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House Bill 4829 (Substitute H-1 as passed by the House)
Sponsor: Representative Steve Vear
House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 10-17-01

CONTENT

The bill would combine 19 dairy laws and regulations into one statute, and repeal various Acts, to create the "Manufacturing Milk Law of 2001". Proposed changes to current law include:

- Temperature, bacterial, and composition standards for all Manufacturing Grade milk and milk products.**
- A higher standard for the quality of raw milk used in frozen desserts.**
- Pasteurization temperatures and time requirements for all Manufacturing Grade milk products.**
- Drug-residue education for dairy farmers seeking initial permits.**
- A requirement that plant codes and manufacture lot numbers be placed on frozen dessert package containers.**
- An allowance for multiyear licensing in certain cases, and the establishment of a uniform license fee.**
- An allowance for permit and license suspension, and administrative hearings and actions.**

The bill is tie-barred to House Bill 4820, which would create the "Grade A Milk Law of 2001".

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 manufacture 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 Department 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 eliminate 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 1](#).

Table 1

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.

Drug Residue Penalties, Sanctions, and Education

All Manufacturing Grade and Grade A milk presently must be tested for drug residue. The methods by which they are tested,

however, differ. The bill would require Manufacturing Grade milk to be tested in a manner consistent with Grade A standards.

The current law imposes fines on producers whose milk tests positive for residues of drugs, such as antibiotics. The bill 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 Department. 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. The current Act does not contain sanctions, nor does it require producers to pay buyers for lost milk; rather, it requires the producer to pay the Department for each drug residue violation.

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

Penalty for Failure to Pay Administrative Fine

Under the bill, 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 this 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 bill, it would become the producer's responsibility to ensure that the correct number of samples were reported to the Department.

Consumption of Raw Milk

Currently, only farm employees are allowed to consume unpasteurized, or raw, milk. The bill provides that only on-farm family members of milk producers could consume raw milk.

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.

Repealed Acts

The bill would repeal the following Acts:

- 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).
- The Manufacturing Milk Act (MCL 288.101-288.117).

- 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".

Legislative Analyst: C. Layman

FISCAL IMPACT

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.

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.