

Legislative Analysis



REVISE MANUFACTURING MILK LAW OF 2001

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House Bill 5585

Sponsor: Rep. John Espinoza

Committee: Agriculture

Complete to 1-22-08

A REVISED SUMMARY OF HOUSE BILL 5585 AS INTRODUCED 12-13-07

The bill would amend the Manufacturing Milk Law of 2001 (MCL 288.561 et seq.), which regulates milk products such as butter, cheese, ice cream, and other frozen desserts. In this summary, "the act" refers to the Manufacturing Milk Law of 2001. [House Bill 5584, summarized separately, would amend the Grade A Milk Law of 2001, which regulates all milk for drinking, as well as milk products such as yogurt, sour cream, eggnog, and half and half.] Among other things, the bill would:

- Make changes to bacterial and temperature standards for specified milk products.
- Require the Department of Agriculture to inspect *receiving stations* and *transfer stations*, in addition to dairy farms, and allow its director to establish the frequency of inspections
- Exempt persons licensed under the Food Law of 2000 from the act's licensure requirements, if they comply with specified requirements.
- Exempt persons licensed under the Grade A Milk Law from the act's licensure requirements but require them to comply with the act.
- Allow the department to impose a \$10 per business day late fee (up to \$100) on license renewal applications submitted late and to impose convenience fees and other charges associated with the applicant's method of payment.
- Prohibit the department from issuing licenses or permits to persons with unpaid fees or fines.
- Exclude applications from bulk milk hauler/samplers from the requirement that licenses be issued within 90 days.
- Expand the grounds for summary license or permit suspensions.
- Require the manner and timing of payments to producers to be mutually agreed to by producers, the dairy plant, and the department.
- Exempt milk plants from security requirements if they 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.
- Extend tuberculosis and brucellosis eradication requirements to all dairy animals as defined in the bill, including cows, goats, sheep, and water buffalo.
- Allow the aseptic packaging of milk and milk products as a low acid food under specified conditions.

- Allow bulk milk hauler/samplers to pick up milk that is up to 96 hours old except for goat milk (which can be stored for 7 days) or sheep milk (which may be frozen).
- Adopt new minimum vat pasteurization temperature and time standards, minimum high temperature short time (HTST) standards, higher heat short time (HHST) standards, and aseptic pasteurization temperature and time standards.
- Require pasteurization of dairy plants by-products used as animal feed only "when specified by the director."
- Specify ingredients that must be added before pasteurization.
- Specify ingredients that may be added after pasteurization.
- Require milk and milk products to be pasteurized before entering RO, UF, evaporator, or condensing equipment with certain exceptions.
- Require the repasteurization of condensed milk and milk products transported to a milk plant for drying with the exception of certain whey products.
- Require the design and operation of pasteurization equipment to comply with the act.
- Adopt specific minimum light intensity requirements for different areas of a milk plant.
- Require the Department of Agriculture to approve plans to construct, remodel, or change equipment in milk plants.
- Require a milk plant to provide adequate electrical power for on-demand support of lighting, cooling, heating, agitation, and ventilation systems.
- Require that toilet facilities are not only conveniently located and adequate but "in the processing plant."
- Require that pasteurized milk storage tanks be cleaned and sanitized at least every 72 hours without a written exception from the director.
- Require only "newly licensed or newly or extensively remodeled facilities" to comply with an existing requirement that each site in a plant receiving or shipping milk or dairy products in tank trucks be covered or enclosed and allow the director to approve alternatives that protect milk during sampling and transferring.
- Prohibit the reuse of packaged fluid dairy products past their sell-by date in any dairy products regulated by either the act or the Grade A 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 Grade A Milk Law.
- Allow food to be kept at a higher temperature (45°F instead of 40°F) during the period after packaging and before shipping.

A more detailed summary is provided below.

Standards. Section 70(2) of the act establishes chemical, physical, bacterial, and temperature standards for a variety of milk products. The bill would make the following changes to these standards.

- **Raw milk for frozen desserts:** Add maximum freezing point of -0.530°F.
- **Pasteurized condensed milk/skim milk:** Eliminate current phosphatase limit.
- **Instant nonfat dry milk, extra grade:** Amend drug residue standard to "no positive results on drug residue detection methods which have been found to be acceptable for use with *nonfat* dry milk" (instead of dry whole milk).
- **Whey for condensing:** Require whey for condensing to be kept at either 45°F(7°C) or less, or 135°F(57°C) or greater, instead of 145°F(63°C) or greater, except for acid-type whey.
- **Pasteurized condensed whey/whey products:** Require to be cooled to 50°F (10°C) (instead of 45°F(7°C)) or less during crystallization, within 72 hours (instead of 18 hours) of condensing. Eliminate current bacterial and phosphatase limits.
- **Sterilized or aseptic products.** Adopts a federal regulation defining the "commercial sterility" of thermally processed foods (21 CFR 113.3(e)(1)) as the bacterial limit. Amends the drug residue standard to "no positive results on drug residue detection methods which have been found to be acceptable for use with *aseptically processed milk and milk products*" (instead of pasteurized milk).

Inspections. The department is currently obligated to inspect dairy farms at least every twelve months and dairy plants at least every six months. The bill would specify that *receiving stations* and *transfer stations* would also have to be inspected at least every six months. The bill would also authorize the director to specify different time intervals for inspections.

Licensing. Currently, under Section 110 of the act, only persons with licenses or permits under the act or the Grade A Milk Law are allowed to produce, transport, wash milk tank trucks, process, manufacture, label, or sell manufacturing milk and dairy products or manufacture single service containers. 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's requirements. The bill retains the director's authority to issue temporary licenses or permits.

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

- Produce milk that is offered for sale. .
- Collect milk samples for regulatory purposes.
- Operate a milk transportation company that owns or operates a can milk tank truck.
- Process, label, distribute, or sell milk or manufactured dairy products, with an exception described below for retail food establishments.
- Wash milk tank trucks.

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 Section 111 of the act. 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. As amended by the bill, Section 111 would provide that milk products manufactured at retail food establishments licensed under the Food Law of 2000 are exempt from the act under the following conditions: (1) all ingredients contained in the products comply with the Food Law's requirements; and (2) the milk products manufactured are not sold wholesale or to another business entity.

Application of act to persons licensed under the Grade A Milk Law. A person licensed under the Grade A Milk Law of 2001 and engaged in activities regulated under either that law or the Manufacturing Milk Law (the act) would be exempt from licensure under the act. 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 Manufacturing Milk Law and would subject persons licensed under either law to applicable penalties in the Manufacturing Milk Law.

Dairy and Food Safety Fund. Section 110(18) 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 this act. Further, the bill would require that administrative fines imposed under Section 125 would be deposited into the Dairy and Food Safety Fund.

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 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 license or permit fees described in Sections 110 or 110a.

No issuance of permits or licenses with unpaid fees or fines. 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 fees or fines have not been paid except as allowed under the Administrative Procedures Act of 1969.

Additional exception to 90-day rule. Under current law, "notwithstanding license and permit fee requirements," the department must issue an initial or renewal license or permit for activities regulated in Section 110 no later than 90 days after a completed application is filed, unless the applicant is a manufacturing grade dairy farm. The bill would also exclude applications from bulk milk hauler/samplers from the 90-day rule.

Buying or selling condemned milk products for use in human food. Section 113(3)(h) of the act makes it unlawful to knowingly possess, sell, offer for sale, or purchase any condemned milk or cream dairy product for use in a human food product. The bill would change "cream dairy product" to "milk product."

Grounds for summary license or permit suspension. The bill would add the following new grounds for summary license or permit suspensions under Section 114:

- Selling or offering for sale milk or dairy products that are not pasteurized as required by the act (with the exception of cheese made from unpasteurized milk in accordance with federal regulations).
- Selling or offering for sale milk or milk products that present an imminent health hazard due to improper or unknown storage temperature.
- Selling or offering for sale milk or milk products that present an imminent health hazard due to improper allergen labeling.

Manner and timing of payments to producers. Section 115 of the act currently requires persons purchasing milk for resale or use in another product to pay producers in a manner and on dates (1) set by the USDA milk market administrator or (2) as mutually agreed to by the producers, the dairy plant, and the department. The bill would eliminate the option of payments in a manner and date set by the USDA milk market administrator.

Exemption from security requirements for milk plants receiving milk only from farms under the same ownership. 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. Under the bill, to be exempt from security requirements, a 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."

Tuberculosis and brucellosis eradication. The bill would require milk from all dairy animals (not just cows, goats, and sheep) to comply with requirements for the eradication of tuberculosis and brucellosis. "Dairy animal" is defined in the bill 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."

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 would have to comply with specified federal regulations.
- Handling. The hermetically sealed packages would have to be handled to maintain product and container integrity.

Pasteurization standards. The bill would adopt the following pasteurization standards:

Minimum Vat Pasteurization Temperature and Time Standards

Whole milk; skim milk; cheese milk; whey; other products with less than 10% butterfat or without added sweeteners	145°F (63°C) 30 minutes
Cream; condensed products; other products with 10% or more butterfat or with added sweeteners	150°F (66°C) 30 minutes
Eggnog; frozen dessert mix	155°F (69°C) 30 minutes
Cream for butter making	165°F (74°C) 30 minutes
Milk or cream for plastic or frozen cream	170°F (77°C) 30 minutes

Minimum High Temperature Short Time (HTST)

Higher Heat Short Time (HHST) and

Aseptic Pasteurization Temperature and Time Standards

Whole milk; skim milk; cheese milk;	161°F (72°C) 15 seconds
Whey; other products with less than 10%	191°F (89°C) 1.0 second
butterfat or without added sweeteners	194°F (90°C) 0.5 second
	201°F (94°C) 0.1 second
	204°F (96°C) 0.05 second
	212°F (75°C) 15 seconds
Cream; condensed products; other	166°F (75°C) 15 seconds
Products with 10% or more butterfat	196°F (92°C) 1.0 second
Or with added sweeteners	199°F (93°C) 0.5 second

	206°F (97°C) 0.1 second
	209°F (99°C) 0.05 second
	217°F(103°C) 0.01 second
Eggnog; frozen dessert mix	175°F (80°C) 25 seconds
	180°F (83°C) 15 seconds
Cream for butter making	185°F (85°C) 15 seconds
Milk or cream for plastic or frozen cream	190°F (88°C) 15 seconds
Ultra-pasteurized products	280°F(138°C) 2 seconds

Pasteurization of by-products used as animal feed. The act currently requires all dairy plant by-products used as animal feed to be pasteurized or derived from pasteurized products. The bill would require pasteurization of by-products used as animal feed only "when specified by the director."

Ingredients that must be added before pasteurization. The bill would require the following ingredients to be added before pasteurization, in a sanitary manner:

- All milk and milk products (including milk solids, whey, nonfat dry milk, condensed milk, cream)
- Eggs, egg products, cocoa, cocoa products, emulsifiers, stabilizers, vitamins, and liquid sweeteners.

Ingredients that may be added after pasteurization. The bill would allow some flavorings and other ingredients that have found to be "safe and suitable" to be added after pasteurization, including:

- Ingredients permitted by federal standards of identity for a standardized milk or milk product.
- Fresh fruits and vegetables added to cultured milk and milk products provided that appropriate pH levels are reached and maintained.
- Ingredients previously heated or treated to eliminate pathogens in a manner recognized by the FDA.
- Ingredients having a water activity of 0.85 or less.
- Highly acidic or highly alkaline ingredients.
- Roasted nuts.
- Dry sugars and salts.
- Flavor extracts with a high alcohol content.
- "Safe and suitable" bacterial cultures and enzymes.
- Other ingredients found to be "safe and suitable" by the FDA.

Pasteurization required to be performed in the processing plant and before entering specified equipment. The bill would add a new subsection (8) to Section 137 that would generally require all milk and milk products to be pasteurized before entering "RO, UF, evaporator, or condensing equipment" in the milk plant where the processing is being done, with the following exceptions:

- "Acid whey"(pH less than 4.7) or whey processed in RO or UF equipment at temperatures at or below 7°C (45°) would not have to be pasteurized.
- Raw milk for pasteurization could be concentrated using RO or UF membrane filtration without pasteurization before entering the system, if:
 - The system is designed and operated to assure that milk or milk product temperature is maintained at or below 7°C (45°F) throughout the process. A higher temperature for up to 15 minutes would be allowed, but if the temperature rises above 10°C (50°F), the product would have to be diverted and then (1) discarded, (2) immediately cooled to below 7°C (45°F), or (3) immediately pasteurized.
 - The system has temperature monitoring and recording devices as outlined in the Grade A Milk Law, and the devices monitor and record the milk or milk product temperature at certain points specified in the bill.
 - If system does not meet the design, installation, or operation criteria, the raw milk or milk product would have to be pasteurized before entering the system.

Repasteurization of condensed milk transported for drying. Condensed milk and milk products transported to a milk plant for drying would have to be repasteurized at the milk plant.

Repasteurization of condensed, partially crystallized whey not always required. Condensed, partially crystallized whey containing at least 40 percent total solids could be transported to a separate milk plant for drying without pasteurization, if:

- The condensed, partially crystallized whey is cooled and maintained at 7°C (45°F) or less.
- Milk tank trucks used to transport the whey are washed and sanitized immediately before filling and are sealed until they are unloaded.
- Separate unloading pumps are provided and used only for the unloading of condensed, partially crystallized whey and are cleaned and sanitized separately.

Pasteurization equipment. The design and operation of pasteurization equipment and accessories must comply with the act.

Lighting. Section 140 of the act requires manufacturing milk plants to be equipped with "adequate and well-distributed lighting." The bill would adopt specific minimum

light intensity requirements for different areas of the plant, to be measured at a distance of 30 inches from the floor with the use of a light meter, although the director could specify other lighting requirements:

Area of Plant	Required intensity
Areas for grading or inspecting dairy products (such as a can milk receiving room dumping area)	50-foot candles
Working surfaces in manufacturing, processing, packing, or washing rooms	20-foot candles
All other rooms, including storage rooms and coolers	5-foot candles

In-plant toilet facilities. The bill would require that toilet facilities are not only conveniently located and adequate but also "in the processing plant."

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.

Electrical requirements. A milk plant would have to provide adequate electrical power for on-demand support of lighting, cooling, heating, agitation, and ventilation systems.

Pasteurized milk storage tank cleaning. Pasteurized milk and milk product storage tanks would have to be cleaned and sanitized at least every 72 hours without a written exception from the director.

Covered or enclosed transfer sites. The bill would require only "newly licensed or newly or extensively remodeled facilities" to comply with an existing requirement that every site that receives or ship milk or dairy products in tank trucks have a covered or enclosed receiving, washing, and sanitizing facility. The bill would also allow the director to approve other means to protect milk during sampling and transferring.

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.

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."

Drying. The act currently prohibits containers used in drying milk to be lined more than one hour before filling. The bill would allow containers to be lined earlier if they are adequately protected from contamination.

Temperature after packaging. The bill would raise the maximum temperature at which foods could be kept after they are packaged and before they are shipped from 40°F(4.4°) to 45°F(4.7°).

Effective date. The bill would take effect 30 days after it is enacted.

Definitions.

"Approved laboratory" would mean "a laboratory that has been evaluated by the department and is approved to perform tests on manufacturing milk and milk products."

"Cash payments" would mean, in the context of producer security requirements, "a payment in cash by check, money order, wire transfer, or draft for a sale in which the title to farm milk is transferred."

"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."

"Dairy farm" would mean "any place or premises where one or more dairy animals are kept for milking purposes, and from which a part or all of the milk is provided, sold, or offered for sale."

"Dairy plant" or "milk plant" would mean "any place or premises where milk or dairy products are collected, handled, processed, stored, pasteurized, aseptically processed, packaged, or prepared for distribution."

"Distributor" would mean "a person other than producer or processor who offers for sale, holds for sale, or sells at wholesale milk or dairy products." [Currently, a distributor is a person who sells at retail.]

"First receiving point" would mean "the dairy plant where the milk is first received for processing and manufacturing. First receiving point for producer security requirements does not include receiving stations and transfer stations."

"Food service establishment" would mean "a fixed or mobile restaurant, coffee shop, cafeteria, short order café, 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.

"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."

"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 110 and 110a, 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 110 of the act: \$50 annual for dairy plants and \$10.00 annually for milk trucks. These licensing fees generate approximately \$2,000 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).

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■ 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.