

## LEGISLATIVE BILL 201

Approved by the Governor March 10, 1997

Introduced by Agriculture Committee: Dierks, 40, Chairperson; Chambers, 11; Cudaback, 36; Hudkins, 21; Vrtiska, 1

AN ACT relating to agriculture; to amend sections 2-3902 and 2-3903, Reissue Revised Statutes of Nebraska, and sections 2-3901, 2-3910, and 2-3917, Revised Statutes Supplement, 1996; to adopt by reference federal provisions into the Nebraska Pasteurized Milk Law; to change a manufacturing milk standard; to eliminate duplicative provisions; to harmonize provisions; to repeal the original sections; and to outright repeal sections 2-3902.01 and 2-3912, Revised Statutes Supplement, 1996.

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

Section 1. Section 2-3901, Revised Statutes Supplement, 1996, is amended to read:

2-3901. (1) Sections 2-3901 to 2-3911, the publications adopted by reference in subsection (2) of this section, and Part II of the Grade A Pasteurized Milk Ordinance as adopted by reference in subsection (3) of this section shall be known and may be cited as the Nebraska Pasteurized Milk Law.

(2) The Legislature hereby adopts by reference the publications titled Standards for the Fabrication of Single Service Containers and Closures for Milk and Milk Products, 1995 Revision, and Grade A Condensed and Dry Milk Products and Condensed and Dry Whey, Supplement I to the Grade A Pasteurized Milk Ordinance, 1995 Revision.

(3) The Legislature adopts by reference the procedures prescribed by the United States Department of Health and Human Services in its document entitled Fabrication of Single-Service Containers and Closures for Milk and Milk Products, as it exists on January 17, 1992, and the provisions of Part II of the Grade A Pasteurized Milk Ordinance--1978 Recommendations of the United States Public Health Service/Food and Drug Administration, 1995 Revision, the Ordinance, as follows:

(a) Provisions of the Ordinance Appendixes with which the Ordinance requires mandatory compliance are adopted as a requirement of the Ordinance.

(b) Section 9 of the Ordinance is replaced by section 2-3903.

(c) Section 15 of the Ordinance is replaced by sections 2-3904 and 2-3905.

(d) Section 16 of the Ordinance is replaced by section 2-3909.

(e) Section 17 of the Ordinance is not adopted.

(f) Footnotes 3 and 4 of Part II of the Ordinance and all provisions relating to the regulation of cottage cheese, dry curd cottage cheese, and lowfat cottage cheese are adopted; and

(g) Section 3 of the Ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) All references to issuing permits to bulk milk pickup tankers are not adopted as a part of the Nebraska Pasteurized Milk Law; and

(ii) In addition to the administrative procedures provided in Section 3 of the Ordinance, the Department of Agriculture may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Pasteurized Milk Law, as it exists on January 17, 1992, including all provisions relating to cottage cheese contained therein and Supplement I to such ordinance entitled Grade A Condensed and Dry Milk Products and Condensed and Dry Whey, but excluding those provisions of Part II of such ordinance replaced under subsection (2) of this section.

(2) Sections 9, 15, 16, and 17 of the ordinance expressly adopted by reference pursuant to subsection (1) of this section shall be replaced by sections 2-3903, 2-3904, 2-3909, and 2-3912 respectively.

(3) (4) Copies of the ordinance and the document entitled Fabrication of Single-Service Containers and Closures for Milk and Milk Products Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

Sec. 2. Section 2-3902, Reissue Revised Statutes of Nebraska, is amended to read:

2-3902. The Nebraska Pasteurized Milk Law shall, on and after July 16, 1990, be used for the regulation of: (1) The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of

all milk and milk products, other than milk and milk products regulated under the Nebraska Manufacturing Milk Act, sold for ultimate consumption within the State of Nebraska; (2) the inspection of dairy herds, dairy farms, milk plants, plants fabricating single-service articles, transfer stations, receiving stations, milk haulers, and milk distributors; and (3) the issuance, suspension, and revocation of permits.

Sec. 3. Section 2-3903, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(3) Milk and milk products produced by farmers exclusively for sale at the farm directly to customers for consumption and not for resale shall be exempt from the Nebraska Pasteurized Milk Law.

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

Sec. 4. Section 2-3910, Revised Statutes Supplement, 1996, is amended to read:

2-3910. The Director of Agriculture shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Pasteurized Milk Law. The Director of Agriculture shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health and Human Services in its documents entitled Methods of Making Sanitation Ratings of Milk Supplies, and Procedures Governing the Cooperative State Public State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers, as such documents ~~exist on June 27, 1995~~ existed on January 1, 1997, copies of which shall be kept on file in the offices of the Secretary of State, the Clerk of the Legislature, and the Director of Agriculture.

Sec. 5. Section 2-3917, Revised Statutes Supplement, 1996, is amended to read:

2-3917. All dairy plants shall run the quality tests set out in this section in a state-certified laboratory and, except as provided in subdivision (8) of this section, report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

(1) Milk shall be classified for bacterial counts as follows by the standard plate count or plate loop count. Bacterial limits of individual producer milk shall not exceed five hundred thousand per milliliter.

(2) Bacterial counts shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in subdivision (1) of this section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count, the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(3) All dairy plants shall smell all raw milk received. Milk failing to meet the odor standards of section 2-3916 shall be rejected.

(4) Laboratory examinations for somatic cells shall be conducted at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Such examinations may begin with a screening test to determine whether the sample exceeds a Wisconsin Mastitis Test result of ten millimeters or higher.

(5) If a sample exceeds the screening test results set out in subdivision (4) of this section or if no screening test is run, either of the following tests shall be used to obtain an official result:

(a) Direct microscopic somatic cell count or equivalent; or

(b) Electronic somatic cell-counting procedure.

Whenever an official result indicates a somatic cell count of more than seven hundred fifty thousand somatic cells per milliliter for cow milk or sheep milk or one million per milliliter for goat milk, the procedure set out under subdivision (6) of this section shall be applied.

(6) Somatic cell counts of individual producer milk for cow milk and sheep milk shall not exceed seven hundred fifty thousand per milliliter and for goat milk shall not exceed one million per milliliter. Whenever any two out of four consecutive somatic cell counts exceed seven hundred fifty thousand per milliliter the limit, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in this subdivision. A producer sample shall be taken between three and twenty-one days after the second excessive count. Whenever three out of five consecutive samples are in excess of seven hundred fifty thousand per milliliter the limit, the producer's milk shall be rejected until subsequent testing indicates a somatic cell count equal to or less than seven hundred fifty thousand cells per milliliter the applicable limit of somatic cells per milliliter. For three weeks after the acceptable count is obtained, the producer's milk shall be tested at least once a week but no more than twice a week. Testing at this frequency shall continue until three consecutive acceptable counts are obtained, after which testing may return to the routine frequency prescribed in subdivision (4) of this section.

(7) Milk from cows, goats, or sheep infected with mastitis, milk containing drug residues, or milk containing pesticides or other chemical residues in excess of the established limits shall not be sold or offered for sale for human food. Cows, goats, or sheep that secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply. Milk from cows, goats, or sheep treated with drugs shall be excluded for such period of time as is necessary to have the milk free from drug residues.

(8) Each producer's milk shall be tested by the plant at least four times each six months at irregular intervals at times designated by the director for drug residues. Load samples may be tested in lieu of individual producer samples if all the producer samples are available to identify the responsible producer in case of positive results. Milk found to contain drug residues shall be handled as prescribed in subdivision (7) of this section. State-certified laboratories shall immediately notify the department of drug residues. When a producer's milk shows positive results, such producer shall immediately be cut off from all markets. The producer shall not be reinstated until subsequent testing shows the producer's milk to be free of drug residues. Dairy plants shall not use any milk or dairy products known to contain unacceptable levels of drug residues for the manufacture of milk or dairy products for human consumption.

(9)(a) The industry shall test all bulk milk pickup tankers for beta lactam drug residues. Additionally, other drug residues shall be screened for by employing a random sampling program on bulk milk pickup tankers. The random sampling program shall represent and include, in any consecutive six months, at least four samples collected in at least four separate months. Samples collected under the random sampling program shall be analyzed as specified by the federal Food and Drug Administration. All loads of milk testing positive for drug residue shall be immediately reported to the department. Bulk loads of milk shall be sampled prior to commingling and tested prior to processing of the milk. Whenever a load of milk shows a positive test, individual producer samples shall be individually tested to determine the farm of origin. The samples shall be tested as directed by the department. Accurate records of the results of the milk quality and drug residue test for each producer shall be kept on file at the plant for a period of not less than twelve months. The records shall be available for examination by the department.

(b) When a load of milk is positive for drug residue, the department shall immediately suspend the permit of the responsible producer for a minimum of two days or the equivalent penalty as determined by the director. On the second occurrence of violative drug residue in a twelve-month period, the producer's permit shall be suspended for a minimum of four days or equivalent penalties as determined by the director. For a third occurrence of violative drug residue in a twelve-month period, the suspension of the permit shall be the same as the second occurrence and the director shall initiate administrative procedures pursuant to revocation of the producer's permit.

(c) When a load of milk is negative and there is a producer whose milk is positive on the load, the director shall be advised and the producer's

permit suspended until such time as subsequent testing reveals an acceptable result. The director may waive the two-day or four-day penalty when the load of milk is negative, but it shall count on the producer record as either a first, second, or third occurrence, and the reinstatement procedure shall be as described in subdivision (d) of this subdivision.

(d) The permit may be restored to a temporary permit status after the penalty when a sample is taken from the producer's milk and the farm bulk tank is no longer positive for drug residues. In no event shall the permit of the violative producer be reinstated by the director until the responsible producer and a licensed veterinarian have signed a quality assurance certificate for display in the milkhouse or milkroom which states that the Milk and Dairy Beef Residue Prevention Protocol is in place and is being implemented for the dairy herd from which the adulterated milk containing the violative drug residue was shipped.

(e) The department shall monitor industry surveillance activities by making unannounced onsite inspections to collect samples from bulk milk pickup tankers and to review industry records of the random sampling program.

(f) The department shall perform routine sampling and testing for drug residues.

(10) Each producer's milk shall be tested by the department at least once a year for residues of pesticides or other harmful chemicals. Milk found to contain excessive residues of such substances shall be handled as prescribed in subdivision (7) of this section.

Sec. 6. Original sections 2-3902 and 2-3903, Reissue Revised Statutes of Nebraska, and sections 2-3901, 2-3910, and 2-3917, Revised Statutes Supplement, 1996, are repealed.

Sec. 7. The following sections are outright repealed: Sections 2-3902.01 and 2-3912, Revised Statutes Supplement, 1996.