4-3-503. Sale of raw milk -- Suspension of producer's permit -- Severability not**
55 **permitted.**

56 (1) As used in this section:

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

58 (b) "Raw milk product" means raw milk, cream produced from raw milk, and butter
59 produced from raw milk.

60 [~~(b)~~] (c) "Self-owned retail store" means a retail store:

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

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

65 (2) Except as provided in Subsection (5), a raw milk product may be manufactured,
66 distributed, sold, delivered, held, stored, or offered for sale if:

67 (a) the producer obtains a permit from the department to produce the raw milk product
68 under Subsection 4-3-301(5);

69 (b) the sale and delivery of the raw milk product is made upon the premises where the
70 raw milk product is produced, except as provided by Subsection (3);

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

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

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

76 (f) the raw milk used to produce the raw milk product is:

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

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

81 (iii) maintained at 41 degrees Fahrenheit or a lower temperature until the raw milk is
82 delivered to the consumer or used to produce the raw milk product;

83 (g) the bacterial count of the raw milk used to produce the raw milk product does not
84 exceed 20,000 colony forming units per milliliter;

85 (h) the coliform count of the raw milk used to produce the raw milk product does not
86 exceed 10 colony forming units per milliliter;

87 (i) the production of the raw milk product conforms to departmental rules for the

88 production of grade A milk products;

89 (j) ~~[and]~~ the dairy animals on the premises are:

90 (i) permanently and individually identifiable; and

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

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

95 (3) A producer may distribute, sell, deliver, hold, store, or offer for sale a raw milk
96 product at a self-owned retail store, ~~[which]~~ that is properly staffed, or from a mobile unit
97 where the raw milk product is maintained through mechanical refrigeration at 41 degrees
98 Fahrenheit or a lower temperature, if, in addition to the requirements of Subsection (2), the
99 producer:

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

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

106 (i) intervening storage;

107 (ii) change of ownership; or

108 (iii) loss of physical control;

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

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

113 (i) is prominent;

114 (ii) is easily readable by a consumer;

115 (iii) reads in print that is no smaller than .5 ~~[inches]~~ inch in bold type, "This milk
116 product is raw and unpasteurized. Please keep refrigerated."; and

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

118 (e) labels the raw milk product with:

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

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

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

124 (iv) [~~by January 1, 2017;~~] a specific colored label as determined by the department by
125 rule; and

126 (v) any other information required by rule;

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

128 (i) the department or a third party certified by the department tests each batch of raw
129 milk used to produce a raw milk product for standard plate count and coliform count; and

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

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

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

134 (h) ensures that the plant and retail store complies with Chapter 5, Utah Wholesome
135 Food Act, and the rules governing food establishments enacted under Section [4-5-301](#); and

136 (i) complies with ~~[aH]~~ the applicable rules adopted as authorized by this chapter.

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

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

140 (b) the producer:

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

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

144 (iii) maintains separate, labeled, refrigerated display cases for raw milk products and
145 pasteurized milk.

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

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

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

- 150 is produced;
- 151 (c) the producer labels the raw milk with:
- 152 (i) the producer's name and address;
- 153 (ii) a date, no more than nine days after the raw milk is produced, by which the raw
- 154 milk should be sold;
- 155 (iii) the statement "This raw milk has not been licensed or inspected by the state of
- 156 Utah. Raw milk, no matter how carefully produced, may be unsafe."; and
- 157 (iv) handling instructions to preserve quality and avoid contamination or spoilage;
- 158 (d) the raw milk is:
- 159 (i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being
- 160 drawn from the animal; and
- 161 (ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the
- 162 animal;
- 163 (e) the producer conducts a monthly test ensuring the coliform count of the raw milk
- 164 does not exceed 10 colony-forming units per milliliter;
- 165 (f) ~~the~~ the dairy animals on the producer's premises are free of tuberculosis,
- 166 brucellosis, and other diseases carried through milk;
- 167 (g) the producer maintains records of tests and sales for a minimum of two years; and
- 168 (h) the producer notifies the department of the producer's intent to sell raw milk
- 169 pursuant to this Subsection (5) and includes in the notification the producer's name and
- 170 address.
- 171 (6) A person who conducts a test required by Subsection (3) shall send a copy of the
- 172 test results to the department as soon as the test results are available.
- 173 (7) (a) The department shall adopt rules, as authorized by Section [4-3-201](#), governing
- 174 the sale of raw milk products at a self-owned retail store.
- 175 (b) The rules adopted by the department shall include rules regarding:
- 176 (i) permits;
- 177 (ii) building and premises requirements;
- 178 (iii) sanitation and operating requirements, including bulk milk tanks requirements;
- 179 (iv) additional tests;
- 180 (v) frequency of inspections, including random cooler checks;

181 (vi) recordkeeping; and

182 (vii) packaging and labeling.

183 (c) The department may make rules, in accordance with Title 63G, Chapter 3, Utah
184 Administrative Rulemaking Act, regarding the standards of identity for a raw milk product.

185 ~~[(c)]~~ (d) (i) The department shall establish and collect a fee for the tests and inspections
186 required by this section and by rule in accordance with Section 63J-1-504.

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

189 (8) (a) The department shall suspend a permit issued under Section 4-3-301 if:

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

192 (ii) a producer violates ~~[a provision of]~~ this section or a rule adopted as authorized by
193 this section.

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

197 (9) (a) If any subsection of this section or the application of any subsection to any
198 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,
199 the remainder of the section may not be given effect without the invalid subsection or
200 application.

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

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

204 (11) The department shall issue a cease and desist order to a producer linked to a
205 foodborne illness and shall stop sale ~~[on]~~ of a raw milk product currently being sold.

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

207 (a) adheres to ~~[all of the provisions of]~~ this section; and

208 (b) has three consecutive clean tests of the raw milk product.

209 (13) In addition to ~~[the provisions of]~~ Subsections (11) and (12), if a producer's raw
210 milk product has been linked to a foodborne illness outbreak, and the department finds that the
211 producer has violated the applicable provisions of this section, the department may impose

212 upon the producer the following administrative penalties:

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

214 (b) upon a second violation, a penalty of no more than \$750; and

215 (c) upon a third or subsequent violation a penalty of no more than \$1,500.