

House File 338 - Introduced

HOUSE FILE 338

BY HOLT

A BILL FOR

1 An Act relating to raw milk, by providing for the production
2 of raw milk at certain dairies, the manufacture of products
3 using raw milk, and the labeling and distribution of raw
4 milk and manufactured products, and making penalties
5 applicable.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135.16B Raw milk — associated
2 products.

3 The department of health and human services may demand that
4 a raw milk producer provide the department with all records of
5 tests to determine the coliform count and standard plate count
6 of dairy animals maintained at the raw milk dairy as required
7 in section 195.6.

8 Sec. 2. Section 137.104, subsection 2, Code 2023, is amended
9 by adding the following new paragraph:

10 NEW PARAGRAPH. e. Demand that a raw milk producer provide
11 the board with all records of tests to determine the coliform
12 count and standard plate count of dairy animals maintained at
13 the raw milk dairy as required in section 195.6.

14 Sec. 3. NEW SECTION. 137D.2A Raw milk — associated
15 products.

16 A home food processing establishment shall not advertise
17 for sale, offer for sale, sell or otherwise distribute, or use
18 raw milk, or a manufactured raw milk product or raw milk dairy
19 product, as provided in chapter 195.

20 Sec. 4. Section 137F.1, subsection 9, Code 2023, is amended
21 by adding the following new paragraph:

22 NEW PARAGRAPH. o. (1) The premises of a raw milk dairy
23 where raw milk is produced, processed, labeled, marketed, or
24 distributed by a raw milk producer in compliance with chapter
25 195.

26 (2) The premises of a raw milk dairy where a raw milk
27 product or a raw milk dairy product is manufactured, labeled,
28 marketed, or distributed by a raw milk producer in compliance
29 with chapter 195.

30 Sec. 5. Section 137F.1, subsection 10, Code 2023, is amended
31 by adding the following new paragraph:

32 NEW PARAGRAPH. d. (1) The premises of a raw milk dairy
33 where raw milk is produced, processed, labeled, marketed, or
34 distributed by a raw milk producer in compliance with chapter
35 195.

1 (2) A premises of a raw milk dairy where a raw milk product
2 or raw milk dairy product is manufactured, labeled, marketed,
3 or distributed by a raw milk producer in compliance with
4 chapter 195.

5 Sec. 6. NEW SECTION. 137F.8B Raw milk — associated
6 products.

7 A food establishment or farmers market shall not advertise
8 for sale, offer for sale, sell or otherwise distribute, or use
9 raw milk, or a manufactured raw milk product or a raw milk
10 dairy product, regardless of whether the food establishment
11 or farmers market is regulated by the department under
12 this chapter or another chapter, another state agency, or a
13 municipality.

14 Sec. 7. Section 159.6, subsection 6, Code 2023, is amended
15 to read as follows:

16 6. Regulation and inspection of foods, drugs, and other
17 articles, as provided in Title V, subtitle 4, ~~but.~~ However,
18 chapter 205 of that subtitle shall be enforced as provided in
19 that chapter. Except as expressly authorized in subtitle 4,
20 the department shall not regulate any of the following:

21 a. The production, processing, labeling, marketing, or
22 distribution of raw milk by a raw milk producer in compliance
23 with chapter 195.

24 b. The manufacture, labeling, marketing, or distribution
25 of a raw milk product or raw milk dairy product by a raw milk
26 producer in compliance with chapter 195.

27 Sec. 8. Section 190.2, Code 2023, is amended by adding the
28 following new subsection:

29 NEW SUBSECTION. 3. This section does not apply to any of
30 the following:

31 a. The manufacture, labeling, marketing, or distribution of
32 raw milk by a raw milk producer in compliance with chapter 195.

33 b. The manufacture, labeling, marketing, or distribution
34 of a raw milk product or raw milk dairy product by a raw milk
35 producer in compliance with chapter 195.

1 Sec. 9. Section 191.2, subsection 5, unnumbered paragraph
2 1, Code 2023, is amended to read as follows:

3 ~~All bottles, containers, and packages~~ Bottles, containers,
4 and packages. Except as provided in subsection 5A, a container
5 or package enclosing milk or a milk ~~products~~ product shall be
6 conspicuously labeled or marked with all of the following:

7 Sec. 10. Section 191.2, Code 2023, is amended by adding the
8 following new subsection:

9 NEW SUBSECTION. 5A. *Raw milk and associated products.* A
10 container holding raw milk, or a manufactured raw milk product
11 or a raw milk dairy product, distributed by a raw milk producer
12 shall be labeled as required in section 195.8.

13 Sec. 11. Section 192.103, subsections 1 and 2, Code 2023,
14 are amended to read as follows:

15 1. Only grade "A" pasteurized milk and milk products
16 shall be sold to the final consumer, or to restaurants, soda
17 fountains, grocery stores, or similar establishments. ~~However,~~
18 ~~in~~ except as follows:

19 a. In an emergency, the sale of pasteurized milk and milk
20 products ~~which~~ that have not been graded, or the grade of which
21 is unknown, may be authorized by the secretary, in which case,
22 such products shall be labeled "ungraded".

23 b. A raw milk producer may distribute raw milk, or a
24 manufactured raw milk product or raw milk dairy product, in
25 compliance with chapter 195.

26 2. ~~No~~ A person shall not within the state produce, provide,
27 sell, offer, or expose for sale, or have in possession with
28 intent to sell, any milk or milk product which is adulterated
29 or misbranded. However, in an emergency, the sale of
30 pasteurized milk and milk products which have not been graded,
31 or the grade of which is unknown, may be authorized by the
32 secretary, in which case such products shall be labeled
33 "ungraded".

34 Sec. 12. NEW SECTION. 194.22 **Raw milk dairies — exception.**
35 This chapter does not apply to any of the following:

1 1. The production, processing, marketing, and distribution
2 of raw milk, if the raw milk is produced by a raw milk producer
3 at a raw milk dairy as provided in chapter 195.

4 2. The manufacture, marketing, and distribution of a
5 raw milk product or raw milk dairy product, if the raw milk
6 product or raw milk dairy product is manufactured by a raw milk
7 producer at a raw milk dairy as provided in chapter 195.

8 Sec. 13. NEW SECTION. 195.1 **Definitions.**

9 As used in this chapter, unless the context otherwise
10 requires:

11 1. "*Dairy animal*" means a cow, goat, or sheep that is
12 actively producing milk.

13 2. "*Department*" means the department of agriculture and land
14 stewardship.

15 3. "*Distribute*" means to transfer an item or offer to
16 transfer an item to another person, either free of charge or by
17 sale or exchange.

18 4. "*Milk*" means the lacteal secretion of a dairy animal.

19 5. "*Raw milk*" means milk that is not pasteurized or graded
20 as otherwise required in chapters 190, 192, and 194.

21 6. "*Raw milk dairy*" means an operation where not more than
22 ten dairy animals are maintained to actively produce milk at
23 any one time.

24 7. "*Raw milk dairy product*" means a product, other than a
25 milk product, manufactured using milk or a milk product as the
26 primary ingredient, and that includes any quantity of raw milk.

27 8. "*Raw milk producer*" means a milk producer who owns or
28 operates a raw milk dairy.

29 9. "*Raw milk product*" means a product manufactured using
30 milk as its exclusive ingredient as described in 21 C.F.R.
31 §1240.3 and that includes any quantity of raw milk.

32 Sec. 14. NEW SECTION. 195.2 **Conflicts with other law.**

33 This chapter shall be construed to supplement applicable
34 provisions in chapters 190, 191, 192, and 194. If there is a
35 conflict between a provision in this chapter and one of those

1 other chapters, the provision in this chapter shall prevail
2 but only to the extent of interpreting the provision in this
3 chapter.

4 Sec. 15. NEW SECTION. 195.3 Exclusions.

5 This chapter does not apply to a bulk milk tanker, milk
6 grader, milk hauler, milk plant, milk processing plant, dairy
7 plant, transfer station, or receiving station.

8 Sec. 16. NEW SECTION. 195.4 Rulemaking prohibited.

9 The department shall not adopt rules to administer or
10 enforce this chapter.

11 Sec. 17. NEW SECTION. 195.5 General — election by raw milk
12 producer.

13 A raw milk producer may elect to process, market, or
14 distribute raw milk produced at the raw milk producer's
15 raw milk dairy in compliance with this chapter. A raw milk
16 producer may also elect to use the raw milk to manufacture,
17 market, or distribute a raw milk product or raw milk dairy
18 product at the raw milk producer's raw milk dairy in compliance
19 with this chapter.

20 Sec. 18. NEW SECTION. 195.6 Production and processing of
21 raw milk.

22 If a raw milk producer makes an election described in section
23 195.5 to produce and process raw milk, all of the following
24 apply:

25 1. The raw milk must be produced exclusively from dairy
26 animals maintained at the raw milk dairy.

27 2. The raw milk must not be pasteurized or graded.

28 3. The raw milk must be processed in a manner that ensures
29 the health and safety of persons consuming the raw milk
30 produced at the raw milk dairy, or consuming raw milk products
31 or raw dairy products manufactured at the raw milk dairy. The
32 raw milk producer must do all of the following:

33 a. Each month, test each dairy animal maintained at the raw
34 milk producer's raw milk dairy to determine the dairy animal's
35 coliform count and standard plate count. The raw milk producer

1 shall retain a record of each test at the raw milk dairy for at
2 least three years.

3 *b.* Each twelve-month period, employ a licensed veterinarian
4 to examine each dairy animal maintained at the raw milk
5 producer's raw milk dairy to determine the dairy animal's
6 health status. The examination must at least include a blood
7 test for common diseases afflicting the type of dairy animal
8 being examined.

9 **Sec. 19. NEW SECTION. 195.7 Distribution of raw milk or**
10 **associated products.**

11 1. A raw milk producer shall only take an order for the
12 distribution of raw milk at the raw milk producer's raw milk
13 dairy where the raw milk is produced. The raw milk producer
14 shall only distribute the raw milk to an individual placing the
15 order.

16 *a.* The raw milk producer shall post the summary of the test
17 to determine the coliform count and standard plate count of
18 the dairy animals retained at the raw milk dairy as provided
19 in section 195.6. The summary shall be posted at the raw milk
20 dairy's distribution point for the raw milk. The individual
21 being distributed the raw milk may examine the records for the
22 three-year period that the records are required to be retained
23 by the raw milk producer under section 195.6.

24 *b.* If the raw milk producer distributes raw milk in a
25 container, the container shall be labeled as provided in
26 section 195.8.

27 *c.* The raw milk producer shall distribute the raw milk
28 directly to the individual at the raw milk dairy or to a
29 location specified by the individual. However, a person shall
30 not deliver the raw milk to a place of business where food or
31 food items are distributed on a retail basis, including but
32 not limited to a home food processing establishment regulated
33 under chapter 137D or a food establishment or farmers market
34 regulated under chapter 137F. The raw milk shall only be used
35 for consumption by the individual, members of the individual's

1 household, and the individual's nonpaying guests or nonpaying
2 employees.

3 *d.* A person shall not resell raw milk.

4 2. A raw milk producer shall only take an order for the
5 distribution of a raw milk product or raw milk dairy product
6 at the raw milk producer's raw milk dairy where the raw milk
7 product or raw milk dairy product is manufactured. The raw
8 milk producer shall only distribute the raw milk product or raw
9 milk dairy product to an individual placing the order. The raw
10 milk producer may distribute the raw milk product or raw milk
11 dairy product to the individual without charge or on a retail
12 basis.

13 *a.* The raw milk producer shall post the summary of the most
14 recent test to determine the coliform count and standard plate
15 count of dairy animals as retained at the raw milk dairy as
16 provided in section 195.6. The summary shall be posted at the
17 raw milk dairy's distribution point for the raw milk products
18 or raw milk dairy products. The individual being distributed
19 the raw milk product or raw milk dairy product may examine the
20 records for the three-year period that the records are required
21 to be retained by the raw milk producer under section 195.6.

22 *b.* If the raw milk producer distributes a raw milk product
23 or raw milk dairy product in a container, the container shall
24 be labeled as provided in section 195.8.

25 *c.* The raw milk producer shall distribute the raw milk
26 product or raw milk dairy product directly to the individual
27 at the raw milk dairy or to a location specified by the
28 individual. However, a person shall not deliver the raw milk
29 product or raw milk dairy product to a place of business where
30 food or a food item is distributed on a retail basis, including
31 but not limited to a home food processing establishment
32 regulated under chapter 137D or a food establishment or farmers
33 market regulated under chapter 137F. The raw milk product or
34 raw milk dairy product shall only be used for consumption by
35 the individual, members of the individual's household, or the

1 individual's nonpaying guests or nonpaying employees.

2 *d.* A person shall not resell the raw milk product or raw
3 milk dairy product.

4 Sec. 20. NEW SECTION. 195.8 Labeling containers holding
5 raw milk or associated products.

6 1. A raw milk producer who distributes raw milk, or a
7 manufactured raw milk product or raw milk dairy product, shall
8 label the container holding the raw milk, or the manufactured
9 raw milk product or raw milk dairy product. The label shall
10 be permanently affixed to the container. The words on the
11 label shall be printed using upper case letters in at least
12 twelve point boldface type. If the container includes a main
13 informational or advertising panel, the label shall be part of
14 the panel.

15 2. *a.* For a container holding raw milk, the label shall
16 state the following:

17 Notice to Consumers

18 This container holds raw milk that is not subject to state
19 inspection or other public health regulations that require
20 pasteurization and grading.

21 *b.* For a container holding a raw milk product or raw milk
22 dairy product, the label shall state the following:

23 Notice to Consumers

24 This container holds a raw milk product or raw milk dairy
25 product that is not subject to state inspection or other public
26 health regulations that require pasteurization and grading.

27 Sec. 21. NEW SECTION. 195.9 Enforcement actions.

28 The department of health and human services acting under
29 chapter 135 or a local board of health acting under chapter
30 137 may demand that the raw milk producer provide it with all
31 records of tests to determine the coliform count and standard
32 plate count of dairy animals maintained at the raw milk dairy
33 as required in section 195.6. The demand shall be based on an
34 affidavit signed by a licensed physician certifying that in
35 the physician's opinion an individual contracted an illness as

1 a direct result of consuming raw milk produced at a raw milk
2 dairy, or consuming a raw milk product or a raw milk dairy
3 product manufactured at a raw milk dairy.

4 EXPLANATION

5 The inclusion of this explanation does not constitute agreement with
6 the explanation's substance by the members of the general assembly.

7 BACKGROUND. This bill amends provisions regulating dairies
8 where raw milk is produced and processed for human consumption
9 (fluid milk), or produced and processed to be manufactured as
10 a food item (a milk product or dairy product) at a processing
11 or manufacturing facility (milk plant or dairy plant).

12 Generally, the department of inspections and appeals (DIA), or
13 a local authority under contract with DIA, provides for the
14 licensing and inspection of both food processing plants and
15 food establishments such as grocery stores and restaurants.
16 The production and processing of milk, and the processing
17 and manufacture of milk products and dairy products, are
18 administered and enforced by the department of agriculture and
19 land stewardship (DALs).

20 FEDERAL LAW. Generally, states are provided responsibility
21 for enacting health and sanitation standards for their dairy
22 industry subject to oversight by the federal government.

23 DALs' regulations are based on voluntary standards published
24 by the United States food and drug administration (FDA),
25 and specifically the "Grade 'A' Pasteurized Milk Ordinance"
26 commonly referred to as the PMO (Code section 192.102).

27 The PMO provides standards for the production, processing,
28 distribution, transportation, handling, sampling, examination,
29 grading, labeling, and sale of grade "A" pasteurized milk
30 and grade "A" milk products. In administering the PMO, DALs
31 conducts inspections of dairy herds, dairy farms, milk plants,
32 milk receiving stations, and milk transfer stations. DALs
33 issues licenses or permits to milk producers, milk haulers,
34 and milk transfer stations subject to suspension or revocation
35 (21 IAC 68.12). FDA also regulates the labeling of milk and

1 dairy products (21 C.F.R. pt. 131). The United States, acting
2 through FDA, prohibits the delivery of unpasteurized milk,
3 or milk products manufactured using unpasteurized milk, into
4 interstate commerce (21 C.F.R. pt. 1240). Voluntary standards
5 governing the grading of milk are established by the United
6 States department of agriculture (USDA) (7 C.F.R. pt. 58,
7 adopted by DALs pursuant to Code section 190.2; 21 IAC 71.1).
8 Grade "A" milk is the standard used for fluid milk production.
9 Grade "B" milk is subject to less restrictive standards
10 allowing it to be used in manufacturing (Code chapter 194).

11 DALs GENERAL AUTHORITY. Under Code chapter 189, DALs
12 regulates adulterated articles and the labeling of those
13 articles and may report violations to the appropriate county
14 attorney (Code section 189.25). This includes inspections of
15 locations (Code section 189.4). A person is prohibited from
16 manufacturing, selling, or delivering an adulterated article
17 (Code section 189.15). DALs may act to enjoin a person from
18 violating provisions prohibiting the marketing of adulterated
19 food (Code section 190.15), including adulterated milk, and
20 adulterated milk products and dairy products (Code sections
21 190.4 and 190.5). DALs may confiscate an adulterated or
22 improperly labeled article (Code section 189.17). DALs is
23 granted authority to petition a district court to restrain
24 a person who violates a statute or rule regulating milk
25 production, processing, manufacture, labeling, and sales (Code
26 sections 190.15, 191.10, and 192.146).

27 BILL'S PROVISIONS — TERMINOLOGY. The bill uses a number
28 of key terms, including "raw milk" meaning milk that is not
29 graded or pasteurized, "raw milk dairy" which includes a dairy
30 farm where dairy animals (milk-producing cows, goats, or
31 sheep) are maintained and where a "raw milk producer" owning
32 or operating the dairy farm may store and process the raw milk
33 for distribution as fluid milk, or may manufacture the raw
34 milk into "raw milk products" or "raw milk dairy products" for
35 distribution (new Code section 195.1). Code chapters refer to

1 both terms "milk product" and "dairy product" as does federal
2 law. Generally, FDA defines "milk product" to include cheese,
3 butter, ice cream, and yogurt (21 C.F.R. §1240.3) and USDA
4 defines a "dairy product" similarly (7 C.F.R. §58.101). The
5 bill defines a "raw milk product" as a product using milk as
6 an exclusive ingredient, if any quantity of the milk is raw
7 milk, and a "raw dairy product" as a product using milk as the
8 primary ingredient, if any quantity of the milk is raw milk
9 (new Code section 195.1). The term "distribute" refers to both
10 the transfer of raw milk or a manufactured raw milk product
11 or raw milk dairy product to final consumers with or without
12 charge (new Code section 195.7).

13 BILL'S PROVISIONS — EXCLUSION FROM DIA REGULATIONS. The
14 bill prohibits a home food processing establishment regulated
15 by DIA from advertising for sale, offering for sale, selling,
16 or otherwise distributing raw milk, or a manufactured raw milk
17 product or raw milk dairy product (new Code section 137D.2A).
18 The premises of a raw milk dairy is not a food establishment or
19 a food processing plant regulated by DIA (Code section 137F.1).
20 Similarly, the bill prohibits a food establishment or farmers
21 market from advertising for sale, offering for sale, selling,
22 or otherwise distributing raw milk, or a manufactured raw milk
23 product or a raw milk dairy product (new Code section 137F.8B).

24 BILL'S PROVISIONS — ADMINISTRATION AND ENFORCEMENT. The
25 bill's provisions are codified as new Code chapter 195. The
26 new chapter is construed to supplement applicable provisions of
27 the other Code chapters regulating the state's dairy industry
28 (Code chapters 190, 191, 192, and 194). DALS is prohibited
29 from adopting rules to administer or enforce provisions in the
30 new Code chapter.

31 BILL'S PROVISIONS — REQUIREMENTS FOR PROCESSING, MARKETING,
32 AND DISTRIBUTING RAW MILK OR MANUFACTURING, MARKETING, AND
33 DISTRIBUTING A RAW MILK PRODUCT OR RAW MILK DAIRY PRODUCT. A
34 raw milk producer must not own or operate a raw milk dairy
35 having more than 10 dairy animals actively producing milk (new

1 Code section 195.1). The milk cannot be pasteurized or graded.
 2 On a monthly basis, the raw milk producer must test each dairy
 3 animal to determine its coliform and standard plate counts. On
 4 a yearly basis, the raw milk producer must employ a licensed
 5 veterinarian to examine the health status of each dairy animal,
 6 including by administering a blood test (new Code section
 7 195.6).

8 In distributing raw milk, or a manufactured raw milk product
 9 or raw dairy product, a raw milk producer can only take an
 10 order by an individual (new Code section 195.7). The order
 11 must be made at the raw milk dairy. The individual may examine
 12 the health records of the raw milk dairy's dairy animals and
 13 the records must be retained for three years. The raw milk
 14 producer may deliver the raw milk or the manufactured raw milk
 15 product or raw milk dairy product to the individual at the
 16 raw milk dairy or at a location specified by the individual.
 17 However, the raw milk producer cannot deliver the raw milk or
 18 the manufactured raw milk product or raw milk dairy product
 19 to a location where food or food items are sold on a retail
 20 basis (e.g., a location regulated by DIA). The raw milk or
 21 the manufactured raw milk product or raw milk dairy product
 22 can only be used for consumption by the individual making
 23 the order, a member of the individual's household, or the
 24 individual's nonpaying guests or nonpaying employee. A
 25 person cannot resell the raw milk or the manufactured raw milk
 26 product or raw milk dairy product. If the raw milk, or the
 27 manufactured raw milk product or raw milk dairy product is
 28 distributed in a container, the container must be labeled with
 29 a notice to consumers stating it contains raw milk or that raw
 30 milk has been used as an ingredient in manufacturing the raw
 31 milk product or raw dairy product, and the raw milk, or the
 32 raw milk product or raw dairy product, has not been subject to
 33 public health regulations (new Code section 195.8).

34 BILL'S PROVISIONS — RECORDS. The Iowa department of health
 35 and human services or a local board of health may demand that

1 a raw milk producer provide it with all records of tests to
2 determine the coliform count and standard plate count of dairy
3 animals maintained at a raw milk dairy.

4 APPLICABLE PENALTIES. A person who violates the bill's
5 provisions is guilty of a simple misdemeanor (Code section
6 189.21). A person who violates a provision regulated by the
7 Iowa department of health and human services is guilty of
8 a simple misdemeanor (Code section 135.38). A person who
9 violates a provision regulated by a local board of health is
10 also guilty of a simple misdemeanor and subject to a civil
11 penalty not to exceed \$750. A simple misdemeanor is punishable
12 by confinement for no more than 30 days and a fine of at least
13 \$105 but not more than \$855.