

ANALYSIS OF ESB 5187

House Agriculture & Ecology Committee
11, 1999

March

- Extends the termination date of an assessment on milk processed in this state.
- Alters the milk laws by: requiring sources of milk for processing plants to be licensed or out-of-state equivalents of licenses; removing mandatory penalties for certain violations and providing enforcement options; creating new civil penalties; requiring all milking animals to meet animal health requirements; and repealing certain licensure requirements.
- Repeals the Washington Meat Inspection Act, the Washington Wholesome Poultry Products Act, and laws prohibiting imitation dairy products, regulating the sale of oleomargarine, providing for certain inspections of meat storage and sale facilities, and establishing certain standards for bread and hops.

BACKGROUND:

Fluid Milk Laws. Milk and milk products are regulated under the fluid milk laws. The following must be licensed by the Department of Agriculture (WSDA) under those laws: milk producers, milk processing plants, milk distributors, milk haulers, dairy technicians, certain milk wash stations, and persons who transport, sell, or store for sale milk or milk products. These laws provide for inspections of dairy farms and milk processing plants by the WSDA, taking samples, and taking actions regarding violations of the milk laws or implementing rules. Among the actions that may be taken by the Director of Agriculture are the suspension, revocation or degrading of a license, and bringing actions to enjoin violations. The director may impose a civil penalty for a violation of certain chemical residue tests or standards for component parts of fluid dairy products. Penalties are also established for performing certain tasks without a dairy technician's license, for possessing or using imitation inspection seals, and for tampering with samples taken by an inspector.

An assessment not to exceed 0.54 cents per hundredweight is levied on all milk processed in this state until June 30, 2000. Monies derived from the assessment are to be used to provide

inspection services for the dairy industry. An advisory committee is created by the milk laws to provide advice to the director regarding the dairy inspection program.

Food Processing: The Washington Food Processing Act requires that food processing plants be licensed, provides exemptions from this requirement, and authorizes the WSDA to inspect such plants.

Other Food Laws. Chapter 15.38 RCW prohibits the manufacture, sell, exchange, transport or possessing for intrastate commerce of "filled dairy products." These are milk products to which a fat or oil other than milk fat has been added creating an imitation or semblance of a dairy product, other than certain chocolate, oleomargarine, cheese, cream sauce or physician ordered products.

Chapters 15.40 and 15.41 RCW prohibit the labeling, sale, or advertisement of oleomargarine using dairy terms or words or designs commonly associated with dairying or dairy products, except as necessary to satisfy labeling requirements of other laws.

Chapter 16.48 RCW grants the WSDA the right to enter meat shops, restaurants, refrigerated locker plants, and other places where meat is commercially stored or sold to inspect carcasses and records.

Chapter 16.49A, the Washington Meat Inspection Act, requires the WSDA's inspection of meat food animals and slaughtering or packing facilities or similar facilities, inspection of meat carcasses, and inspection and labeling or marking of meat food products, authorizes the adoption of rules regulating storage and sanitary conditions at such facilities, and prohibits commerce in misbranded or adulterated meat products.

Chapter 16.74 RCW, the Washington Wholesome Poultry Products Act requires the licensing of poultry slaughtering or processing plants, authorizes the WSDA's inspections, authorizes the adoption of rules setting sanitation requirements for slaughtering facilities, rules for the handling and storage of poultry products, and rules requiring the registration of persons engaged in commerce in such products, and prohibits commerce in misbranded or adulterated poultry products.

Chapter 69.07 RCW, the Washington Food Processing Act, requires that food processing plants be licensed, provides exemptions from this requirement, and authorizes the WSDA to inspect such plants.

Chapter 19.92 RCW prescribes the weights by which loaves of bread may be sold; prescribes the size of the pans to be used in baking loaves of bread, but allows variations from those sizes; and establishes the weight of a standard bale of hops and bailing cloth and tare requirements regarding hop bales.

SUMMARY:

Assessment. An assessment of not more than 0.54 cents/hundredweight levied under the milk laws on all milk processed in this state no longer expires on June 30, 2000. It now expires on June 30, 2005. A processing plant for which the monthly assessment would be less than \$20

is exempted from the assessment for that month.

Unlawful Acts. Except as authorized by law for the receipt of milk from out-of-state, it is unlawful for a milk processing plant to accept milk from a person not licensed as a producer or milk processor. The penalties for unlawfully performing activities for which a dairy technician's license is required and for tampering with a seal or sample are no longer specified.

Enforcement. The director is no longer required to degrade or summarily suspend a license for certain violations by a producer or processing plant. The director is now authorized to degrade or summarily suspend the license or assess a civil penalty. This authority to levy a civil penalty rather than degrade or suspend a license may be used only as consistent with the federal pasteurized milk ordinance, as that federal ordinance has also been adopted by the WSDA by rule. The director may summarily suspend the license of a producer (not just, under current law, a processing plant) for conditions that pose an immediate danger to the public or for preventing the director during an on-site inspection from determining that such a condition exists. If a license of a producer or processing plant is so suspended, shipping operations must cease. Statutory standards are created for setting the size of a civil penalty for violations concerning inspections of dairy farms and for repeated violations of certain biological and temperature tests of milk. They are continued for violations of certain chemical residue tests. With regard to violations other than these and other than violations of standards for component parts of fluid dairy products, a civil penalty of not more than \$1000/violation/day is authorized. All monies collected from civil fines, not just those from fines for certain violations, are deposited in the revolving fund of the Dairy Products Commission. The use of these monies is no longer dedicated to certain activities of the commission. The director may now bring an action to enjoin a violation in Thurston County Superior Court, not just in the superior court of the defendant's county.

Licensing. Milk distributors and those who transport (other than haulers), sell or store milk or milk products for sale are no longer required to be licensed under the milk laws. It is clarified that, if a milk transport vehicle is found to be in violation of requirements under this program, the violation affects the endorsement on the hauler's license for that vehicle only, not the haulers entire license. A hearing is not expressly required before a license may be revoked for serious or repeated violations after a suspension or degrade. Expiration dates are expressly given for certain licenses.

Milk Plants. The department may issue sanitary certificates to milk processing plants for a fee of \$50/certificate. Fees collected are to be deposited in the Agricultural Local Fund. The director is granted express authority to gain access to a milk processing plant.

Tests. Test results for a sample taken need be given to the person whose product was sampled within ten days only if the results indicate a violation. Test results of an official or officially designated lab are prima facie evidence of any sampling violation, not just of sampling for component standards.

Animal Health. All milking cows, goats, and other mammals must meet animal health requirements set by the State Veterinarian under the animal health laws. Restrictions on the sale of colostrum milk expressly apply only to such sales for human consumption. Rules setting standards for hyper-immunization regarding milk from diseased animals are no longer expressly

required.

Advisory Committee. The membership of the Dairy Inspection Program Advisory Committee is altered and the purpose of the committee is now to advise the director regarding the administration of the dairy inspection program and policy issues related to the milk laws. The members serve without compensation and are to elect a chair.

Milk Law Repealers. Repealed are provisions of the milk laws: regulating imitation dairy products; expressly prohibiting the sale of milk other than grade "A" to consumers or to sell ungraded milk or an ungraded milk product; expressly giving the director authority to take samples of milk products at stores, cafes and similar establishments and prescribing the actions that must be taken in response to a phosphatase test violation; requiring that the transfer of milk from one container to another to take place within a milk or bottling room, and that milk be sold to consumers only in single service containers or certain sizes; establishing a temperature standard to be maintained for milk and sanitary requirements for establishments that serve consumers; regarding containers bearing registered brands; regarding the health of personnel handling milk and disease control in the delivery of milk and collection of milk containers; prescribing specific procedures to be used for levying penalties for violations of certain chemical residue tests or of component part standards, and requiring notification of the violator's marketing organization; specifying the distribution of monies collected from prosecutions under the milk laws; and referring to certain duties transferred to the Department of Health.

Other Repealers. Repealed are: Chapter 15.38 RCW, prohibiting imitation dairy products; Chapters 15.40 and 15.41 RCW, regulating the sale of oleomargarine; Chapter 16.48 RCW, authorizing WSDA inspections of meat storage and sale facilities; Chapter 16.49A, the Washington Meat Inspection Act; Chapter 16.74 RCW, the Washington Wholesome Poultry Products Act; and Chapter 19.92 RCW, regarding bread and hops.

Fiscal Note: Available.