

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5379

Chapter 212, Laws of 1993

53rd Legislature
1993 Regular Session

DAIRIES AND MILK PRODUCERS--REGULATION OF--REVISIONS

EFFECTIVE DATE: 7/25/93

Passed by the Senate April 17, 1993
YEAS 40 NAYS 0

JOEL PRITCHARD
President of the Senate

Passed by the House April 5, 1993
YEAS 97 NAYS 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Approved May 6, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5379** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN
Secretary

FILED

May 6, 1993 - 1:30 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5379

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Agriculture (originally sponsored by Senators M. Rasmussen, Barr, Loveland, Hochstatter and Winsley; by request of Department of Agriculture)

Read first time 02/19/93.

1 AN ACT Relating to milk and milk products; amending RCW 69.07.040
2 and 15.36.595; reenacting and amending RCW 15.36.115; and repealing RCW
3 15.36.580.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 15.36.115 and 1989 c 354 s 18 and 1989 c 175 s 48 are
6 each reenacted and amended to read as follows:

7 (1) If the results of an antibiotic, pesticide, or other drug
8 residue test under RCW 15.36.110 are above the actionable level
9 established in the pasteurized milk ordinance published by the United
10 States public health service and determined using procedures set forth
11 in the current edition of "Standard Methods for the Examination of
12 Dairy Products," a producer holding a grade A permit is subject to a
13 civil penalty. The penalty shall be in an amount equal to one-half the
14 value of the sum of the volumes of milk equivalent produced under the
15 permit on the day prior to and the day of the adulteration. The value
16 of the milk shall be computed by the weighted average price for the
17 federal market order under which the milk is delivered.

18 (2) The penalty is imposed by the department giving a written
19 notice which is either personally served upon or transmitted by

1 certified mail, return receipt requested, to the person incurring the
2 penalty. The notice of the civil penalty shall be a final order of the
3 department unless, within fifteen days after the notice is received,
4 the person incurring the penalty appeals the penalty by filing a notice
5 of appeal with the department. If a notice of appeal is filed in a
6 timely manner, a hearing shall be conducted on behalf of the department
7 by the office of administrative hearings in accordance with chapters
8 34.05 and 34.12 RCW (~~and, to the extent they are not inconsistent with~~
9 ~~this subsection, the provisions of RCW 15.36.580~~). At the conclusion
10 of the hearing, the department shall determine whether the penalty
11 should be affirmed, and, if so, shall issue a final order setting forth
12 the civil penalty assessed, if any. The order may be appealed to
13 superior court in accordance with chapter 34.05 RCW. Tests performed
14 for antibiotic, pesticide, or other drug residues by a state or
15 certified industry laboratory of a milk sample drawn by a department
16 official or a licensed dairy technician shall be admitted as prima
17 facie evidence of the presence or absence of an antibiotic, pesticide,
18 or other drug residue.

19 (3) Any penalty imposed under this section is due and payable upon
20 the issuance of the final order by the department. The penalty shall
21 be deducted by the violator's marketing organization from the
22 violator's final payment for the month following the issuance of the
23 final order. The department shall promptly notify the violator's
24 marketing organization of any penalties contained in the final order.

25 (4) All penalties received or recovered from violations of this
26 section shall be remitted monthly by the violator's marketing
27 organization to the Washington state dairy products commission and
28 deposited in a revolving fund to be used solely for the purposes of
29 education and research. No appropriation is required for disbursements
30 from this fund.

31 (5) In case of a violation of the antibiotic, pesticide, or other
32 drug residue test requirements, an investigation shall be made to
33 determine the cause of the residue which shall be corrected.
34 Additional samples shall be taken as soon as possible and tested as
35 soon as feasible for antibiotic, pesticide, or other drug residue by
36 the department or a certified laboratory. After the notice has been
37 received by the producer and the results of a test of such an
38 additional sample indicate that residues are above the actionable level
39 or levels referred to in subsection (1) of this section, the producer's

1 milk may not be sold until a sample is shown to be below the actionable
2 levels established for the residues.

3 **Sec. 2.** RCW 69.07.040 and 1992 c 160 s 3 are each amended to read
4 as follows:

5 It shall be unlawful for any person to operate a food processing
6 plant or process foods in the state without first having obtained an
7 annual license from the department, which shall expire on a date set by
8 rule by the director. License fees shall be prorated where necessary
9 to accommodate staggering of expiration dates. Application for a
10 license shall be on a form prescribed by the director and accompanied
11 by the license fee. The license fee is determined by computing the
12 gross annual sales for the accounting year immediately preceding the
13 license year. If the license is for a new operator, the license fee
14 shall be based on an estimated gross annual sales for the initial
15 license period.

16	If gross annual sales are:	The license fee is:
17	\$0 to \$50,000	\$50.00
18	\$50,001 to \$500,000	\$100.00
19	\$500,001 to \$1,000,000	\$200.00
20	\$1,000,001 to \$5,000,000	\$350.00
21	\$5,000,001 to \$10,000,000	\$500.00
22	Greater than \$10,000,000	\$750.00

23 Such application shall include the full name of the applicant for the
24 license and the location of the food processing plant he or she intends
25 to operate. If such applicant is an individual, receiver, trustee,
26 firm, partnership, association or corporation, the full name of each
27 member of the firm or partnership, or names of the officers of the
28 association or corporation shall be given on the application. Such
29 application shall further state the principal business address of the
30 applicant in the state and elsewhere and the name of a person domiciled
31 in this state authorized to receive and accept service of summons of
32 legal notices of all kinds for the applicant. The application shall
33 also specify the type of food to be processed and the method or nature
34 of processing operation or preservation of that food and any other
35 necessary information. Upon the approval of the application by the
36 director and compliance with the provisions of this chapter, including

1 the applicable regulations adopted hereunder by the department, the
2 applicant shall be issued a license or renewal thereof.

3 Licenses shall be issued to cover only those products, processes,
4 and operations specified in the license application and approved for
5 licensing. Wherever a license holder wishes to engage in processing a
6 type of food product that is different than the type specified on the
7 application supporting the licensee's existing license and processing
8 that type of food product would require a major addition to or
9 modification of the licensee's processing facilities or has a high
10 potential for harm, the licensee shall submit an amendment to the
11 current license application. In such a case, the licensee may engage
12 in processing the new type of food product only after the amendment has
13 been approved by the department.

14 If upon investigation by the director, it is determined that a
15 person is processing food for retail sale and is not under permit,
16 license, or inspection by a local health authority, then that person
17 may be considered a food processor and subject to the provisions of
18 this chapter. The director may waive the licensure requirements of
19 this chapter for a person's operations at a facility if the person is
20 licensed under chapter 15.32 RCW or has a permit under chapter 15.36
21 RCW to conduct the same or a similar operation at the facility.

22 **Sec. 3.** RCW 15.36.595 and 1989 c 175 s 49 are each amended to read
23 as follows:

24 (1) The director of agriculture shall adopt rules imposing a civil
25 penalty for violations of the standards for component parts of fluid
26 dairy products which are established by RCW 15.36.030 or adopted
27 pursuant to RCW 69.04.398. The penalty shall not exceed ten thousand
28 dollars and shall be such as is necessary to achieve proper enforcement
29 of the standards. The rules shall be adopted before January 1, 1987,
30 and shall become effective on July 1, 1987.

31 (2) The penalty is imposed by the department giving a written
32 notice which is either personally served upon or transmitted by
33 certified mail, return receipt requested, to the person incurring the
34 penalty. The notice of the civil penalty shall be a final order of the
35 department unless, within fifteen days after the notice is received,
36 the person incurring the penalty appeals the penalty by filing a notice
37 of appeal with the department. If a notice of appeal is filed in a
38 timely manner, a hearing shall be conducted on behalf of the department

1 by the office of administrative hearings in accordance with chapters
2 34.05 and 34.12 RCW (~~and, to the extent they are not inconsistent with~~
3 ~~this subsection, the provisions of RCW 15.36.580~~). At the conclusion
4 of the hearing, the department shall determine whether the penalty
5 should be affirmed, reduced, or not imposed and shall issue a final
6 order setting forth the civil penalty assessed, if any. The order may
7 be appealed to superior court in accordance with chapter 34.05 RCW.
8 Tests performed for the component parts of milk products by a state
9 laboratory of a milk sample collected by a department official shall be
10 admitted as prima facie evidence of the amounts of milk components in
11 the product.

12 (3) Any penalty imposed under this section is due and payable upon
13 the issuance of the final order by the department.

14 (4) All penalties received or recovered from violations of this
15 section shall be remitted by the violator to the department and
16 deposited in the revolving fund of the Washington state dairy products
17 commission. One-half of the funds received shall be used for purposes
18 of education with the remainder one-half to be used for dairy
19 processing or marketing research, or both. No appropriation is
20 required for disbursements from this fund.

21 (5) In case of a violation of the standards for the composition of
22 milk products, an investigation shall be made to determine the cause of
23 the violation which shall be corrected. Additional samples shall be
24 taken as soon as possible and tested by the department.

25 NEW SECTION. **Sec. 4.** RCW 15.36.580 and 1989 c 354 s 26, 1987 c
26 202 s 175, 1981 c 67 s 17, & 1961 c 11 s 15.36.580 are each repealed.

Passed the Senate April 17, 1993.

Passed the House April 5, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.