

HOUSE BILL REPORT

SSB 6377

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

Title: An act relating to regulation of milk and milk products.

Brief Description: Changing the regulation of milk and milk products.

Sponsors: Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Doumit, Rasmussen, Schoesler, Swecker, Morton, Zarelli, Shin and Pflug).

Brief History:

Committee Activity:

Economic Development, Agriculture & Trade: 2/15/06, 2/22/06 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- 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 misdemeanor and gross misdemeanor as penalties for selling raw milk from an unlicensed dairy farm.
- Directs the Department to convene a work group to identify barriers, solutions, best management practices, and other actions to assist small-scale dairies to become licensed.

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE & TRADE

Majority Report: Do pass as amended. Signed by 17 members: Representatives Linville, Chair; Pettigrew, Vice Chair; Skinner, Assistant Ranking Minority Member; Appleton, Bailey, Chase, Clibborn, Grant, Haler, Kilmer, Kretz, McCoy, Morrell, Newhouse, Quall, Strow and P. Sullivan.

Minority Report: Do not pass. Signed by 6 members: Representatives Kristiansen, Ranking Minority Member; Blake, Buri, Dunn, Holmquist and Wallace.

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 Amended 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 misdemeanor for the first offense, and a gross misdemeanor for second and subsequent offenses. Civil penalties and cease and desist orders are in addition to criminal liability.

The Department must convene a work group to identify barriers, examine size-appropriate and economically feasible solutions, identify technical assistance and information on best management practices, and recommend other actions to assist small-scale dairies to become licensed. The Department and work group are required to report to appropriate legislative committees by December 1, 2006, as to the work accomplished and recommendations. Thirty thousand dollars is appropriated from the State General Fund for the Department's work.

Amended Bill Compared to Substitute Bill:

The amended bill revises the penalties for selling raw milk from an unlicensed dairy farm. For the first offense, the penalty is a misdemeanor instead of a gross misdemeanor. For the second and subsequent offenses, the penalty is a gross misdemeanor instead of a Class C Felony. The Department must convene a work group to investigate barriers, solutions, technical assistance, and other actions to assist small-scale dairies to become licensed. A State General Fund appropriation of \$30,000 is provided to the Department for these purposes.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support) This is an important step forward in protecting families and children from incidents like the one that sickened 18 people who drank raw milk from an unlicensed southwest Washington dairy. The regulation of cow-shares is in dispute, so although the Department believes it currently has that regulatory authority, this bill clarifies its authority and adds necessary enforcement tools. Regulation will protect the broader industry. The Senate wants to continue raw milk sales and is open to the concept of a study or work group to discuss education or incentives to achieve licensure. The Senate is concerned about making exceptions to licensing requirements. The penalties are tough because sales of bad milk can cause life and death situations. It is not difficult for a small dairy to be

licensed. Dairies have a fiduciary responsibility to produce good product in conjunction with regulatory and technological controls. The requirements are part of the federal Pasteurized Milk Ordinance. There are different means possible for meeting the requirements, and every producer who has gone through the licensing process is supportive of the Department. There are currently six licensed raw milk dairies, three pending, and 30 to whom technical assistance is being provided.

(With amendment) We support the micro-dairy work group amendment that was added to the House bill earlier this session.

Testimony Against: Many people are clamoring for raw milk because it has health benefits such as helping digestion. There is a long list of requirements to become a Grade A dairy but not much education. The cost of having to build a separate milk processing facility and meet other requirements is an issue. If not onerous and expensive, we would love to be licensed. We want to have a statutorily-mandated work group to work through barriers to licensing. Some micro-dairies have had great experiences with creative food safety officials at the Department, but some officials are "by the book." Being able to be licensed should not hinge on an official's creativity. Consumers' ability to find their own food will be affected if people with a couple of animals are criminalized rather than helped towards licensure.

Persons Testifying: (In support) Senator Doumit, prime sponsor; Tim Lukens, Grace Harbor Farms; Anthony Estrella, Estrella Family Creamery; Debbie Higgins, Rainhaven Grade A Goat Dairy; Pat Hendrickson, Rock Run Farm; Jay Gordon, Washington State Dairy Federation; and Mary Beth Lang and Claudia Coles, Washington Department of Agriculture.

(With amendment) Melody Barone, Weston A. Price Foundation.

(Opposed) Linda Kozak, Fort Bantam Creamery; Emmy McAllister, Washington State Raw Milk and Micro-Dairy Task Force; and Charlene Osman.

Persons Signed In To Testify But Not Testifying: None.