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SFA



BILL ANALYSIS

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House Bill 4820 (Substitute S-2 as reported by the Committee of the Whole)
House Bill 4829 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Representative Tom Meyer (House Bill 4820)
Representative Steve Vear (House Bill 4829)
House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness and Food Systems

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RATIONALE

Before the Food Law of 2000 was enacted, a dozen laws and regulations governed food establishments. The State's dairy laws are similarly disbursed across 20 or more separate Acts and regulations. Currently, separate laws regulate butter, cheese, frozen desserts, and milk bottles. Several of these statutes date back 50 years or more, and, while they have been amended over the years, many people believe that these laws no longer meet the needs of the dairy industry. In particular, the Fluid Milk Act of 1965, which regulates Grade A milk and Grade A milk products, still refers to the 1993 version of the Federal Pasteurized Milk Ordinance (PMO). The PMO was updated in 1995, 1997, 1999, and 2001.

Currently, the two most comprehensive dairy acts are the Fluid Milk Act and the Manufacturing Milk Act, which set the standards for the two grades of milk. Grade A milk is intended for direct consumption, and is used to make yogurt, cottage cheese, and sour cream. Manufacturing Grade, also known as Grade B, meets certain standards lower than those of Grade A, and is used to make cheese, butter, ice cream, and infant formula, all products that are heated in the production process. (Typically, Manufacturing Grade milk comes from Amish farms, where the lack of electricity makes it difficult to cool the milk to Grade A standards.)

The Michigan Department of Agriculture's Food and Dairy Division consulted with representatives from Michigan State University, the Michigan Milk Producers Association, the Michigan Farm Bureau, Amish farmers, and others to recommend the consolidation of the State's dairy laws into two

statutes: one that would regulate Grade A milk, and another that would regulate Manufacturing Grade milk.

CONTENT

The bills would combine, update, and repeal a number of dairy regulations and laws and create two new acts: the "Grade A Milk Law of 2001" and the "Manufacturing Milk Law of 2001". Proposed changes to current law include:

- **Specific requirements for the handling of milk from cows tested positive for tuberculosis (TB).**
- **Additional licensing or permit requirements for manufacturers and transporters.**
- **Adjusted license and permit fees.**
- **Additional education, penalties, and follow-up requirements to restrict drug residue found in milk.**
- **Prescribed maximum temperatures for the storage of milk in cans and bulk containers.**

In the description of the bills below, provisions specific to each bill are discussed first, followed by a summary of elements common to both bills. The bills are tie-barred to each other.

House Bill 4820 (S-2)

Overview

The bill would replace the Fluid Milk Act and related regulations with the "Grade A Milk Law of 2001", and would adopt the 2001 Federal

Grade A Pasteurized Milk Ordinance, the recommendations of the U.S. Public Health Service/Food and Drug Administration, and provisions of a 1995 supplement concerning condensed and dry milk. (The Fluid Milk Act adopts the 1993 version of the PMO.) Under the bill, "Grade A milk" would mean milk or milk products produced in compliance with the requirements of the bill.

Licensing

The bill would add milk transportation companies, tank truck wash stations, bulk milk tank trucks, and single service container manufacturers to those who must be issued Grade A milk licenses. (A single service container would be a single use container, or parts of single service containers that touch milk.) Under the Act, producers, transporters, processors, labelers, and sellers of Grade A milk must be licensed. The bill would permit

State agencies operating dairy facilities under a memorandum of understanding from the Michigan Department of Agriculture (such as correctional facilities) to be exempted from a Grade A license.

The bill would permit a milk tank truck driver from another state to apply for a hauler/sampler license in Michigan without taking an exam if he or she submitted satisfactory proof of training and current licensing to the Michigan Department of Agriculture (MDA). The bill would allow the MDA Director to waive this requirement, however, if there were a reciprocal agreement with the hauler's home state. In addition, the Director could deny license renewal to any bulk milk hauler/sampler who failed evaluations in the previous two years.

The bill would change some Grade A license and permit fees imposed under the Fluid Milk Act (Act 233 of 1965) and other laws. Table 1 illustrates the proposed adjustments.

Table 1

License or Permit	Last Update	Current Fee per year	Proposed Fee/Charge
Grade A Dairy Plant Without Certified Fieldperson Act 233 of 1965	1982	\$50 plus \$15 per milk producer sending milk to the plant	\$175 per plant, plus \$15 per producer (\$5 per producer if part of a co-op)
Grade A Dairy Plant With Certified Fieldperson Act 233 of 1965	1982	\$50 plus \$5 per producer	\$175 per plant, plus \$5 per producer
Grade A Transfer/ Receiving Station Act 233 of 1965	1982	\$25	Include receiving/ transfer stations, bulk tanker wash stations, single service manufacturers, milk distributors; \$50
Certified Fieldperson Act 233 of 1965	1982	\$10	\$60 for three years
Milk Plant Delivery Vehicle Act 233 of 1965	1982	\$10	Eliminate
Milkfat Tester Act 212 of 1935	1970	\$5	Eliminate
Unassigned Grade A Dairy Farm Without Certified Fieldperson		None	\$15 annual permit fee
Unassigned Grade A Dairy Farm with Certified Fieldperson		None	\$5 annual permit fee

Revocation and Suspension of Permits and Licenses

The 1993 PMO allows for the suspension of permits or licenses if any violations of the ordinance occur. The Fluid Milk Act names the following four violations that may result in revocation or suspension:

- Failing to agitate Grade A milk in the farm bulk milk tank before taking a sample for delivery to the milk plant or the Department.
- Failing to take the sample for analysis in accordance with the procedures established by departmental rules.
- Picking up Grade A milk at a temperature that exceeds 45 degrees Fahrenheit.
- Failing to report accurately the weight or temperature of Grade A milk picked up from a farm bulk milk tank.

The bill would include language to allow the Director to revoke or suspend a license or permit issued under the proposed Act for *any* violation of the proposed Act, the PMO, or a rule promulgated under the proposed Act. The bill specifies the violations that would be cause for revoking or suspending a license or permit or charging an administrative fine. In addition to the four infractions above, they would include:

- Failing to provide supplementary or interim information or information required to be supplied to the Department.
- Failing to provide a security device (such as a verified financial statement) in the amount and manner required by the Director under the bill.
- Knowingly providing false or fraudulent information or making a material misrepresentation on an application.
- Knowingly providing false or fraudulent information or making a material misrepresentation in response to a request for information by the Department.
- Failing to pay a producer in the manner provided under the bill.
- Adulterating milk or milk products.
- Failing to pay a final civil or administrative fine.

The MDA Director also could summarily suspend a license or permit if the licensee or permittee offered for sale or sold any of the following:

- Milk or milk products from diseased animals, or animals otherwise considered abnormal, that had been incorporated with milk or milk products from normal healthy animals.
- Milk or milk products suspected of contamination with any substance considered by the Department to be an imminent or substantial health hazard.
- Milk products from production, transportation, packing, or storage facilities that had such an accumulation of trash, rubbish, dirt, insects, vermin, human or animal wastes, or spoiled milk or milk products that precluded the reasonable protection of the milk or milk products from contamination.
- Milk or milk products produced in equipment with a significant portion of the milk contact surfaces covered with an accumulation of residues left after a cleaning regimen and thick enough that they could be scraped to form a body of solids.
- Milk or milk products stored in a container of unapproved construction.
- Milk or milk products produced from dairy animals with a majority of the milking herd with an excessive accumulation of manure on the flanks, bellies, or udders that precluded the reasonable protection of the milk from contamination during the milking process.
- Milk that was of inadequate volume to agitate properly after the first milking.
- Milk or milk products produced with excessive sediment.

In addition, the following would be cause for summary suspension of a license or permit:

- Receiving or picking up milk or milk products stored in a container of unapproved construction.
- Interfering with inspection of milk or milk products.
- Maintaining dead animals on the premises inconsistent with Public Act 239 of 1982.
- Maintaining a minimum of three of the last five official bacteria counts illegal.
- Maintaining a minimum of three of the last five official somatic counts illegal.
- Maintaining a minimum of three of the last five official milk or milk product cooling temperatures illegal.
- Failing to provide milk or milk products free of violative drug residues based on tests approved by the Food and Drug Administration.

-- Any other condition that created an imminent threat to the public health, safety, or welfare.

A person whose license or permit had been suspended, revoked, or denied immediately would have to discontinue operation of the business for which the license or permit was issued or requested, and would not be eligible for reinstatement of the license or permit until the Director determined that all violations had been corrected.

Except for drug residue violations discussed below, the Director could, upon finding that a person violated a provision or rule, impose an administrative fine of not more than \$1,000 and the actual cost of the investigation of the violation. The fine would be deposited in the General Fund. Failure to pay this fine would result in the action described below (under "Penalty for Failure to Pay Administrative Fine").

Other Provisions

Farm Milk Maximum Temperature. The current Act requires that farm milk be cooled to 45 degrees within two hours after the first milking, then allowed to get no warmer than 50 degrees Fahrenheit. The bill would amend this to require that milk be cooled to 50 degrees Fahrenheit within four hours after the start of the first milking, then to 45 degrees Fahrenheit within two hours of the completion of milking, not to exceed 50 degrees Fahrenheit on subsequent milkings. (This would bring the time and temperature requirements into alignment with the PMO standards.)

Water for Milkhouse and Milking Operations. Water used for these operations would have to follow recommendations for safety and accessibility set by the Department of Environmental Quality. The current Act names the Michigan Department of Public Health as the recommending agency.

Milk Collection Frequency. The bill would require bulk milk hauler/samplers to pick up milk that had been stored on the farm for no more than 72 hours. The current Act contains no time restriction.

Dairy Farm Construction Requirements. The bill would require that nonelectric farms

provide battery-powered lighting for each bulk tank opening. The current Act contains no such requirement.

Transportation of Pasteurized Product. The 2001 PMO requires that pasturized milk transported in a container previously used for transportation of raw milk be repasteurized. This does not apply to certain products transported in dedicated tankers. The bill would adopt this PMO requirement.

Repealer. The bill would repeal the Fluid Milk Act (MCL 288.21-288.29a) and sections R 285.401.8-485.408.5 of the Michigan Administrative Code, which regulates the sale of Grade A milk, including date-of-sale requirements.

House Bill 4829 (S-1)

The bill would create the "Manufacturing Milk Law of 2001", which would regulate the production, transportation, licensing, and standards for Manufacturing Grade milk.

Milk Quality Standards

Current law provides chemical, physical, bacteriological, and temperature quality standards for Manufacturing Grade raw (unpasteurized) milk, frozen desserts, and instant nonfat dry milk. The bill would expand those standards to include most dairy products. (As defined by the bill, a "dairy product" or "manufactured dairy product" would include, but not be limited to: "evaporated milk, condensed skim milk, condensed milk, condensed buttermilk, condensed milk solids, concentrate milk, nonfat dry milk, dry milk, dry cream, dry whey, dry buttermilk, butter, buttermilk, cheese, cheese products, ice cream, sherbet, frozen desserts, dairy confections or novelties, related dairy products with butter fat or milk solids substitutions, filtered milk components, infant formula manufactured with dairy ingredients, whey, whey cream, and other products for human consumption not regulated under the grade A dairy law or as determined appropriate by the director".)

Frozen Dessert Standards

The bill would require that raw milk used for frozen desserts be cooled to 45 degrees Fahrenheit within two hours after milking, the

standard for Grade A milk. Under current law, raw milk used for frozen desserts must be cooled to 50 degrees Fahrenheit. The bill includes in, but does not limit "frozen desserts" to, frozen yogurt, soft serve ice cream, the mixes used to make these desserts, and quiescently frozen confections.

The bill would require that frozen dessert mixes be pasteurized at the final freezing location. The current law does not address the point at which the mixes must be pasteurized. The bill would exclude single service containers of five gallons or less from this requirement. In addition, if a frozen dessert plant transported pasteurized bulk mix in tankers dedicated to hauling pasteurized products, the plant could be exempt from this requirement, with the written approval of the Director. The bill also would require that frozen dessert mix be stored at a maximum of 45 degrees Fahrenheit; the current law specifies 50 degrees as the maximum.

Further, the bill would require that frozen dessert rerun be handled in a manner that would eliminate potential allergens, such as nuts. ("Rerun" would be defined as frozen dessert not placed in its final container immediately after passing through the freezing process, and intended to be melted and reprocessed or refrozen.)

Lastly, frozen desserts would have to meet specific labeling requirements. The labels would have to include the name of the product; the quantity of its contents; the name and address of the processor, manufacturer, or distributor; the ingredients, including known allergens; the manufacturer lot number; and the plant code issued by the Department identifying where the product was manufactured. Current State and Federal laws do not specify these requirements for frozen dessert labels.

Facility Requirements

Current law requires that a milkhouse or milkroom be kept sanitary, clean, and well-lighted, among other requirements. The bill would retain these requirements and further specify others, including those dealing with nonelectric farms.

For example, the bill would require nonelectric farms to have a minimum of one battery-

operated light for each bulk tank opening, positioned directly over the bulk tank openings. The fuels used for milkhouse operations would be required not to cause odors that could impart off-flavors to the milk. In addition, the bill would prescribe the measurements for a required slab outside the milkhouse, list the specific cleaning agents that would have to be used to wash utensils and equipment, and describe in more detail the construction of required doors.

Other new specifications would include a requirement that plans for new or remodeled facilities or equipment be submitted to the MDA for prior approval. Dairy farmers would have to ensure that each new farm bulk tank met sanitary standards and was installed in accordance with Department regulations.

Further, the bill proposes that dairy plant operators make available an enclosed or covered facility for washing and sanitizing milk trucks, piping, and accessories at central locations, or at sites that receive or ship milk or dairy products in milk transport tanks.

Dairy Plant Raw Milk Storage Requirement

Current law specifies that storage tanks used to store raw milk must comply with a number of standards and requirements. The bill would add requirements that all tanks be equipped with a thermometer in good working order, and that the tanks be washed and sanitized every 72 hours.

Equipment Construction Requirements

The bill would require that the Director approve equipment that did not meet sanitary construction standards. The bill further states that the owner or operator of a dairy plant would have to submit plans to the Department for approval before commencing new construction, remodeling, and process or equipment changes. (The bill would define "dairy plant" as a milk plant, transfer or receiving station, cheese plant, frozen desserts plant, or other plant receiving dairy products or processing dairy products into manufactured dairy products.) These requirements would be additional specifications to current law.

Farm Milk Maximum Temperature

Current law requires Manufacturing Grade milk stored in cans (such as those used on nonelectric farms) be cooled to 60 degrees Fahrenheit within two hours of milking, and milk stored in bulk tanks be stored at 50 degrees Fahrenheit, after being cooled to 45 degrees Fahrenheit within two hours of milking. The bill would retain the temperature requirement of 60 degrees for canned milk, but reverse the requirement for bulk milk (cooled to 50 degrees within four hours after milking, then cooled to 45 degrees, not to exceed 50 degrees on subsequent milkings).

Frequency of Inspections

The bill would require that the Department inspect all dairy farms a minimum of once every 12 months and dairy plants a minimum of once every six months. All dairy products would have to be tested to meet the chemical, physical, bacteriological, and temperature standards proposed by the bill at least four times every six months, or as determined by the Director. Recirculated water or other mediums used to cool dairy products would have to be tested for bacteria at least once every six months under the bill. The current law does not specify the frequency of these inspections.

Letter of Credit

Current law requires that a licensee or applicant for a license as a manufacturing dairy plant provide a security device as a condition of obtaining a license. A security device includes a year-end financial statement prepared by a certified public accountant, a commercial surety bond, a certificate of deposit or money market certificate, stocks and bonds, and an irrevocable letter of credit from a financial institution, among others. The bill would exempt from this licensing requirement milk plants that receive milk only from dairy farms under the same ownership. In addition, the bill would allow the Department to draw on the letter of credit if it were not renewed by the financial institution and if it were necessary to cover losses

incurred on behalf of the producers. The money drawn from the letter of credit would have to be held in an interest-bearing account by the Department. Money in the account in excess of the total dollar amount would have to be repaid to the bank. The excess money would have to be paid to the milk plant if the bank had provided the Department with a waiver of payment to the bank, and had authorized payment of the dairy plant on a form approved by the Department.

Licensing and Permits

Under current law, the following entities or people are required to be licensed or permitted: dairy farms, dairy plants, receiving stations, transfer stations, bulk milk hauler/samplers, frozen dessert plants, and soft-serve manufacturers. The bill would add single service manufacturing plants, bulk tank truck cleaning facilities, bulk milk tank trucks, State agencies operating under a memo of understanding with the Department (such as correctional facilities), and can milk trucks to the entities required to be licensed. Also, the bill would omit from its licensing requirements bulk milk hauler/samplers (which would be licensed under the proposed Grade A Milk Law of 2001), and soft-serve manufacturers (which are now covered under the Michigan Food Law).

(The bill would define "bulk milk hauler/sampler" as "any person who collects official samples and may transport raw milk from a farm and/or raw milk products to or from a dairy plant, receiving station, or transfer station and has in his or her possession a license or permit to sample such products". "Bulk milk tank truck" or "bulk milk pickup tanker" would mean "a vehicle including a truck, tank, and those appurtenances necessary for its use used by a bulk milk hauler/sampler to transport bulk raw milk for pasteurization from a dairy farm to a dairy plant, receiving station, or transfer station".)

In addition, the bill proposes changes to current licensing and permit fees, as shown in Table 2.

Table 2

License or Permit	Last Update	Current Fee per Year	Proposed Fee
Manufacturing Dairy Plant and Transfer/Receiving Station	1982	\$50	\$50 per year, and incorporate frozen dessert plant licensing under the bill.
Frozen Dessert Plants, as licensed under the Frozen Dessert Plant Act	1968		Eliminate Act. Incorporate frozen dessert licenses into dairy and food licenses.
-- Up to 5,000 Gallons		\$10	N/A
-- 5,001-10,000 Gallons		\$20	N/A
-- 10,001-25,000 Gallons		\$30	N/A
-- Over 25,000 Gallons		\$50	N/A
Can Milk Transport Truck		None	\$10

Lastly, the bill states that a person licensed under the proposed Grade A law would be exempt from licensure under the proposed Manufactured Milk law. Current law does not speak to licensing overlap.

License Revocation or Suspension

The current Act allows the Director to revoke or suspend a license or permit for violation of any of the requirements of the Act or a rule promulgated under it. The bill would retain this authority, but also would identify specific causes for suspension or revocation. In addition, the bill would permit the Director to charge an administrative fine instead of revoking or suspending a license.

Before suspension, the producer must be provided notice and an opportunity for an administrative hearing. The bill would retain that provision.

Pasteurization Requirements

The bill would prescribe the temperature and time standards for the pasteurization of certain Manufacturing Grade milk and milk products. The bill would define "pasteurization" as "the process of heating every particle of milk or dairy products to at least the temperature and time relationships given...or by any equivalent process approved by the federal food and drug administration and accepted by the department for that purpose".

In addition, the bill would allow the manufacture of cheese with unpasteurized milk only if done in compliance with the Code of Federal Regulations. Current law allows certain cheeses to be made from unpasteurized milk. Furthermore, the bill would require pasteurized products transported in a container used for the transportation of nonpasteurized products to be repasteurized at the process location. Some products, however, could be transported in dedicated tankers. Current law does not specify these conditions.

Repealed Acts

The bill would repeal the following Acts:

- The Manufacturing Milk Act (MCL 288.101-288.117).
- Public Act 167 of 1899, which permitted the Dairy and Food Commissioner to inspect property or samples required by law (MCL 289.61).
- Public Act 243 of 1903, which restricts the sale and manufacture of renovated butter (MCL 288.221-288.223).
- Public Act 257 of 1911, which makes it unlawful for milk distributors or milk wagon drivers to open or tamper with milk bottles (MCL 288.371-288.372).
- Public Act 63 of 1913, which regulates the labeling, advertising, sale, and handling of margarine (MCL 288.251-288.257).
- Public Act 93 of 1915, which states that the by-products of cheese factories and other places where milk is received and

distributed must be pasteurized (MCL 288.161-288.162).

- Public Act 30 of 1923, which defines cheese and regulates its manufacture, sale, and labeling (MCL 288.281-288.284).
- Public Act 212 of 1935, which regulates the sampling and testing of milk and cream (MCL 288.51-288.60).
- Public Act 155 of 1939, which limits the percentage of butter overrun (MCL 288.201-206).
- Public Act 293 of 1945, which requires the pasteurization of dairy products (MCL 288.151- 288.153).
- Public Act 211 of 1955, which provides for the grading of butter (MCL 288.211-288.217).
- Public Act 45 of 1967, which requires that all dairy products sold to consumers be pasteurized, and allows agricultural workers to drink unpasteurized milk (MCL 288.141-288.149).
- The Frozen Desserts Act (MCL 288.321-288.334).

The following rules from the Michigan Administrative Code would be rescinded:

- R 285.400.1, which sets ice cream standards.
- R 285.402.1, which specifies the licensing requirements for milk and cream testers.
- R 285.404.1, which sets the standards for the grading of butter.
- R 285.405.1 to R 285.405.29, which regulates frozen desserts.
- R 285.407.1 to R 285.407.6, which regulates manufactured-grade milk.
- R 285.409.1, which defines "producer security".

Provisions Common to Both Bills

Consumption of Raw Milk. Both bills would restrict the consumption of raw milk to the producer, the producer's family members (defined as the producer's siblings, children, and parents) who live and work on the farm, and the employees who live and work on the farm. Under current law, consumption is limited to "persons primarily engaged in agricultural production [and] employees working on farms operated or controlled by such persons".

TB Cows. Cows tested positive for tuberculosis would have to be milked last or in

separate equipment, and the milk from these animals could not be used or sold for human or animal consumption. Current law does not specify requirements for the handling of TB milk. (The 1993 PMO mandated that a state with a less than modified-accredited bovine TB status test every dairy farm for TB. The current PMO does not require the whole state to be tested if there is a Federally approved testing protocol in place. Instead, it allows for random sampling.)

Drug Residue Penalties, Sanctions, and Education

At present, all Manufacturing Grade and Grade A milk must be tested for drug residue. The methods by which they are tested, however, differ. House Bill 4829 (S-1) would require Manufacturing Grade milk to be tested in a manner consistent with Grade A standards.

The current laws impose fines on producers whose milk tests positive for residues of drugs, such as antibiotics. Both bills would maintain fines in some circumstances, and enact additional sanctions and tracking requirements.

For example, any time drug residue was found in a batch of milk, that producer's milk would not be available for sale until a subsequent sample tested negative at an approved laboratory. For each incident, the producer would have to pay the milk buyer the equivalent of the lost value of the milk on the entire contaminated load, and any costs associated with the disposition of that load. Written notification of the date and location of the contaminated load's disposal would have to be provided to the MDA. If the violative shipment did not cause partial or total loss of a load of milk, the producer would have to pay an administrative fine to the Department. Currently, for each 12-month period, the administrative fines are \$300 for the first incident, \$600 for the second, and \$1,200 for the third; the bill would maintain these fine amounts. Currently, the Fluid Milk Act and Manufacturing Milk Act do not contain sanctions, nor do they require producers to pay buyers for lost milk; rather, they require the producer to pay the MDA for each drug residue violation.

Also, the bills would impose tracking requirements on milk producers who violated the drug residue provisions multiple times in a

12-month period. In addition to the penalties and sanctions imposed on first-time offenders, second-time offenders would be required to test all milk prior to shipment for at least 12 months, and retain records of the tests for at least 18 months. The producer also would be required to maintain complete drug treatment records for all lactating or near-lactating dairy animals for the same amount of time.

Each additional violation would result in a maximum 60-day suspension of the producer's permit (after notice and the opportunity for an administrative hearing before the Department). The Director would be instructed to investigate the cause of the violative drug residue and discuss avoidance control measures with the producer. The sanctions and tracking requirements imposed on second-time offenders also would apply.

The payment for administrative fines would be required within 10 days after notification of the violation or within 10 days after notification of adverse findings following a hearing or appeal, or both. The fines would have to be deposited in the General Fund and appropriated for the purpose of training producers on avoiding drug residue contamination.

Further, the bills would require producers with one or more incidents of drug residue contamination to complete education, acceptable to the Director, on drug residue avoidance measures. Also, all applicants for an initial Manufacturing Grade Dairy Farm Permit or Grade A Dairy Farm Permit would have to complete education on drug residue avoidance control measures prior to receiving the permit. Currently, no drug residue education is required to obtain either permit.

Penalty for Failure to Pay Administrative Fine

Under the bills, failure to pay the administrative fines associated with drug residue contamination or license revocation within 120 days without making acceptable payment arrangements could result in license revocation, permit suspension, or court action, following notice and the opportunity for an administrative hearing. The Director would have to advise the Attorney General of a producer's failure to pay an administrative fine, and the Attorney General would have to bring an action in a court to recover the fine. The Director would not be required to impose an administrative fine or initiate court action

for minor violations whenever the Department believed that the public interest would be adequately served under the circumstances by a suitable written notice or warning.

Civil Fines

If a producer were fined three or more times in a 12-month period, and/or the producer failed to pay the administrative fines associated with drug residue contamination, the producer would be guilty of a misdemeanor punishable by a fine of not less than \$250 and not more than \$2,500 or imprisonment for up to 90 days, or both.

These civil penalties also would apply to anyone who provided false or fraudulent information on an application or in response to a request from the Director. Any other violator of the proposed Act would be guilty of a misdemeanor and subject to the same fine and imprisonment. Under the current law, the maximum civil fine is \$500.

Monthly Producer Milk Test Results

Currently, the milk buyer is responsible for testing the milk, and the milk hauler, who represents the buyer, collects the samples. It is the buyer who is responsible for ensuring that the correct number of milk samples are sent to the Department. Under the bills, it would become the producer's responsibility to ensure that the correct number of samples were reported to the Department.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would streamline about two dozen dairy laws and consolidate them into two clear, consistent statutes. Doing so would promote both public health and the dairy industry. Moreover, the legislation would adopt the 2001 Pasteurized Milk Ordinance, which reflects the U.S. Public Health Service's most recent quality standards. Adoption of the Ordinance is essential for assuring consumers that Michigan's milk and dairy products are wholesome and safe. Interstate commerce depends upon other states' confidence that Michigan milk and dairy products meet the highest quality standards.

The bills would promote public health by clarifying current requirements, addressing issues on which the current law is silent, adding licensing provisions, and adopting new sanitary standards. While the bills would create two separate statutes, some of their provisions are identical. According to the Department, this is to allow for the safe regulation of Grade B milk while maintaining universal standards for violative drug residue, farmer rights and responsibilities, and the handling of cows with tuberculosis. Also, new licensing requirements for tank truck cleaning facilities, single service plants, milk transportation companies, and bulk milk tank trucks would give the MDA increased oversight responsibilities. It is important that the Department have the authority to issue, suspend, and revoke licenses for all people involved in the process.

Requiring drug residue avoidance education for all new dairy farms, as well as increasing recording and testing requirements following a positive drug residue test, would focus attention on preventing drug residue problems. The bills also would increase penalties for a farmer who spoiled a tank of milk (often milk collected from several farmers) with drug residue. The current law requiring the violating producer to pay an administrative fine to the Department does not rectify the financial loss to the milk buyer, who has lost an entire load of milk. The bills would remedy this discrepancy and further encourage farmers to keep strict tabs on cows receiving antibiotic treatments.

Furthermore, the Michigan Department of Agriculture has been working with Federal authorities to ensure that the 2001 version of the PMO allows certain states to implement an alternative TB testing plan, as long as it is acceptable to the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA). Currently, Michigan and other states are required to test each milking herd once a year until the state is declared safe. Adopting the 2001 version would ensure that this State was entitled to submit an alternative testing plan for the USDA's and FDA's consideration (for example, confining testing to those parts of Michigan where TB exists).

Opposing Argument

Both bills would restrict the consumption of

raw milk to the producer, the producer's family members who live and work on the farm, and the employees who live and work on the farm. Under current law, consumption of raw milk is less limited. Specifically, the Fluid Milk Act and the Manufacturing Milk Act allow "persons primarily engaged in agricultural production [and] employees working on farms operated or controlled by such persons" to consume raw milk. The right to consume foods in their natural state should be granted to those who, for health reasons, choose to do so. In fact, it can be argued it is a violation of civil rights to deny access to clean, raw food.

Dairy farming has changed since 1948 when Michigan outlawed the sale or consumption of unpasteurized milk to all but agricultural workers. At that time, much less was known about sanitation and the spread of disease, and many farmers produced, unknowingly or not, unclean milk. Farmers might not have washed their hands before milking, and then may have left the milk in open containers in a warm (and often unclean) barn. Therefore, some people who drank this milk did become sick. Pasteurization, rather than more sanitary farming, was adopted as the single answer to eliminate the bacteria, including tuberculosis, found in unclean milk.

Today, strict TB, somatic cell, and drug residue testing and regulations are the law. Those who support the consumption of raw milk--farmers (including those who use organic methods), the Weston A. Price Foundation, and numerous families and individuals--support these regulations for raw milk. For health reasons, however, they want to be able to choose to drink clean, regulated raw milk.

Pasteurization kills a number of nutrients that naturally occur in milk, including Vitamins A, C, and B complex, and phosphate, which is essential for the absorption of calcium. Naturally occurring enzymes, which aid in the digestion of milk, also are killed. It is possible that the killing of these enzymes causes lactose intolerance and other milk allergies. The late Dr. J.E. Crewe of the Mayo Foundation believed that raw milk increased resistance to diseases, including TB, obesity, cancer, heart disease, tooth decay, osteoporosis and diabetes. Other doctors and studies have since supported this.

Consuming raw milk is legal in 27 other states, and its sale is legal in three: California, New Mexico, and Connecticut. It is legal and available in most European countries, including Germany. There have been no reported outbreaks in California caused by raw milk.

In states where consumption of raw milk is legal but the sale of it is not, farmers have implemented a "cowshare" program, in which families or individuals who wish to drink raw milk purchase "shares" of a cow. The farmer then boards the cow, and provides raw milk to its owners. In Sutton's Bay, Michigan, such a cowshare program exists, and it is funded as a Community Supported Agency with State and Federal money. Under current Michigan law, therefore, cowsharing seems to be legal, perhaps because the owners of the cow might be considered "persons primarily engaged in agricultural production" and the farmers "employees working on farms operated or *controlled by such persons*" (emphasis added). The bills would render such cowshare programs illegal.

Those who oppose the further restriction of raw milk are not proposing a return to the 1920s, nor are they suggesting doing away with pasteurized milk. Rather, they support a tandem system for raw milk, one that would use modern management and testing techniques. Doing so would produce a clean milk product of superior value to the consumer who appreciates a living food. It seems only fair that consumers who are allowed to purchase and consume foods that carry an implicit risk--well water, meat and eggs (which carry a far greater risk for carrying salmonella and E. coli than does raw milk), and fatty foods, for example--be allowed to choose to drink clean, regulated, unpasteurized milk.

Response: The wide-scale adoption of pasteurization dramatically reduced the spread of disease, and it continues to be the most effective means of preventing salmonella, listeria, E. coli, bovine TB, and other serious diseases that cause illness and death to humans. Pasteurization is simply a heating process that kills micro-organisms. Raw milk directly from the cow or goat is not healthier or safer-- it is riskier. Claims that raw milk is better have not been proven scientifically. On the contrary, studies done on certified raw milk in California found that even an operation

with clean cows and clean equipment can produce milk containing pathogenic organisms. Minute quantities of E. coli can result in serious disease. Illness and even death occur every year in the United States from the consumption of unpasteurized dairy products. The Michigan Department of Agriculture strongly believes that the consumption of raw milk can pose a significant public health risk.

Unpasteurized milk for human use is banned from interstate commerce, and states have their own requirements for intrastate commerce. Michigan was the first state to ban the sale of unpasteurized milk for human consumption. This legislation would continue to allow the farm family (which would include siblings, parents, and children of the producer) to drink their own farm's milk, but it would not allow unpasteurized milk to be put into commerce or to be provided to others.

Legislative Analyst: C. Layman

FISCAL IMPACT

House Bill 4820 (S-2)

The bill would result in an estimated loss in State revenue of nearly \$32,000 associated with the provisions regarding drug residue testing. Under the bill, penalty fines under certain conditions would no longer be paid to the Director of the Michigan Department of Agriculture; instead, the bill would require producers to pay buyers for lost milk.

The bill would modify and eliminate a number of the current fees as well as create new fees. There would be no net annual fiscal impact on State revenues from these changes. The bill would change the terms of a number of the licenses from one year to two and three years. However, these changes would not affect the annual revenues generated from these fees.

The bill could result in additional State revenue from the provision allowing administrative fines of up to \$1,000 and the costs of investigation. This fine revenue would be deposited in the General Fund for the purpose of the training or education of producers in management procedures to avoid drug residue contamination.

House Bill 4829 (S-1)

The bill would result in a decrease in State revenues of approximately \$2,000 associated with the elimination of some licenses and the restructuring of others.

The bill could result in additional State revenue from the provision allowing administrative fines of up to \$1,000 and the costs of investigation. This fine revenue would be deposited in the General Fund for the purpose of the training or education of producers in management procedures to avoid drug residue contamination.

Fiscal Analyst: C. Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.