

HOUSE BILL REPORT

HB 3010

As Reported by House Committee On:
Economic Development, Agriculture & Trade

Title: An act relating to ensuring the safety of milk and dairy products.

Brief Description: Relating to ensuring the safety of milk and dairy products.

Sponsors: Representatives Moeller, Newhouse and Flannigan.

Brief History:

Committee Activity:

Economic Development, Agriculture & Trade: 1/31/06, 2/1/06 [DPS].

Brief Summary of Substitute Bill

- Declares it unlawful for any person to operate as a milk producer or milk processing plant without obtaining a license, or to sell raw milk from a dairy farm that is not so licensed.
- Authorizes the Director of the Department of Agriculture (Department) to take specified enforcement actions under certain conditions, and the person served to contest such actions through adjudicative proceedings.
- Prescribes penalties for selling raw milk from an unlicensed dairy farm.
- Directs the Department to convene a work group on establishing a "micro-dairy" licensing category.

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE & TRADE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Linville, Chair; Pettigrew, Vice Chair; Kristiansen, Ranking Minority Member; Appleton, Bailey, Blake, Chase, Clibborn, Dunn, Grant, Haler, Kilmer, Kretz, McCoy, Morrell, Newhouse, Quall, Strow, P. Sullivan and Wallace.

Minority Report: Do not pass. Signed by 2 members: Representatives Buri and Holmquist.

Staff: Meg Van Schoorl (786-7105).

Background:

The sale of raw milk by licensed milk producers and milk processing plants is legal in Washington for three purposes: further processing, human consumption, or animal feed. All raw milk sold must meet the statutory requirements for Grade A milk, and must meet additional bacterial and animal health testing and labeling requirements.

Under the Department of Agriculture's (Department) Milk Producer license (no annual fee), a farmer may sell raw milk to milk processing plants, food processors, or into the general milk pool for further processing. Under the Department's Milk Processing Plant license (\$55 annual fee), a person or company may sell raw milk directly to consumers for human consumption. Under the Department's Animal Feed license (\$25 annual fee), a farmer may sell raw milk for animal feed, as long as certain labeling requirements are met.

"Cow shares," "farm shares," or similar agreements are arrangements in which one or more individuals purchase one or more shares in a milk-producing animal in return for a portion of the milk that is produced.

Summary of Substitute Bill:

Raw milk and raw milk products, including arrangements known as "cow shares," are regulated under the state milk and milk products law. The intent of this act is not to ban the sale of raw milk or to prohibit cow shares or similar arrangements by properly licensed producers and processors. It is, however, unlawful to operate as a milk producer or milk processor without obtaining a license from the Department, or to sell raw milk from a dairy farm that is not licensed as a milk producer or milk processing plant.

A "producer" is a person or organization who operates a dairy farm and provides, sells, or offers milk for sale. A "dairy farm" is a place where one or more cows, goats, or other mammals are kept and a part or all of the milk or milk products are sold or offered for sale. A "sale" is further defined to include distributing, dispensing, delivering, and supplying products. The customer of the producer or the dairy farm or the sale is not specified.

If the Director of the Department (Director) has information that a dairy farm or facility without a license is engaged in activities requiring a license under the state milk and milk products law, the Director will have:

- access to all parts of the farm or facility during working hours;
- access to customer lists, records of milk production, temperature, inspections and tests;
- authority to take samples of milk, milk products, water, and the environment; and,
- authority to apply to a court for a search warrant if denied access, and to issue a cease and desist order.

Having probable cause to believe that milk or milk products are being sold, distributed, stored, or transported in violation of the state dairy law or rules, the Director may:

- issue and serve a written notice of embargo and order prohibiting their sale; and
- issue a destruction and disposal order, carried out at the owner or custodian's expense.

These orders and embargoes may be contested in an adjudicative proceeding by the person served; however, if a state court finds probable cause, recovery of damages will not be allowed.

Selling raw milk from a dairy farm that is not licensed as a milk producer or milk processing plant is a gross misdemeanor for the first offense, and a class C felony for second and subsequent offenses. Civil penalties and cease and desist orders are in addition to criminal liability.

The Department is directed to convene a work group to research and make recommendations for establishing a "micro-dairy" licensing category. The scope of work will include:

- defining micro-dairies;
- structuring size-appropriate and economically feasible licensing, inspection and testing requirements;
- instituting additional regulatory requirements;
- identifying sources of assistance on best management practices; and
- reporting to appropriate legislative standing committees by September 2006.

Substitute Bill Compared to Original Bill:

The substitute bill expands the intent section of the title-only original bill with two statements: (1) raw milk and raw milk products, including arrangements known as "cow shares," are regulated under the state milk and milk products law; and (2) the intent is not to ban the sale of raw milk or to prohibit cow-shares or similar arrangements by properly licensed producers and processors. Further provisions declare it unlawful for any person to operate as a milk producer or milk processing plant without obtaining a license, or to sell raw milk from a dairy farm that is not licensed. The Director is authorized to take specified enforcement actions under certain conditions, and the person served is authorized to contest such actions through adjudicative proceedings. Penalties for selling raw milk from an unlicensed dairy farm are prescribed. The Department is directed to convene a work group on establishing a "micro-dairy" licensing category. The work group's membership, scope of work, and timeline for reporting to the Legislature are prescribed.

Appropriation: None.

Fiscal Note: Available on original bill.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) Raw milk and cow shares are legal as long as the dairy is licensed. The goal is to sell safe milk and milk products. The bill makes it clear that a dairy providing milk through cow-shares is selling milk. The enforcement measures in the bill strengthen the Department's ability to do its job. With recent food borne illness in southwest Washington tied to raw milk produced at an unlicensed dairy, the Department had to wait two

days to gain access to the facility, and still does not have the dairy's customer list. The Department has been working with 34 small entrepreneurs to help clear up misperceptions. There already are six raw milk licensed dairies. With an expenditure of \$3,000 and technical assistance from the Department, it was very doable for our micro-dairy to acquire a Grade A license and to continually have clear monthly test results.

(In support of amendment) The amendment on micro-dairies recognizes that there is a difference between large and small-scale dairies. It is a good compromise to meet safety needs and to help micro-dairies. Two levels of licensure are needed. Diversifying small farm operations to include dairy products is an important option. The current dairy law should be reviewed, as was done with hand capping, for opportunities to improve it. The issues will be able to be resolved in the work group.

Testimony Against: It is frightening to think that sharing milk from one cow with neighbors or providing raw milk to one's children could become a crime. Without the amendment, the bill is punitive and does not address the underlying problem of small farmers being unable to afford the cost of equipment and facilities required under current licensing regulations. The penalties are relaxed from the original Senate bill, but are still somewhat harsh. The same penalties prescribed in the bill for raw milk dairies should also apply to any unlicensed dairy. The bill does not go far enough to protect consumers. Additional tests for E. coli, salmonella, and listeria, tamper-evident seals, capping dates on the bottle, and other measures need to be added to statutes. Lists of raw milk dairy customers should be readily available and shareholder agreements should contain language advising customers that their personal information will be given to health officials if necessary.

Persons Testifying: (In support) Representative Moeller, prime sponsor; Jay Gordon, Washington State Dairy Federation; Debbie Higgins, Rainhaven Grade A Raw Goat Dairy; Tim Lukens, Drayton Harbor Farms; and Mary Beth Lang and Claudia Coles, Washington Department of Agriculture.

(In support of amendment) Henning Sehmsdorf, S&S Homestead Farms; and Chris Ostrander, Washington Association of Shareholder Dairies.

(Opposed to original bill) Emmy McAllister, Weston A. Price Foundation.

Persons Signed In To Testify But Not Testifying: None.