

# SENATE BILL REPORT

## SB 5139

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As Passed Senate, February 6, 2013

**Title:** An act relating to milk and milk products.

**Brief Description:** Concerning milk and milk products.

**Sponsors:** Senators Hatfield, Schoesler, Hobbs, Honeyford and Shin.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 1/28/13, 1/29/13 [DP].

Passed Senate: 2/06/13, 49-0.

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** Do pass.

Signed by Senators Hatfield, Chair; Eide, Hobbs, Honeyford, Ranking Member; Schoesler and Shin.

**Staff:** Diane Smith (786-7410)

**Background:** The Washington State Department of Agriculture (WSDA) protects the public from milk and milk products that are unsafe; produced under unsanitary conditions; do not meet bacterial standards under the pasteurized milk ordinance (PMO) published by the United States Public Health Service, Food and Drug Administration (FDA); or below federal and state quality standards; and by requiring licensing of all aspects of the dairy production and processing industry.

The PMO is the basic standard used in the voluntary Cooperative State-FDA Program for the Certification of Interstate Milk Shipments. Among other things, the PMO establishes the standards for grade A milk processing plants, grade A pasteurized milk, and grade A raw milk as these terms are defined in Washington. It is the standard for interstate milk shipments.

Bacteriological standards for milk intended to be consumed in the raw state require bacterial plate counts not exceeding 20,000 per milliliter and coliform plate counts not exceeding ten per milliliter. For milk intended for pasteurization, the bacterial plate count standard is 80,000 per milliliter. Temperature standards for both raw and pasteurized milk are that it be

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cooled to, and be maintained at, no more than 40 degrees within two hours of milking, so long as the blended temperature between the first and subsequent milkings does not exceed 50 degrees.

In discharging its duty to protect the public and in exercising the police powers of the state, the WSDA samples raw milk and raw milk destined for pasteurization. Sampling must occur at least four times in any consecutive six-month period. If any of the standards are not met in two of the last four consecutive tests, the WSDA must send notice to the person concerned. If another sampling taken at least three days later shows there is another violation, so that three of the last five consecutive samples exceed the limit of the same standard, then the WSDA may degrade the milk, suspend the producer's or processing plant's license, or assess civil penalties. Sampling of milk in processing plants must occur in at least four separate months.

Degrading milk means changing its grade from grade A to grade C for a period not to exceed 30 days. Grade C milk may be sold for cheese-making but not sold as fluid milk or grade A milk products. When a license is revoked, the milk may not be sold at all. A producer or processing plant may apply for the re-grading of its products or the reinstatement of its license. The WSDA must, then, take further samples of not more than two samples per week to confirm that all violated items are corrected. If so, the WSDA must reinstate the grade or license.

The maximum civil penalty for standards violations is \$1,000 per day per violation. The WSDA must adopt rules to ensure that the penalties are equitably based on the volume of milk or milk product that fails to meet the standards. When the standards for antibiotics, pesticides, or other drug residues are violated, the producer is subject to a civil penalty of one half the value of the sum of the volumes of milk produced on the day before and the day of the adulteration.

The authority to assess civil penalties for noncompliance with grade requirements and for violation of standards for raw milk and for raw milk destined for pasteurization must be consistent with the 1995 PMO. The WSDA must adopt rules for imposing a civil penalty of not more than \$10,000 for a violation of the standards for the components of fluid milk, investigate the causes, and require correction. The WSDA has adopted the current 2009 PMO.

**Summary of Bill:** The sampling requirements are clarified by explicitly differentiating sampling milk from producers from sampling milk from processors. The standards against which these samples are compared are clarified to be bacteriological and cooling temperature standards. The requirement to take at least four samples in any consecutive six-month period is retained, but one failed sample triggers notice to the producer or processor. The three-day limitation on the timing of taking the second sample is deleted. Proceedings to degrade, suspend the license, or assess the civil penalty may begin whenever the standard is again violated.

Rulemaking is permissive for the creation of a matrix for assessment of civil penalties. The measures of civil penalties by volume of milk handled are deleted. The measure of civil penalty for antibiotics, pesticides, or other drug residue being above actionable levels is

deleted. The director's authority to impose civil penalties for violation of the standards for component parts of fluid dairy products is clarified.

The civil penalty sections referring to the 1995 PMO and the limitation of \$10,000 on the penalty for the violation of the standards for the components of fluid milk and the specifics of its administration are repealed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is important to ensure milk and milk products continue to meet high standards for cross-border shipments. It is a fine example of industry and government working together to ensure our milk is acceptable for export. The process of degrading milk from A to C is very cumbersome and ultimately untimely. This bill allows the department to take timely action to protect the milk supply.

**Persons Testifying:** PRO: Mark Streuli, Kirk Robinson, WSDA; Dan Coyne, Northwest Dairy Assn., Darigold.