

SALE OF DAIRY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends provisions related to the sale of raw milk products.

Highlighted Provisions:

This bill:

▶ amends the definition of "raw milk product" for provisions regulating the sale of raw milk products.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-3-503, as last amended by Laws of Utah 2020, Chapter 422

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

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

4-3-503. Sale of raw milk products -- 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.



28 (b) "Raw milk product" means [~~raw milk, cream produced from raw milk, and butter~~]
29 any product produced from raw milk.

30 (c) "Self-owned retail store" means a retail store:

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

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

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

37 (a) the producer obtains a permit from the department to produce the raw milk product
38 under Subsection 4-3-301(6);

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

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

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

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

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

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

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

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

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

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

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

59 (j) the dairy animals on the premises are:
60 (i) permanently and individually identifiable; and
61 (ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and
62 (k) any person on the premises performing any work in connection with the production,
63 bottling, packaging, handling, or sale of the raw milk product is free from communicable
64 disease.

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

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

72 (b) retains ownership of the raw milk product until it is sold to the final consumer,
73 including transporting the raw milk product from the premises where the raw milk product is
74 produced to the self-owned 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 product at 41 degrees Fahrenheit or a lower temperature in a
79 display case equipped with a properly calibrated thermometer at the self-owned retail store;

80 (d) places a sign above each display case that contains a raw milk product at the
81 self-owned retail 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 inch in bold type, "This milk product is raw
85 and unpasteurized. Please keep refrigerated."; and

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

87 (e) labels the raw milk product with:

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

- 90 (ii) the statement "Raw milk products, no matter how carefully produced, may be
- 91 unsafe.";
- 92 (iii) handling instructions to preserve quality and avoid contamination or spoilage;
- 93 (iv) a specific colored label as determined by the department by rule; and
- 94 (v) any other information required by rule;
- 95 (f) refrains from offering the raw milk product for sale until:
- 96 (i) the department or a third party certified by the department tests each batch of raw
- 97 milk used to produce a raw milk product 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 product sales; and
- 100 (ii) makes the database available to the Department of Health and Human Services
- 101 during the self-owned retail store's business hours for purposes of epidemiological
- 102 investigation;
- 103 (h) ensures that the plant and retail store complies with Chapter 5, Utah Wholesome
- 104 Food Act, and the rules governing food establishments enacted under Section [4-5-301](#); and
- 105 (i) complies with the applicable rules adopted as authorized by this chapter.
- 106 (4) A producer may distribute, sell, deliver, hold, store, or offer for sale a raw milk
- 107 product and 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
- 112 product is produced; and
- 113 (iii) maintains separate, labeled, refrigerated display cases for raw milk products and
- 114 pasteurized 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 raw milk is made upon the premises where the raw milk
- 119 is 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) the dairy animals on the producer's premises are free of tuberculosis, brucellosis,
135 and 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 (6) A person who conducts a test required by Subsection (3) shall send a copy of the
141 test results to the department as soon as the test results are available.
- 142 (7) (a) The department shall adopt rules, as authorized by Section [4-3-201](#), governing
143 the sale of raw milk products 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) The department may make rules, in accordance with Title 63G, Chapter 3, Utah
153 Administrative Rulemaking Act, regarding the standards of identity for a raw milk product.

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

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

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

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

161 (ii) a producer violates this section or a rule adopted as authorized by this section.

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

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

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

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

173 (11) The department shall issue a cease and desist order to a producer linked to a
174 foodborne illness and shall stop sale of a raw milk product currently being sold.

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

176 (a) adheres to this section; and

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

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

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

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