

HOUSE BILL NO. 490

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE SALE OF RAW MILK FOR HUMAN
CONSUMPTION; CREATING A SMALL SCALE RAW MILK LICENSE; CREATING A COMMERCIAL RAW MILK
LICENSE; LIMITING THE SALE OF RAW MILK TO FLUID MILK; PROVIDING DEPARTMENT OF LIVESTOCK
RULEMAKING AUTHORITY FOR LICENSING, LICENSING COSTS, ANIMAL HEALTH, TRACEBACK
PROVISIONS, AND CONTAINER LABEL REQUIREMENTS; REQUIRING RECORDKEEPING OF RAW MILK
LICENSEES; PROHIBITING RESALE OF RAW MILK; ~~PROVIDING A STATEMENT OF THE INHERENT RISKS
OF DRINKING RAW MILK;~~ PROVIDING FOR HEALTH INSPECTOR POWERS IN CERTAIN INSTANCES;
REQUIRING A WARNING PLACARD AT PLACE OF SALE FOR RAW MILK; PROVIDING FOR TESTING OF
RAW MILK FROM A COMMERCIAL RAW MILK LICENSEE; PROVIDING RAW MILK LICENSE RENEWAL,
SUSPENSION, AND REVOCATION PROCEDURES; CREATING EXCEPTIONS; AMENDING SECTIONS
81-22-303, 81-22-304, 81-22-404, 81-22-415, 81-22-501, AND 81-23-106, MCA; AND PROVIDING AN
EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Sale of raw milk for human consumption -- rulemaking -- requirements
-- records -- warnings -- provisions of licensing. (1) Raw milk may not be sold for human consumption unless
the person selling the raw milk has a small scale raw milk license issued pursuant to [section 2] or a commercial
raw milk license issued pursuant to [section 3].

(2) The department shall adopt rules to implement [sections 1 through 4 3]. The rules must include, but
are not limited to:

- (a) requirements for providing raw milk for human consumption;
- (b) fees for licensing AND ROUTINE INSPECTION that may not exceed:
 - (i) \$100 for a small scale raw milk license issued pursuant to [section 2]; and
 - (ii) \$1,050 for a commercial raw milk license issued pursuant to [section 3];



- 1 (c) related fees for testing that must be commensurate with costs incurred by the department;
- 2 (d) minimum animal health requirements, including vaccination and testing for herds that provide raw
3 milk, which may require increased testing in areas of Montana where herds may be exposed to disease;
- 4 (e) development and implementation of traceback provisions; and
- 5 (f) requirements for information that must be contained on a raw milk container label.
- 6 (3) The department may not issue a raw milk license until the adoption of rules. The department shall
7 adopt rules related to [sections 1 through 4 3] within 6 months of [the effective date of this act].
- 8 (4) A raw milk licensee may:
- 9 (a) only sell fluid raw milk;
- 10 (b) not further process the raw milk; and
- 11 (c) not mechanically separate the raw milk.
- 12 (5) The point of production and point of sale of raw milk under a raw milk license must be the same
13 location for which the raw milk license is issued. All raw milk sold by a licensee must be sold directly to a
14 consumer or a member of the consumer's household at the location authorized by the raw milk license.
- 15 (6) A licensee must create and retain records of all raw milk sold for 6 months. These records must
16 include date of sale, amount sold, and a buyer's name, address, and phone number or e-mail address.
- 17 (7) A licensee may not sell or otherwise provide raw milk produced by the licensee to any person for
18 resale. A licensee may not sell raw milk for resale to a retail food establishment license under Title 50, chapter
19 50, or a wholesale food establishment licensed under Title 50, chapter 57.
- 20 (8) In case of a human health threat or emergency, if the licensee is found to be in violation of any
21 provisions of [sections 1 through 4 3], the licensee may be required to pay all costs associated with the foodborne
22 outbreak investigation by state agencies, including product sampling, travel, and other costs.
- 23 (9) A licensee is not subject to inspection by state or local health officers, except when investigating a
24 complaint or illness, safety concern, or an outbreak suspected to be related to raw milk produced and sold on that
25 site.
- 26 (10) Raw milk subject to [sections 1 through 4 3] must be unadulterated and may not contain any
27 additives.
- 28 (11) The sale of raw milk by a raw milk licensee is not subject to pricing controls under Title 81, chapter
29 23.
- 30 (12) A warning placard must be posted in a conspicuous place on a licensee's premises. The warning

1 placard must be at least 1 foot by 2 feet and must state in large, clear print: "Research has found raw milk from
2 cows, goats, and sheep can transmit life-threatening bacterial infections. Physicians advise elderly and
3 immunocompromised individuals, pregnant women, infants, and children to consume only pasteurized milk,
4 cheese, and other milk products."

5 (13) In addition to the warning placard required by subsection (12), all raw milk containers, whether
6 provided by the raw milk licensee or the consumer, must contain a warning label.

7 (14) The sale of raw milk through a herd share or cooperative agreement or arrangement must meet the
8 requirements of [section 2] or [section 3] as determined by the gallons of milk produced at the point of production.

9 (15) All raw milk that is not for sale must be stored in containers permanently marked as "not for sale".

10 (16) In [sections 1 through 4 3], the term "sale" or "sell" includes a transaction in which nothing of
11 monetary value is exchanged.

12 (17) A raw milk license terminates on December 31 of each year. A licensee may renew a raw milk
13 license on a form prescribed by the department by December 1 of each year.

14 (18) (a) The department shall immediately suspend a raw milk license if:

15 (i) a licensee violates the rules adopted pursuant to [sections 1 through 4 3];

16 (ii) a licensee does not file or pay for a timely license renewal pursuant to subsection 47 (17); or

17 (iii) the department has reason to believe a health concern or human health outbreak has originated from
18 a raw milk license location.

19 (b) A licensed raw milk facility is prohibited from selling raw milk immediately upon suspension of the
20 license.

21 (19) Failure to renew a raw milk license suspends the license effective January 1. The department may
22 reinstate a license after application from the suspended licensee and approval by the department.

23 (20) The department may revoke a raw milk license if:

24 (a) a raw milk licensee sells raw milk while its license is suspended;

25 (b) an inspector or investigator is barred from the licensee's premises or denied access to conduct
26 inspections or investigations pursuant to [sections 1 through 3]; or

27 (c) an inspector or investigator is physically or verbally assaulted.

28 ~~(24) The department shall use revenue from the licensing fees in subsection (2)(b) to offset the costs of~~
29 ~~administering [sections 1 through 4].~~

30 (21) ALL LICENSING AND ROUTINE INSPECTION FEES COLLECTED IN ACCORDANCE WITH SUBSECTION (2)(B) FROM

1 A RAW MILK LICENSEE AS REQUIRED IN [SECTIONS 1 THROUGH 3] MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE
2 ACCOUNT FOR THE MILK AND EGG BUREAU. THE DEPARTMENT SHALL USE THE REVENUE TO OFFSET THE COSTS OF
3 ADMINISTERING [SECTIONS 1 THROUGH 3].

4
5 **NEW SECTION. Section 2. Small scale raw milk license.** (1) The department shall issue small scale
6 raw milk licenses on a form prescribed by the department.

7 (2) A small scale raw milk license applies:

8 (a) to a location that sells raw milk for human consumption and produces 10 gallons of milk a day or less;

9 or

10 (b) to a herd share or cooperative agreement or arrangement in which no more than 10 gallons of milk
11 is produced a day, regardless of whether shares of the animal or milk from the animal are sold.

12 (3) Animals milked as part of a small scale raw milk license location must be tested as required by
13 department rules.

14 (4) In addition to the warning placard required in [section 1(12)], the container warning label required by
15 [section 1] must state: "This product, sold for personal use and not for resale, is milk that has not been
16 pasteurized. Neither this farm nor the milk sold by this farm has been inspected by the state of Montana. The
17 consumer assumes liability for health issues that may result from the consumption of this product".

18 (5) The department shall investigate a licensee if:

19 (a) there is a human illness associated with raw milk and a link may exist to a facility with a raw milk
20 license; or

21 (b) there is a complaint.

22
23 **NEW SECTION. Section 3. Commercial raw milk license.** (1) The department may issue commercial
24 raw milk licenses to a person who produces raw milk for human consumption pursuant to:

25 (a) this section;

26 (b) rules adopted by the department; and

27 (c) the requirements of section 14 and items (1)(r) through (19)(r) of the 2017 grade "a" pasteurized milk
28 ordinance of the U.S. food and drug administration.

29 (2) A commercial raw milk license applies to any location that sells raw milk for human consumption and
30 produces more than 10 gallons of milk a day.

1 (3) A commercial raw milk license applies to a herd share or cooperative agreement or arrangement if
 2 more than 10 gallons of milk is produced a day, regardless of whether shares of the animal or milk from the
 3 animal are sold.

4 (4) The department shall establish by rule minimum requirements for testing raw milk produced by a
 5 commercial raw milk-licensed location.

6 (5) The licensee shall provide containers in which the raw milk is sold. The department shall adopt rules
 7 defining container sanitation requirements and other requirements related to the container.

8 (6) In addition to the warning placard required in [section 1(12)], a container warning label must state:
 9 "This product, sold for personal use and not for resale, is milk that has not been pasteurized. The consumer
 10 assumes liability for health issues that may result from the consumption of this product".

11 (7) A commercial raw milk licensee shall conduct:

12 (a) animal testing as established in [section 1(2)(c)]; and

13 (b) raw milk testing as established by subsection (4).

14
 15 ~~NEW SECTION. Section 4. Assumption of risk for consumption of raw milk. (1) A person who~~
 16 ~~consumes raw milk assumes inherent risks in consuming milk that is not pasteurized, whether those risks are~~
 17 ~~known or unknown. A person is legally responsible for all injury or death to the person and for all damage to the~~
 18 ~~person's property that results from the inherent risks in the consumption of raw milk.~~

19 ~~(2) It is not the duty of the department to ensure that a person is free from the inherent risks associated~~
 20 ~~with the consumption of raw milk that is not pasteurized, including the consumption of raw milk produced pursuant~~
 21 ~~to a raw milk license issued pursuant to [sections 1 through 4].~~

22
 23 **Section 4.** Section 81-22-303, MCA, is amended to read:
 24 **"81-22-303. Sampling and testing by department.** The department shall have the authority to sample,
 25 test, ~~and/or~~ and retest samples of milk or cream or their products at ~~any~~ a dairy, ~~at~~ the premises of any supplier
 26 of milk or cream for manufacturing purposes, ~~or at any~~ a manufactured dairy products plant, a milk plant, ~~or a~~
 27 cream buying or receiving station, a facility operating under a raw milk license pursuant to [sections 1 through
 28 4 3]."

29
 30 **Section 5.** Section 81-22-304, MCA, is amended to read:

1 **"81-22-304. Department's right of entry into dairy or plants for inspection -- penalty.** (1) The
2 department or its authorized agent has the right of entry during normal business hours, including Sundays and
3 holidays, into a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant,
4 milk plant, cream receiving station, transportation facility, facility operating under a raw milk license pursuant to
5 [section 1 through 4 3], or any premises where dairy products, dairy manufactured products, or their substitutes
6 or imitations are produced, manufactured, sold, offered for sale, or stored while in transit to inspect the dairy or
7 plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person to interfere
8 with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain samples.

9 (2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than \$50 and
10 not more than \$500 or to imprisonment in the county jail for not less than 1 or more than 30 days or both such
11 fine and imprisonment."
12

13 **Section 6.** Section 81-22-404, MCA, is amended to read:

14 **"81-22-404. Removal or destruction of products in case of potential health hazards.** (1) When
15 epidemiological evidence indicates or the likelihood exists that a dairy, a person operating under a raw milk
16 license pursuant to [sections 1 through 4 3], or manufactured dairy products plant is producing, manufacturing,
17 storing, handling, or offering for sale milk or a manufactured dairy product that is adulterated or that may be
18 detrimental to the health or safety of the consumer, the department may request the department of public health
19 and human services to remove the product from the market or to hold, dispose of, destroy, or treat the product
20 so that it no longer constitutes a potential health hazard.

21 (2) It is unlawful for a person to violate an order that requires the product's removal from the market or
22 its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation
23 is subject to a fine of not less than \$25 or more than \$250 or to imprisonment in the county jail for not more than
24 30 days, or both fine and imprisonment."
25

26 **Section 7.** Section 81-22-415, MCA, is amended to read:

27 **"81-22-415. Pasteurization labeling.** (1) It is unlawful for a person to sell, offer for sale, exchange, or
28 have in the person's possession milk, cream, or a manufactured dairy product in a container or package marked
29 or labeled or in any way designating the contents of the container or package as "pasteurized" unless it has been
30 treated by an approved process of pasteurization as required by the department.

1 (2) A person operating under a raw milk license provided for in [sections 1 through 4 3] shall label the
2 raw milk as provided in [sections 1 through 4 3]."

3

4 **Section 8.** Section 81-22-501, MCA, is amended to read:

5 **"81-22-501. Required records and reports -- examination.** The department may require dairies, ~~and~~
6 dairy product manufacturers, and facilities operating under raw milk licenses pursuant to [sections 1 through 4
7 3] to maintain and produce for examination or to report the records necessary for carrying out its duties under
8 this chapter."

9

10 **Section 9.** Section 81-23-106, MCA, is amended to read:

11 **"81-23-106. Application.** (1) This chapter does not apply to:

12 (a) foreign or interstate commerce except insofar as it may be effective in compliance with the United
13 States constitution and with the laws of the United States; or

14 (b) raw milk produced under a raw milk license pursuant to [sections 1 through 4 3].

15 (2) It is the intention of the legislature, however, that the instant, whenever that may be, that the handling
16 within the state by a dealer of milk produced outside of the state becomes the subject of regulation by the state
17 in the exercise of its police powers, the provisions of this chapter affecting intrastate milk immediately apply and
18 the powers conferred by this chapter attach thereto."

19

20 NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 4 3] are intended to be
21 codified as an integral part of Title 81, chapter 21, and the provisions of Title 81, chapter 21, apply to [sections
22 1 through 4 3].

23

24 NEW SECTION. **Section 11. Saving clause.** [This act] does not affect rights and duties that matured,
25 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

26

27 NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2019.

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