

SSB 6377 - H COMM AMD

By Committee on Economic Development, Agriculture & Trade

ADOPTED AS AMENDED 03/01/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that chapter 15.36  
4 RCW includes the regulation of raw milk and raw milk products including  
5 arrangements known as "cow shares" in which one or more individuals  
6 purchase one or more shares in a milk-producing animal in return for a  
7 portion of the milk that is produced. The legislature also finds that  
8 the agencies charged with protecting public health and safety need to  
9 have strong enforcement mechanisms and be able to respond rapidly,  
10 comprehensively, and effectively. It is not the intent of this act to  
11 prohibit either the sale of raw milk or cow share or similar  
12 arrangements by producers and processors who are properly licensed  
13 under chapter 15.36 RCW.

14 **Sec. 2.** RCW 15.36.012 and 1999 c 291 s 1 are each amended to read  
15 as follows:

16 For the purpose of this chapter:

17 "Adulterated milk" means milk that is deemed adulterated under  
18 appendix L of the PMO.

19 "Colostrum milk" means milk produced within ten days before or  
20 until practically colostrum free after parturition.

21 "DMO" means supplement I, the recommended sanitation ordinance for  
22 grade A condensed and dry milk products and condensed and dry whey, to  
23 the PMO published by the United States public health service, food and  
24 drug administration.

25 "Dairy farm" means a place or premises where one or more cows,  
26 goats, or other mammals are kept, a part or all of the milk or milk  
27 products from which is sold or offered for sale (~~(to a milk processing~~  
28 ~~plant, transfer station, or receiving station)).~~

1 "Dairy technician" means any person who takes samples of milk or  
2 cream or fluid derivatives thereof, on which sample tests are to be  
3 made as a basis of payment, or who grades, weighs, or measures milk or  
4 cream or the fluid derivatives thereof, the grade, weight, or measure  
5 to be used as a basis of payment, or who operates equipment wherein  
6 milk or products thereof are pasteurized.

7 "Degrade" means the lowering in grade from grade A to grade C.

8 "Department" means the state department of agriculture.

9 "Director" means the director of agriculture of the state of  
10 Washington or the director's duly authorized representative.

11 "Grade A milk processing plant" means any milk processing plant  
12 that meets all of the standards of the PMO to process grade A  
13 pasteurized milk or milk products.

14 "Grade A pasteurized milk" means grade A raw milk that has been  
15 pasteurized.

16 "Grade A raw milk" means raw milk produced upon dairy farms  
17 conforming with all of the items of sanitation contained in the PMO, in  
18 which the bacterial plate count does not exceed twenty thousand per  
19 milliliter and the coliform count does not exceed ten per milliliter as  
20 determined in accordance with RCW 15.36.201.

21 "Grade A raw milk for pasteurization" means raw milk produced upon  
22 dairy farms conforming with all of the same items of sanitation  
23 contained in the PMO of grade A raw milk, and the bacterial plate  
24 count, as delivered from the farm, does not exceed eighty thousand per  
25 milliliter as determined in accordance with RCW 15.36.201.

26 "Grade C milk" is milk that violates any of the requirements for  
27 grade A milk but that is not deemed to be adulterated.

28 "Milk" means the lacteal secretion, practically free of colostrum,  
29 obtained by the complete milking of one or more healthy cows, goats, or  
30 other mammals.

31 "Milk hauler" means a person who transports milk or milk products  
32 in bulk to or from a milk processing plant, receiving station, or  
33 transfer station.

34 "Milk processing" means the handling, preparing, packaging, or  
35 processing of milk in any manner in preparation for sale as food, as  
36 defined in chapter 69.04 RCW. Milk processing does not include milking  
37 or producing milk on a dairy farm that is shipped to a milk processing  
38 plant for further processing.

1 "Milk processing plant" means a place, premises, or establishment  
2 where milk or milk products are collected, handled, processed, stored,  
3 bottled, pasteurized, aseptically processed, bottled, or prepared for  
4 distribution, except an establishment that merely receives the  
5 processed milk products and serves them or sells them at retail.

6 "Milk products" means the product of a milk manufacturing process.

7 "Misbranded milk" means milk or milk products that carries a grade  
8 label unless such grade label has been awarded by the director and not  
9 revoked, or that fails to conform in any other respect with the  
10 statements on the label.

11 "Official laboratory" means a biological, chemical, or physical  
12 laboratory that is under the direct supervision of the state or a local  
13 regulatory agency.

14 "Officially designated laboratory" means a commercial laboratory  
15 authorized to do official work by the department, or a milk industry  
16 laboratory officially designated by the department for the examination  
17 of grade A raw milk for pasteurization and commingled milk tank truck  
18 samples of raw milk for antibiotic residues and bacterial limits.

19 "PMO" means the grade "A" pasteurized milk ordinance published by  
20 the United States public health service, food and drug administration.

21 "Pasteurized" means the process of heating every particle of milk  
22 or milk product in properly designed and operated equipment to the  
23 temperature and time standards specified in the PMO.

24 "Person" means an individual, partnership, firm, corporation,  
25 company, trustee, or association.

26 "Producer" means a person or organization who operates a dairy farm  
27 and provides, sells, or offers milk for sale (~~(to a milk processing~~  
28 ~~plant, receiving station, or transfer station)~~)).

29 "Receiving station" means a place, premises, or establishment where  
30 raw milk is received, collected, handled, stored, or cooled and  
31 prepared for further transporting.

32 "Sale" means selling, offering for sale, holding for sale,  
33 preparing for sale, distributing, dispensing, delivering, supplying,  
34 trading, bartering, offering a gift as an inducement for sale of, and  
35 advertising for sale in any media.

36 "Transfer station" means any place, premises, or establishment  
37 where milk or milk products are transferred directly from one milk tank  
38 truck to another.

1 "Wash station" means a place, facility, or establishment where milk  
2 tanker trucks are cleaned in accordance with the standards of the PMO.

3 **Sec. 3.** RCW 15.36.111 and 1999 c 291 s 6 are each amended to read  
4 as follows:

5 (1) The director shall inspect all dairy farms and all milk  
6 processing plants prior to issuance of a license under this chapter and  
7 at a frequency determined by the director by rule: PROVIDED, That the  
8 director may accept the results of periodic industry inspections of  
9 producer dairies if such inspections have been officially checked  
10 periodically and found satisfactory. In case the director discovers  
11 the violation of any item of grade requirement, he or she shall make a  
12 second inspection after a lapse of such time as he or she deems  
13 necessary for the defect to be remedied, but not before the lapse of  
14 three days, and the second inspection shall be used in determining  
15 compliance with the grade requirements of this chapter. Whenever there  
16 is any violation of the same requirement of this chapter on the second  
17 inspection, the director may initiate proceedings to degrade, suspend  
18 the license, or assess a civil penalty.

19 (2) One copy of the inspection report detailing the grade  
20 requirement violations shall be posted by the director in a conspicuous  
21 place upon an inside wall of the milk tank room or a mutually agreed  
22 upon location on a dairy farm or given to an operator of the milk  
23 processing plant, and said inspection report shall not be defaced or  
24 removed by any person except the director. Another copy of the  
25 inspection report shall be filed with the records of the director.

26 (3) Every milk producer and milk processing plant shall permit the  
27 director access to all parts of the establishment during the working  
28 hours of the producer or milk processing plant, which shall at a  
29 minimum include the hours from 8 a.m. to 5 p.m., and every milk  
30 processing plant shall furnish the director, upon his or her request,  
31 for official use only, samples of any milk product for laboratory  
32 analysis, and a true statement of the actual quantities of milk and  
33 milk products of each grade purchased and sold(~~(, together with a list~~  
34 ~~of all sources, records of inspections and tests, and recording~~  
35 ~~thermometer charts)).~~

36 (4) The director shall have access to all parts of a dairy farm or  
37 facility that is not licensed as a milk producer or milk processing

1 plant if the director has information that the dairy farm or facility  
2 is engaged in activities that require a license under this chapter.  
3 The director shall have access during the working hours of the dairy  
4 farm or facility, which shall at a minimum include the hours from 8  
5 a.m. to 5 p.m. The director shall have the authority to take samples  
6 of milk or any milk products and water and environmental samples for  
7 laboratory analysis. For all establishments subject to this subsection  
8 and subsection (3) of this section, the director shall have access to  
9 records including, but not limited to, customer lists, milk production  
10 records, temperature records, and records of inspections and tests.

11 (5) If the director is denied access to a dairy farm or milk  
12 processing plant, the director may apply to a court of competent  
13 jurisdiction for a search warrant authorizing access to the property  
14 and facilities for purposes of conducting tests and inspections, taking  
15 samples, and examining records. To show that access is denied, the  
16 director shall file with the court an affidavit or declaration  
17 containing a description of his or her attempts to notify and locate  
18 the owner or the owner's agent and to secure consent. Upon  
19 application, the court may issue a search warrant for the purposes  
20 requested.

21 **Sec. 4.** RCW 15.36.511 and 1999 c 291 s 24 are each amended to read  
22 as follows:

23 (1) It is unlawful for any person to:

24 ((+1)) (a) Interfere with or obstruct any person in the  
25 performance of official duties under this chapter;

26 ((+2)) (b) Employ a tester, sampler, weigher, grader, or  
27 pasteurizer who is not licensed as a dairy technician;

28 ((+3)) (c) Alter or tamper with a seal placed by the director;

29 ((~~or~~

30 +4)) (d) Alter or tamper with a sample of milk or milk products  
31 taken or sealed by the director; or

32 (e) Operate as a milk producer or milk processing plant without  
33 obtaining a license from the director.

34 (2) Except as provided under RCW ((15.35.131)) 15.36.131, it is  
35 unlawful for a milk processing plant to accept milk from a person not  
36 licensed as a producer or milk processor.

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 15.36 RCW  
2 to read as follows:

3        The director may issue a cease and desist order to any person whom  
4 the director has reason to believe is engaged in an activity for which  
5 a license is required by this chapter.    The person to whom such notice  
6 is issued may request an adjudicative proceeding to contest the order.

7        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 15.36 RCW  
8 to read as follows:

9        (1) When the director has probable cause to believe that milk or  
10 milk products are being sold, distributed, stored, or transported in  
11 violation of this chapter or rules adopted under this chapter, the  
12 director may issue and serve upon the owner or custodian of the milk or  
13 milk products a written notice of embargo and order prohibiting the  
14 sale of the milk or milk products.    If the owner or custodian is not  
15 available for service, the director may attach the notice of embargo  
16 and order prohibiting sale to the container holding the milk or milk  
17 products.    The milk or milk products shall not be sold, used, or  
18 removed until this chapter has been complied with and the milk or milk  
19 products have been released from embargo under conditions specified by  
20 the director in writing.

21        (2) The department may issue a destruction and disposal order  
22 covering any embargoed milk or milk products.    The destruction and  
23 disposal shall occur at the cost of the owner or custodian.

24        (3) The person to whom the notice of embargo and order prohibiting  
25 sale was issued or the person to whom a destruction or disposal order  
26 was issued may request an adjudicative proceeding to contest the order.

27        (4) A state court shall not allow the recovery of damages from an  
28 administrative action under this section if the court finds there was  
29 probable cause for the action.

30        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 15.36 RCW  
31 to read as follows:

32        (1) It is unlawful for any person to sell raw milk from a dairy  
33 farm that is not licensed as a milk producer or a milk processing plant  
34 under this chapter.

35        (2) The sale of raw milk from a dairy farm that is not licensed as

1 a milk producer and a milk processing plant under this chapter  
2 constitutes:

- 3 (a) For the first offense, a misdemeanor; and
- 4 (b) For the second and subsequent offenses, a gross misdemeanor  
5 punishable according to chapter 9A.20 RCW.

6 (3) Neither the issuance of a cease and desist order nor payment of  
7 a civil penalty relieves the person so selling raw milk from criminal  
8 prosecution, but the remedy of a cease and desist order or civil  
9 penalty is in addition to any criminal liability.

10 NEW SECTION. **Sec. 8.** (1) The legislature finds that small-scale  
11 dairies have varying degrees of familiarity with statutory and  
12 regulatory requirements and the range of acceptable methods they can  
13 use to meet those requirements. The legislature therefore directs the  
14 department of agriculture to convene a work group to identify and help  
15 resolve obstacles faced by small-scale dairies in their efforts to  
16 become licensed as milk producers and milk processing plants.

17 (2) The director of the department of agriculture shall include in  
18 the work group representatives of small-scale and conventional dairies,  
19 public health officials, the cooperative extension, industry  
20 associations, consumers, and other stakeholders as the director deems  
21 appropriate. Representatives from the department's food safety and  
22 small farms direct marketing programs shall staff the work group.

- 23 (3) The work group shall:
- 24 (a) Identify barriers to small-scale dairies in achieving  
25 licensing;
  - 26 (b) Examine potential solutions to those barriers that are  
27 size-appropriate and economically feasible;
  - 28 (c) Identify sources of technical assistance and information on  
29 best management practices; and
  - 30 (d) Recommend other actions that will assist small-scale dairies to  
31 become licensed.

32 (4) By December 1, 2006, the department of agriculture and  
33 representatives of the work group shall report on their work and  
34 recommendations to appropriate standing committees of the legislature.

35 NEW SECTION. **Sec. 9.** The sum of thirty thousand dollars, or as

1 much thereof as may be necessary, is appropriated for the fiscal year  
2 ending June 30, 2007, from the general fund to the department of  
3 agriculture for the purposes of section 8 of this act."

4 Correct the title.

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