

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 132**

Introduced by Cunningham, 40; Burling, 33; Connealy, 16;  
Preister, 5

Read first time January 6, 2005

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend section 2-3903,  
2 Reissue Revised Statutes of Nebraska, and section 2-3901,  
3 Revised Statutes Supplement, 2004; to change provisions  
4 of the Nebraska Pasteurized Milk Law; to provide for a  
5 waiver as prescribed; and to repeal the original  
6 sections.

7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 2-3901, Revised Statutes Supplement,  
2 2004, is amended to read:

3           2-3901. (1) Sections 2-3901 to 2-3911 and sections 2 and  
4 4 of this act and the publications adopted by reference in  
5 subsections (2) and (3) of this section shall be known and may be  
6 cited as the Nebraska Pasteurized Milk Law.

7           (2) The Legislature adopts by reference the following  
8 official documents of the National Conference on Interstate Milk  
9 Shipments as published by the United States Department of Health  
10 and Human Services, Food and Drug Administration:

11           (a) Grade A Pasteurized Milk Ordinance, 1999 Revision, as  
12 delineated in subsection (3) of this section;

13           (b) Grade A Condensed and Dry Milk Products and Condensed  
14 and Dry Whey, 1995 Revision;

15           (c) Methods of Making Sanitation Ratings of Milk  
16 Supplies, 1999 Revision;

17           (d) Procedures Governing the Cooperative State-Public  
18 Health Service/Food and Drug Administration Program of the National  
19 Conference on Interstate Milk Shipments, 1999 Revision; and

20           (e) Evaluation of Milk Laboratories, 1995 Revision.

21           (3) All provisions of the Grade A Pasteurized Milk  
22 Ordinance, including footnotes relating to requirements for cottage  
23 cheese, and the appendixes with which the ordinance requires  
24 mandatory compliance are adopted with the following exceptions:

25           (a) Section 9 of the ordinance is replaced by section  
26 2-3903;

27           (b) Section 15 of the ordinance is replaced by sections  
28 2-3904 and 2-3905;

1 (c) Section 16 of the ordinance is replaced by section  
2 2-3909;

3 (d) Section 17 of the ordinance is not adopted; and

4 (e) Section 3 of the ordinance, Administrative  
5 Procedures, Issuance of Permits, is adopted with the following  
6 modifications:

7 (i) The Department of Agriculture may revoke a permit,  
8 suspend a permit, suspend a permit for a definite period of time,  
9 or place the holder of a permit on probation upon evidence of  
10 violation by the holder of any of the provisions of the Nebraska  
11 Pasteurized Milk Law; and

12 (ii) Decisions of the department may be appealed and such  
13 appeals shall be in accordance with the Administrative Procedure  
14 Act.

15 (4) Copies of the Ordinance, the Appendixes, and the  
16 publications, adopted by reference, shall be filed in the offices  
17 of the Secretary of State, Clerk of the Legislature, and Department  
18 of Agriculture.

19 (5) If there is an inconsistency between sections 2-3901  
20 to 2-3911 and any of the publications adopted by reference in this  
21 section, the requirements of the sections shall control.

22 Sec. 2. For purposes of the Nebraska Pasteurized Milk  
23 Law, raw milk not intended for pasteurization means milk and cream  
24 sold directly from the producer to the consumer for his or her own  
25 consumption which will not be pasteurized under the requirements of  
26 the Nebraska Pasteurized Milk Law or used for manufacturing  
27 purposes pursuant to the Nebraska Manufacturing Milk Act.

28 Sec. 3. Section 2-3903, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           2-3903.     (1) Except as provided in subsections (2), ~~and~~  
3     (3), and (4) of this section, only Grade A pasteurized milk and  
4 milk products shall be sold to the final consumer or to  
5 restaurants, soda fountains, grocery stores, or similar  
6 establishments.

7           (2) In an emergency, the sale of pasteurized milk and  
8 milk products which have not been graded or the grade of which is  
9 unknown may be authorized by the regulatory agency, in which case  
10 such milk and milk products shall be labeled as ungraded.

11           (3) ~~Milk and milk products~~ Raw milk not intended for  
12 pasteurization produced by farmers exclusively for sale at the farm  
13 directly to customers for consumption and not for resale shall be  
14 exempt from the Nebraska Pasteurized Milk Law. Persons selling raw  
15 milk not intended for pasteurization pursuant to this subsection  
16 shall not advertise regarding such milk or deliver such milk to any  
17 other location.

18           ~~(4)~~ (4) (a) A milk producer issued a permit pursuant to  
19 the Nebraska Pasteurized Milk Law may offer raw milk not intended  
20 for pasteurization for sale directly to customers for their own  
21 consumption and not for resale.

22           (b) After a milk producer has separated raw milk not  
23 intended for pasteurization from milk and milk products for  
24 pasteurization, the milk producer shall keep the raw milk not  
25 intended for pasteurization completely apart from the production of  
26 milk and milk products for pasteurization. Milk rooms used in the  
27 production of milk and milk products for pasteurization shall not  
28 be used as bottling rooms, storage rooms, or store fronts for the

1 sale of raw milk not intended for pasteurization. Any milk removed  
2 from the bulk tank of milk for pasteurization shall not be returned  
3 to the bulk tank. A milk producer shall meet the standards for  
4 Grade A milk and milk products found in section 7 of the Grade A  
5 Pasteurized Milk Ordinance for all milk and milk products,  
6 including raw milk not intended for pasteurization, produced on his  
7 or her farm. Raw milk not intended for pasteurization shall be  
8 tested by the Department of Agriculture in conformity with section  
9 6 of the Grade A Pasteurized Milk Ordinance.

10 (c) A milk producer issued a permit pursuant to the  
11 Nebraska Pasteurized Milk Law may deliver raw milk not intended for  
12 pasteurization directly to the consumer. Raw milk not intended for  
13 pasteurization shall not be sold to, or offered for sale at,  
14 farmers markets, educational institutions, health care facilities,  
15 nursing homes, governmental organizations or any food establishment  
16 as defined in section 81-2,245.01.

17 (d) A milk producer issued a permit pursuant to the  
18 Nebraska Pasteurized Milk Law shall keep, for one year, records of  
19 all raw milk not intended for pasteurization sold. Such records  
20 shall include the date of the sale, the amount of raw milk not  
21 intended for pasteurization sold, and the name of the purchaser.

22 (e) A milk producer issued a permit pursuant to the  
23 Nebraska Pasteurized Milk Law may advertise the sale of raw milk  
24 not intended for pasteurization.

25 (f) (i) The packaging of raw milk not intended for  
26 pasteurization shall be determined and agreed upon between the  
27 producer and the consumer except as required in this subsection.

28 (ii) All raw milk not intended for pasteurization shall

1 carry a warning label with the following statement: Warning: Raw  
2 milk and milk products may contain bacteria and other  
3 disease-causing organisms. Persons at the highest risk include  
4 newborns and infants, elderly, pregnant women, and those having  
5 chronic illnesses or conditions that weaken their immune systems.  
6 It is recommended that the milk be heated to a temperature  
7 sufficient to kill these disease-causing organisms. Options  
8 include heating the milk to one hundred forty-five degrees  
9 Fahrenheit for thirty minutes or to one hundred sixty-one degrees  
10 Fahrenheit for fifteen seconds. After heating, the milk should be  
11 immediately cooled and held at, or below, forty degrees Fahrenheit.

12 (iii) All raw milk not intended for pasteurization shall  
13 be labeled with the common name of the contents such as: Raw Milk.  
14 If the milk is not cow's milk, the word milk shall be preceded by  
15 the name of the animal such as: Raw Goat Milk.

16 (iv) All raw milk not intended for pasteurization shall  
17 be labeled with the name and address of the milk producer.

18 (v) Only health claims reviewed and approved by the  
19 United States Food and Drug Administration may be made in the  
20 labeling of raw milk not intended for pasteurization. Labeling  
21 includes Internet pages, pamphlets, and point of sale literature.

22 (5) If the permit of a Grade A milk producer is suspended  
23 for violations of the Nebraska Pasteurized Milk Law, the producer  
24 may market milk for manufacturing purposes for an interim period  
25 not to exceed sixty days with the approval of the Department of  
26 Agriculture, if the milk meets the criteria of the Nebraska  
27 Manufacturing Milk Act.

28 (6) A milk plant which has been issued a permit under the

1 Nebraska Pasteurized Milk Law and which produces milk products for  
2 intrastate sales only may also process milk products normally  
3 regulated under the Nebraska Manufacturing Milk Act without  
4 obtaining additional permits pursuant to the Nebraska Manufacturing  
5 Milk Act.

6           Sec. 4. Milk plants which produce milk products only for  
7 intrastate consumption may request a waiver from the mechanical  
8 filling and capping requirements of the Nebraska Pasteurized Milk  
9 Law. The Department of Agriculture may grant such a waiver after  
10 reviewing and approving the process that will be used for filling  
11 and capping. An interstate milk shippers listing will not be  
12 granted to a plant operating under this waiver.

13           Sec. 5. Original section 2-3903, Reissue Revised  
14 Statutes of Nebraska, and section 2-3901, Revised Statutes  
15 Supplement, 2004, are repealed.