

Legislative Analysis



REVISE GRADE A MILK LAW

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5584

Sponsor: Rep. John Espinoza

Committee: Agriculture

Complete to 1-22-08

A REVISED SUMMARY OF HOUSE BILL 5584 AS INTRODUCED 12-13-07

The bill would amend the Grade A Milk Law of 2001 (MCL 288.471 et seq.), which regulates all milk for drinking, as well as milk products such as yogurt, sour cream, eggnog, and half and half. In this summary, "the act" refers to the Grade A Milk Law. [House Bill 5585, summarized separately, would amend the Manufacturing Milk Law which regulates milk products such as butter, cheese, ice cream, and other frozen desserts.] Among other things, the bill would:

- Incorporate the 2005 edition of the federal Pasteurized Milk Ordinance (PMO), instead of the 2001 version.
- Define "**misbranded**" foods as in the Manufacturing Milk Law of 2001.
- Define "**dairy animal**" as "any domesticated lactating mammal, including a cow, goat, sheep, water buffalo, or other hooved mammal, which is managed and milked to obtain milk for human consumption."
- Eliminate the need for persons licensed under the Food Law of 2000 to also be licensed under the act if certain conditions are met.
- Require persons licensed under the Manufacturing Milk Law to also comply with the Grade A Milk Law.
- Require the Department of Agriculture to approve plans to construct, remodel, or change equipment in milk plants.
- Require all fees, fines, and penalties collected under the act to be deposited into the Dairy and Food Safety Fund.
- Allow the department to impose a \$10 per business day late fee (up to \$100) on license renewal applications that are submitted late, to impose convenience fees, and to collect additional costs associated with an applicant's method of payment.
- Prohibit the department from issuing new or renewal licenses if fees have not been paid.
- Exempt only milk plants receiving milk from dairy farms under the same proprietorship, partnership, or corporation with the same registered name from providing financial security.
- Add bulk milk hauler/samplers to the list of persons whose licenses do not have to be issued within 90 days.
- Require milk plants that do not provide security to make to cash payments for milk "before or at the time the milk is received at the plant" and define "cash payment."

- Allow aseptic packaging of milk and milk products as a low acid food under certain conditions.
- Require pasteurization of milk by-products used as animal feed only "when specified by the director."
- Revise requirements for bulk milk hauler/samplers, including those pertaining to checking tank permits, the allowable length of milk storage on the farm, pickup records, labeling of samples, and partial pickups.
- Prohibit the reuse of packaged fluid dairy products past their sell-by date in any dairy products regulated by either the act or the Manufacturing Milk law unless the department approved a reprocessing protocol.
- Prohibit packaged fluid dairy products that are returned to a dairy plant from being reprocessed into milk or milk products regulated by either the act or the Manufacturing Milk Law.

More details are provided below.

Adoption of the 2005 federal Pasteurized Milk Ordinance (PMO). The bill would adopt the 2005 edition of the Pasteurized Milk Ordinance rather than the 2001 edition incorporated into current law. Where the PMO refers to the "the _____ of _____," the bill would fill in the blanks with "the State of Michigan."

Licensing. Currently, under Section 30 of the act, only persons with licenses or permits under the act are allowed to produce, transport, process, label, or sell Grade A Milk and Grade A Milk Products, manufacture single service containers and closures, and wash milk tank trucks. State agencies operating dairy facilities under agreements with the department do not need licenses or permits or to provide financial security. The bill would continue the exception for state agencies operating under agreements with the Department of Agriculture with the clarification that except for the license/permit and security requirements, state agencies would have to comply with the act. The bill retains the director's authority to issue temporary licenses or permits.

The bill would amend the list of activities for which a Grade A Milk Law license is required. Under the bill, persons would need a license to:

- Produce Grade A milk to be offered for sale.
- Collect Grade A milk for regulatory purposes.
- Operate a milk transportation company that owns or operates a bulk milk tank truck.
- Process, label, distribute, or sell Grade A milk or Grade A milk products.
- Wash milk tank trucks.
- Manufacture single service containers or closures to be used for Grade A milk products (except for Grade A *dry* milk product containers or closures).

Retail food establishments licensed under the Food Law. Persons operating retail food establishments licensed under the Food Law of 2000 would not also need a license under the Grade A Milk Law if they comply with subsection (8) of Section 30. Persons licensed under the Food Law could sell milk or milk products that are packaged in final

consumer packages at a facility licensed under the Grade A Milk Law at wholesale or retail. Subsection (8) of Section 30 provides that milk products manufactured at retail food establishments licensed under the Food Law of 2000 are exempt from the Grade A Milk Law if (1) all ingredients contained in the products comply with Food Law requirements and (2) the milk products manufactured are not sold wholesale or to another business entity.

Application of act to persons licensed under the Manufacturing Milk Law. The bill would require a person licensed under the Manufacturing Milk Law of 2001 or the Grade A Milk Law to comply with applicable requirements of the Grade A Milk Law and states that such persons are subject to applicable penalties in the Grade A Milk Law.

Dairy and Food Safety Fund. Section 31(4) of the bill provides that any fees, assessments, civil or administrative fines, and money from any other source collected by the department would be deposited into the Dairy and Food Safety Fund created in Section 4117 of the Food Law of 2000 (MCL 289.4117) and used to enforce and administer the act. Further, Section 53(8) of the bill would require that administrative fines imposed under Section 53(1) or 53(7) would be deposited into the Dairy and Food Safety Fund, instead of the General Fund, as is currently required.

Approval required for milk plant construction, remodeling, and equipment changes. The bill would require that milk plant operators submit detailed plans to the department for approval before constructing or remodeling milk plants or changing equipment. New construction and remodeling plans would have to protect the milk plant from potential contamination from nearby animal production facilities. In addition, retail or public viewing areas would have to be separated from processing areas by a solid floor-to-ceiling partition, unless the director approved a different but equally effective means of protection.

Late fees and convenience fees. Under the bill, the department could impose a late fee of \$10, up to \$100, for each business day that a license renewal application is late. The department could not issue or renew a license until any fees and fines have been paid, and a hearing would not be required when the department refuses to issue or renew a license because of unpaid fees or fines except as allowed under the Administrative Procedures Act of 1969. The bill would further authorize the department to charge a convenience fee and collect from applicants any additional costs associated with the method of fee payment for the fees described in Sections 31, 32, and 33, not to exceed the costs to the department. [Those sections specify license fees for milk plants, certified industry farm inspectors, stand-alone receiving or transfer stations, stand-alone milk truck cleaning facilities, milk transportation trucks, milk tank trucks, stand-alone milk distributors, stand-alone single service container manufacturers, and bulk milk hauler/samplers.]

Additional exception to requirement that licenses and permits be issued within 90 days. Under current law, unless the applicant is a Grade A dairy farm or certified farm industry farm inspector, and notwithstanding license and permit fee requirements, the department must issue an initial or renewal license or permit for activities regulated in Sections 31

and 33 no later than 90 days after a completed application is filed. The bill would add bulk milk hauler/samplers to the list of persons to whom the 90-day rule does not apply.

Milk plants that only receive milk from dairy farms under same ownership as plant. In general, milk plants must provide an approved financial security device, such as a commercial surety bond, as a condition for receiving a license. However, milk plants that only receive milk from dairy farms under the same ownership as the milk plant do not need to provide financial security. The bill would clarify that to be exempt under this provision, the milk plant would have to receive milk only from dairy farms under the same sole proprietorship, the same registered partnership, or the same corporate ownership having the same registered name as the milk plant.

Prepayment. Under current law, milk plants that do not provide security must prepay for milk with cash payments before or at the time of delivery of the milk products. The bill would change this to cash payments "before or at the time the milk is received at the plant." The bill defines a cash payment as "a payment in cash or check, money order, wire transfer, or draft for a sale in which the title to farm milk is transferred."

Summary suspension of permits or licenses. The bill would amend the summary suspension provisions of the act as follows:

- New grounds for summary suspension:
 - Selling or offering for sale milk or milk products that present an imminent or substantial health hazard due to improper or unknown storage temperature.
 - Selling or offering for sale milk or milk products that present an imminent or substantial health hazard due to improper allergen labeling.
 - Knowingly possessing, selling, offering for sale, or purchasing any milk or milk product for use in a human food product that has been condemned under the act.
 - Selling or offering for sale packaged milk or milk products that present an imminent or substantial health hazard due to improper pasteurization times or temperatures outside the PMO's requirements.
- Catch-all. Currently, the director may summarily suspend a license or permit for "any other condition that creates an imminent threat to the public health, safety, or welfare." The bill would change this to "any other condition that creates an imminent or substantial health hazard."

Advertising. The bill would require milk and milk products to be advertised as specified in the Food Law of 2000. The bill defines "advertising" very broadly as "a representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or [that] is likely to induce, directly or indirectly, the purchase of milk or milk products."

Requirements pertaining to bulk milk hauler/samplers. The bill would amend requirements applicable to bulk milk hauler/samplers:

- Permits. Under current law, a bulk milk hauler/sampler must not take milk from a farm tank before determining that the farmer has a valid permit, if a permit is required. The bill would eliminate the phrase "if a permit is required."
- Storage on farm. Among other restrictions, a bulk milk hauler/sampler may only pick up milk that has not been stored on the farm for more than 72 hours (except for goat milk which may be stored for up to seven days, if properly cooled, and sheep milk which may be frozen for storage). The bill would add that milk produced under the Manufacturing Milk Law of 2001 could be stored as provided under that act. (Under House Bill 5585, Section 131(4)(h) of that law would allow milk to be stored for up to 96 hours on the farm before pickup.)
- Pickup records. Currently, the bulk milk hauler/sampler's identification on the pickup record must include his or her "name or initials and department issued hauler/sampler identification number." The bill would change the required identification on the pickup record to "the bulk milk hauler/sampler's permit identification, which is the first and last name, *or* the hauler/sampler's identification number printed on the license."
- Sample labels. Currently, sample containers must be marked with (1) the milk producer's permit number, (2) the date of pickup, (3) the route number, and (4) the temperature. The bill would eliminate the requirement that sample containers be marked with the route number.
- Partial pickups of milk. In general, the act prohibits the partial removal of milk from a farm tank by a bulk milk hauler/sampler unless certain conditions are met, although partial pickups are currently allowed in the event of (1) an emergency, (2) seasonal weight restrictions, or (3) the overflow of a milk tank truck. The bill would not permit partial pickups in the event of an overflow of a milk tank truck.

Pasteurization. Generally speaking, only pasteurized milk and milk products are allowed to be offered for sale or sold to restaurants, grocery stores, and other customers in Michigan under Section 68 of the act, and the pasteurization must comply with the requirements of the federal Pasteurized Milk Ordinance (PMO). The bill would make the following changes to Section 68:

- Pasteurization of by-products used as animal feed. Currently, the act requires all dairy plant by-products used as animal feed to be pasteurized or derived from pasteurized products. The bill would only require pasteurization of by-products used as animal feed "when specified by the director."
- Aseptic processing. The bill would allow milk and milk products to be aseptically processed as low-acid foods in accordance with the following requirements:
 - Licensed facility. All thermally processed milk and milk products packaged in hermetically sealed containers would have to be processed in a facility licensed under (1) the Grade A Milk Law, (2) the Manufacturing Milk Law, or (3) the Food Law of 2000.
 - Compliance with federal regulations. Both the processors of the milk or milk products and the products must comply with specified federal regulations.

- Handling. The hermetically sealed packages would have to be handled to maintain product and container integrity.

Reuse of packaged fluid dairy products past their sell-by date. The bill would prohibit the reuse of packaged fluid dairy products past their sell-by date in any dairy products regulated by either the Grade A Milk Law or the Manufacturing Milk law unless the department approved a protocol for such reprocessing. The protocol would have to include consideration of storage temperatures, bacterial counts, age past sell-by date, sight and smell grading qualities, added ingredients, and any other factors considered critical by the director.

Reuse of returned dairy products. The bill would prohibit packaged fluid dairy products that have left the control of a dairy plant and are subsequently returned from being reprocessed into milk or milk products regulated by either the Grade A Milk Law or the Manufacturing Milk Law.

Effective date. The bill would take effect 30 days after enactment.

Definitions. The bill would make several changes to the definition sections of the Grade A Milk Law:

- **"Advertise" or "Advertisement"** would mean "a representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or [that] is likely to induce, directly or indirectly, the purchase of milk or milk products."
- **"Approved laboratory"** would mean a laboratory listed in the National Conference of Interstate Milk Shipments list instead of the "IMS list."
- **"Cash payments"** would mean, in the context of producer security requirements, "a payment in cash or check, money order, wire transfer, or draft for a sale in which the title to farm milk is transferred." This term was not previously defined.
- **"Dairy animal"** would mean "any domesticated lactating mammal, including a cow, goat, sheep, water buffalo, or other hooved mammal, which is managed and milked to obtain milk for human consumption." This term was not previously defined.
- **"Distributor"** means "a person other than a producer or processor who offers for sale, holds for sale, or sells at wholesale milk or milk products." Currently, a distributor is defined as "a person other than a producer or processor who offers for sale or sells to another at retail milk or milk products." It would appear that the definition is being changed to persons who sell at wholesale, rather than at retail.
- **"Food Law of 2000"** means Public Act 92 of 2000, MCL 289.1101 to 289.8111. [Presumably this would also include subsequent amendments, including the 2007 amendments.]
- **"Food service establishment"** means "a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding

establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public."

- **Exclusions.** The following places are expressly excluded from the definition of **"food service establishment"**:
 - A motel that serves continental breakfasts only.
 - A bed and breakfast that has 10 or fewer sleeping rooms, including, sleeping rooms occupied by the innkeeper, one or more of which are available for rent to transient tenants.
 - A bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.
 - A child care organization regulated under Public Act 116 of 1973 (MCL 722. 111 to 722.128) unless the director considers it to be a food service establishment.
- **"Manufacturing Milk Law of 2001"** means the Manufacturing Milk Law of 2001, Public Act 267 of 2001, MCL 288.561 to 288.740.
- **"Milk"** would mean "the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats, sheep, or other dairy animals."
- The definition of **"milk product" or "dairy product"** would be amended to include various types of cottage cheese (including dry curd, reduced fat, and lowfat cottage cheeses) and flavored milk in a long list of specified milk products. Products that are retort processed, concentrated, condensed, or dried are considered milk or dairy products only if they are used as an ingredient to produce a milk product or if they are "grade A National Conference of Interstate Milk Shipments listed, instead of "IMS listed," as is currently the case.
- **"Misbranded"** would mean food to which any of the following apply:
 - Its labeling is false or misleading in any particular.
 - It is offered for sale under the name of another food.
 - It is an imitation of another food, unless its label has the word "imitation" immediately before the name of the food in type of uniform size and prominence.
 - Its container is made, formed, or filled as to be misleading.
 - It is in a package form, unless its label contains the following information: (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations and small package exemptions specified in department rules.
 - Any word, statement, or other labeling required by this act is not prominent and conspicuous or is not written in a way to make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
 - It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by this act or under the federal

act unless it conforms to the definition, standard, and labeling requirements for such a food.

- It purports to be or is represented as either of the following: (1) a food for which a standard of identify has been prescribed by this act or its rules and its quality falls below such standard (unless it is labeled as being of substandard quality), or (2) a food that falls below a standard of fill of container set forth in this act or its rules (unless it is labeled as falling below the fill standard).
- Its label does not clearly give the common or usual name of the food, if one exists, and if fabricated from two or more ingredients, the common or usual name of each ingredient. However, spices, flavorings, and colorings (except for those sold as such) could be designated as "spices, flavorings, and colorings" without naming each, under rules allowing exemptions based upon practicality, or the potential for deception or unfair competition.
- It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless that fact is disclosed on the label and under other circumstances as established by rules regarding exemptions based upon practicality.
- For a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under Section 403(q) of the federal act, 21 USC 343.
- It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.
- It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements under applicable federal law.
- **"Registered name"** would mean either a name that is registered as "doing business as" in the county in which the producer or processor resides or that is registered with the State of Michigan as a legal entity registered to do business within the state under an assumed name. The term would include, but not be limited to, incorporations, corporations, limited liability companies, limited liability partnerships, and similar entities.
- **"Retail"** would mean "selling or offering for sale dairy products directly to a consumer."
- **"Retail food establishment"** would mean "an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment but does not include a food processing plant.
- **"Standard methods"** would refer to and incorporate the *17th* edition of "Standard Methods for the Examination of Dairy Products," published by the American Public Health Association, instead of the sixteenth edition as in current law.
- **"Wholesale"** would mean "selling or offering to sell dairy products to retailers, jobbers, or distributors rather than directly to a consumer."

FISCAL IMPACT:

As noted above, the bill would provide for the imposition of a late fee of \$10, up to \$100, for each business day that a license renewal application is late. The bill would also authorize the department to charge a convenience fee and collect from applicants any additional costs associated with the method of fee payment for the fees described in Sections 31, 32, and 33, not to exceed the costs to the department. We do not believe that the proposed late fees and convenience fees will have a material fiscal impact.

The bill would not change the base licensing fees already established in Section 31 of the Grade A Milk Law: \$175 annual for milk plants and \$5.00 annually for dairy farm whose milk is received by the milk plant. These licensing fees generate approximately \$18,000 per year in restricted revenue used to support the department's milk inspection program activities.

The bill would direct revenue from the fees to the Dairy and Food Safety Fund created in Section 4117 of the Food Law of 2000, as amended by 2007 PA 114 (SB 595).

Legislative Analyst: Shannan Kane
Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.