
SUBSTITUTE HOUSE BILL 3010

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Economic Development, Agriculture & Trade
(originally sponsored by Representatives Moeller, Newhouse and
Flannigan)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to ensuring the safety of milk and dairy products;
2 amending RCW 15.36.012, 15.36.111, and 15.36.511; adding new sections
3 to chapter 15.36 RCW; creating new sections; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

18 For the purpose of this chapter:

1 "Adulterated milk" means milk that is deemed adulterated under
2 appendix L of the PMO.

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

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

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

13 "Dairy technician" means any person who takes samples of milk or
14 cream or fluid derivatives thereof, on which sample tests are to be
15 made as a basis of payment, or who grades, weighs, or measures milk or
16 cream or the fluid derivatives thereof, the grade, weight, or measure
17 to be used as a basis of payment, or who operates equipment wherein
18 milk or products thereof are pasteurized.

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

20 "Department" means the state department of agriculture.

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

23 "Grade A milk processing plant" means any milk processing plant
24 that meets all of the standards of the PMO to process grade A
25 pasteurized milk or milk products.

26 "Grade A pasteurized milk" means grade A raw milk that has been
27 pasteurized.

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

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

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

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

6 "Milk hauler" means a person who transports milk or milk products
7 in bulk to or from a milk processing plant, receiving station, or
8 transfer station.

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

14 "Milk processing plant" means a place, premises, or establishment
15 where milk or milk products are collected, handled, processed, stored,
16 bottled, pasteurized, aseptically processed, bottled, or prepared for
17 distribution, except an establishment that merely receives the
18 processed milk products and serves them or sells them at retail.

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

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

24 "Official laboratory" means a biological, chemical, or physical
25 laboratory that is under the direct supervision of the state or a local
26 regulatory agency.

27 "Officially designated laboratory" means a commercial laboratory
28 authorized to do official work by the department, or a milk industry
29 laboratory officially designated by the department for the examination
30 of grade A raw milk for pasteurization and commingled milk tank truck
31 samples of raw milk for antibiotic residues and bacterial limits.

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

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

37 "Person" means an individual, partnership, firm, corporation,
38 company, trustee, or association.

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

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

7 "Sale" means selling, offering for sale, holding for sale,
8 preparing for sale, distributing, dispensing, delivering, supplying,
9 trading, bartering, offering a gift as an inducement for sale of, and
10 advertising for sale in any media.

11 "Transfer station" means any place, premises, or establishment
12 where milk or milk products are transferred directly from one milk tank
13 truck to another.

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

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

18 (1) The director shall inspect all dairy farms and all milk
19 processing plants prior to issuance of a license under this chapter and
20 at a frequency determined by the director by rule: PROVIDED, That the
21 director may accept the results of periodic industry inspections of
22 producer dairies if such inspections have been officially checked
23 periodically and found satisfactory. In case the director discovers
24 the violation of any item of grade requirement, he or she shall make a
25 second inspection after a lapse of such time as he or she deems
26 necessary for the defect to be remedied, but not before the lapse of
27 three days, and the second inspection shall be used in determining
28 compliance with the grade requirements of this chapter. Whenever there
29 is any violation of the same requirement of this chapter on the second
30 inspection, the director may initiate proceedings to degrade, suspend
31 the license, or assess a civil penalty.

32 (2) One copy of the inspection report detailing the grade
33 requirement violations shall be posted by the director in a conspicuous
34 place upon an inside wall of the milk tank room or a mutually agreed
35 upon location on a dairy farm or given to an operator of the milk
36 processing plant, and said inspection report shall not be defaced or

1 removed by any person except the director. Another copy of the
2 inspection report shall be filed with the records of the director.

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

13 (4) The director shall have access to all parts of a dairy farm or
14 facility that is not licensed as a milk producer or milk processing
15 plant if the director has information that the dairy farm or facility
16 is engaged in activities that require a license under this chapter.
17 The director shall have access during the working hours of the dairy
18 farm or facility, which shall at a minimum include the hours from 8
19 a.m. to 5 p.m. The director shall have the authority to take samples
20 of milk or any milk products and water and environmental samples for
21 laboratory analysis. For all establishments subject to this subsection
22 and subsection (3) of this section, the director shall have access to
23 records including, but not limited to, customer lists, milk production
24 records, temperature records, and records of inspections and tests.

25 (5) If the director is denied access to a dairy farm or milk
26 processing plant, the director may apply to a court of competent
27 jurisdiction for a search warrant authorizing access to the property
28 and facilities for purposes of conducting tests and inspections, taking
29 samples, and examining records. To show that access is denied, the
30 director shall file with the court an affidavit or declaration
31 containing a description of his or her attempts to notify and locate
32 the owner or the owner's agent and to secure consent. Upon
33 application, the court may issue a search warrant for the purposes
34 requested.

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

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

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

3 ~~((2))~~ (b) Employ a tester, sampler, weigher, grader, or
4 pasteurizer who is not licensed as a dairy technician;

5 ~~((3))~~ (c) Alter or tamper with a seal placed by the director;
6 ~~((or~~

7 ~~(4))~~ (d) Alter or tamper with a sample of milk or milk products
8 taken or sealed by the director; or

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

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

14 NEW SECTION. Sec. 5. A new section is added to chapter 15.36 RCW
15 to read as follows:

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

20 NEW SECTION. Sec. 6. A new section is added to chapter 15.36 RCW
21 to read as follows:

22 (1) When the director has probable cause to believe that milk or
23 milk products are being sold, distributed, stored, or transported in
24 violation of this chapter or rules adopted under this chapter, the
25 director may issue and serve upon the owner or custodian of the milk or
26 milk products a written notice of embargo and order prohibiting the
27 sale of the milk or milk products. If the owner or custodian is not
28 available for service, the director may attach the notice of embargo
29 and order prohibiting sale to the container holding the milk or milk
30 products. The milk or milk products shall not be sold, used, or
31 removed until this chapter has been complied with and the milk or milk
32 products have been released from embargo under conditions specified by
33 the director in writing.

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

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

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

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

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

12 (2) The sale of raw milk from a dairy farm that is not licensed as
13 a milk producer and a milk processing plant under this chapter
14 constitutes:

15 (a) For the first offense, a gross misdemeanor; and

16 (b) For the second and subsequent offenses, a class C felony
17 punishable according to chapter 9A.20 RCW.

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

22 NEW SECTION. **Sec. 8.** (1) The legislature recognizes that recent
23 events linking consumption of raw milk from an unlicensed dairy to
24 severe illnesses in children have triggered strong public demand for
25 increased regulation of Washington dairies. The legislature also finds
26 that dairies are diverse in terms of size, financial means, customers,
27 facilities, and equipment. The legislature believes that small
28 dairies, conventional operations, and state-of-the-art plants can all
29 play a role in the safe sale and distribution of milk and milk
30 products, but that regulation cannot be done on the basis of one-size-
31 fits-all.

32 (2) The department of agriculture shall convene a work group to
33 research, discuss, and make recommendations for establishment of a
34 "microdairy" licensing category. The scope of the work group shall
35 include:

- 1 (a) Defining microdairies in terms of production volume, numbers of
2 animals, or other relevant criteria;
- 3 (b) Structuring licensing requirements, inspection, and testing
4 procedures for microdairies that are size-appropriate and economically
5 feasible;
- 6 (c) Instituting other regulatory requirements that will protect
7 public health and safety; and
- 8 (d) Identifying sources of assistance for microdairies on best
9 management practices.
- 10 (3) The work group shall include representatives of microdairies
11 and conventional dairies, public health agencies, consumers, technical
12 assistance providers such as county extension agents, staff from the
13 department's food safety and small farm direct marketing programs, and
14 other stakeholders that the director of the department of agriculture
15 deems necessary.
- 16 (4) The department and members of the work group shall report their
17 findings and recommendations to the appropriate house of
18 representatives and senate standing committees by September 2006.

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