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**SUBSTITUTE SENATE BILL 6377**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

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

READ FIRST TIME 01/27/06.

1 AN ACT Relating to regulation of milk and milk products; amending  
2 RCW 15.36.012, 15.36.111, and 15.36.511; adding new sections to chapter  
3 15.36 RCW; creating a new section; 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.

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