

HB0182S01 compared with HB0182

~~deleted text~~ shows text that was in HB0182 but was deleted in HB0182S01.

Inserted text shows text that was not in HB0182 but was inserted into HB0182S01.

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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: _____

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:

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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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) maintained at 41 degrees Fahrenheit or a lower temperature until the raw milk is

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delivered to the consumer or used to produce the raw milk product;

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

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

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

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

(i) permanently and individually identifiable; and

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

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

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

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

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

(i) intervening storage;

(ii) change of ownership; or

(iii) loss of physical control;

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

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

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- (i) is prominent;
- (ii) is easily readable by a consumer;
- (iii) reads in print that is no smaller than .5 [~~inches~~] inch in bold type, "This milk product is raw and unpasteurized. Please keep refrigerated."; and
- (iv) meets any other requirement established by the department by rule;
- (e) labels the raw milk product with:
 - (i) a date, no more than nine days after the raw milk product is produced, by which the raw milk product should be sold;
 - (ii) the statement "Raw milk products, no matter how carefully produced, may be unsafe.";
 - (iii) handling instructions to preserve quality and avoid contamination or spoilage;
 - (iv) [~~by January 1, 2017,~~] a specific colored label as determined by the department by rule; and
 - (v) any other information required by rule;
 - (f) refrains from offering the raw milk product for sale until:
 - (i) the department or a third party certified by the department tests each batch of raw milk used to produce a raw milk product for standard plate count and coliform count; and
 - (ii) the test results meet the minimum standards established for those tests;
 - (g) (i) maintains a database of the raw milk product sales; and
 - (ii) makes the database available to the Department of Health during the self-owned retail store's business hours for purposes of epidemiological investigation;
 - (h) ensures that the plant and retail store complies with Chapter 5, Utah Wholesome Food Act, and the rules governing food establishments enacted under Section 4-5-301; and
 - (i) complies with [~~at~~] the applicable rules adopted as authorized by this chapter.
- (4) A producer may distribute, sell, deliver, hold, store, or offer for sale a raw milk product and pasteurized milk at the same self-owned retail store if:
 - (a) the self-owned retail store is properly staffed; and
 - (b) the producer:
 - (i) meets the requirements of Subsections (2) and (3);
 - (ii) operates the self-owned retail store on the same property where the raw milk product is produced; and

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

(5) A producer may, without meeting the requirements of Subsection (2), sell {per month} up to 120 gallons of raw milk {} per month {}, cream produced from up to 100 gallons of raw milk, and butter produced from up to 100 gallons of raw milk if:

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

(b) the sale and delivery of the raw milk {product} is made upon the premises where the raw milk {product} is produced;

(c) the producer labels the raw milk {product} with:

(i) the producer's name and address;

(ii) a date, no more than nine days after the raw milk {product} is produced, by which the raw milk {product} should be sold;

(iii) the statement "This raw milk {product} has not been licensed or inspected by the state of Utah. Raw milk {products}, no matter how carefully produced, may be unsafe."; and

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

(d) the raw milk {used to produce the raw milk product} is:

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

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

(e) the producer conducts a monthly test ensuring the coliform count of the raw milk {used to produce the raw milk product} does not exceed 10 colony-forming units per milliliter;

(f) ~~[aH]~~ the dairy animals on the producer's premises are free of tuberculosis, brucellosis, and other diseases carried through milk;

(g) the producer maintains records of tests and sales for a minimum of two years; and

(h) the producer notifies the department of the producer's intent to sell {a} raw milk {product} pursuant to this Subsection (5) and includes in the notification the producer's name and address.

(6) A person who conducts a test required by Subsection (3) shall send a copy of the test results to the department as soon as the test results are available.

(7) (a) The department shall adopt rules, as authorized by Section 4-3-201, governing

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the sale of raw milk products at a self-owned retail store.

- (b) The rules adopted by the department shall include rules regarding:
 - (i) permits;
 - (ii) building and premises requirements;
 - (iii) sanitation and operating requirements, including bulk milk tanks requirements;
 - (iv) additional tests;
 - (v) frequency of inspections, including random cooler checks;
 - (vi) recordkeeping; and
 - (vii) packaging and labeling.

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

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

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

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

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

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

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

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

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

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

(11) The department shall issue a cease and desist order to a producer linked to a

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foodborne illness and shall stop sale ~~[on]~~ of a raw milk product currently being sold.

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

- (a) adheres to ~~[all of the provisions of]~~ this section; and
- (b) has three consecutive clean tests of the raw milk product.

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

- (a) upon the first violation, a penalty of no more than \$300;
- (b) upon a second violation, a penalty of no more than \$750; and
- (c) upon a third or subsequent violation a penalty of no more than \$1,500.