

2 **ESSB 5379** - H COMM AMD **ADOPTED 4-5-1993**

3 By Committee on Agriculture & Rural Development

4

5 Strike everything after the enacting clause and insert the
6 following:

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

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

20 (2) The penalty is imposed by the department giving a written
21 notice which is either personally served upon or transmitted by
22 certified mail, return receipt requested, to the person incurring the
23 penalty. The notice of the civil penalty shall be a final order of the
24 department unless, within fifteen days after the notice is received,
25 the person incurring the penalty appeals the penalty by filing a notice
26 of appeal with the department. If a notice of appeal is filed in a
27 timely manner, a hearing shall be conducted on behalf of the department
28 by the office of administrative hearings in accordance with chapters
29 34.05 and 34.12 RCW (~~and, to the extent they are not inconsistent with~~
30 ~~this subsection, the provisions of RCW 15.36.580~~). At the conclusion
31 of the hearing, the department shall determine whether the penalty
32 should be affirmed, and, if so, shall issue a final order setting forth
33 the civil penalty assessed, if any. The order may be appealed to
34 superior court in accordance with chapter 34.05 RCW. Tests performed
35 for antibiotic, pesticide, or other drug residues by a state or
36 certified industry laboratory of a milk sample drawn by a department

1 official or a licensed dairy technician shall be admitted as prima
2 facie evidence of the presence or absence of an antibiotic, pesticide,
3 or other drug residue.

4 (3) Any penalty imposed under this section is due and payable upon
5 the issuance of the final order by the department. The penalty shall
6 be deducted by the violator's marketing organization from the
7 violator's final payment for the month following the issuance of the
8 final order. The department shall promptly notify the violator's
9 marketing organization of any penalties contained in the final order.

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

16 (5) In case of a violation of the antibiotic, pesticide, or other
17 drug residue test requirements, an investigation shall be made to
18 determine the cause of the residue which shall be corrected.
19 Additional samples shall be taken as soon as possible and tested as
20 soon as feasible for antibiotic, pesticide, or other drug residue by
21 the department or a certified laboratory. After the notice has been
22 received by the producer and the results of a test of such an
23 additional sample indicate that residues are above the actionable level
24 or levels referred to in subsection (1) of this section, the producer's
25 milk may not be sold until a sample is shown to be below the actionable
26 levels established for the residues.

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

29 It shall be unlawful for any person to operate a food processing
30 plant or process foods in the state without first having obtained an
31 annual license from the department, which shall expire on a date set by
32 rule by the director. License fees shall be prorated where necessary
33 to accommodate staggering of expiration dates. Application for a
34 license shall be on a form prescribed by the director and accompanied
35 by the license fee. The license fee is determined by computing the
36 gross annual sales for the accounting year immediately preceding the
37 license year. If the license is for a new operator, the license fee

1 shall be based on an estimated gross annual sales for the initial
2 license period.

3	If gross annual sales are:	The license fee is:
4	\$0 to \$50,000	\$50.00
5	\$50,001 to \$500,000	\$100.00
6	\$500,001 to \$1,000,000	\$200.00
7	\$1,000,001 to \$5,000,000	\$350.00
8	\$5,000,001 to \$10,000,000	\$500.00
9	Greater than \$10,000,000	\$750.00

10 Such application shall include the full name of the applicant for the
11 license and the location of the food processing plant he or she intends
12 to operate. If such applicant is an individual, receiver, trustee,
13 firm, partnership, association or corporation, the full name of each
14 member of the firm or partnership, or names of the officers of the
15 association or corporation shall be given on the application. Such
16 application shall further state the principal business address of the
17 applicant in the state and elsewhere and the name of a person domiciled
18 in this state authorized to receive and accept service of summons of
19 legal notices of all kinds for the applicant. The application shall
20 also specify the type of food to be processed and the method or nature
21 of processing operation or preservation of that food and any other
22 necessary information. Upon the approval of the application by the
23 director and compliance with the provisions of this chapter, including
24 the applicable regulations adopted hereunder by the department, the
25 applicant shall be issued a license or renewal thereof.

26 Licenses shall be issued to cover only those products, processes,
27 and operations specified in the license application and approved for
28 licensing. Wherever a license holder wishes to engage in processing a
29 type of food product that is different than the type specified on the
30 application supporting the licensee's existing license and processing
31 that type of food product would require a major addition to or
32 modification of the licensee's processing facilities or has a high
33 potential for harm, the licensee shall submit an amendment to the
34 current license application. In such a case, the licensee may engage
35 in processing the new type of food product only after the amendment has
36 been approved by the department.

37 If upon investigation by the director, it is determined that a
38 person is processing food for retail sale and is not under permit,

1 license, or inspection by a local health authority, then that person
2 may be considered a food processor and subject to the provisions of
3 this chapter. The director may waive the licensure requirements of
4 this chapter for a person's operations at a facility if the person is
5 licensed under chapter 15.32 RCW or has a permit under chapter 15.36
6 RCW to conduct the same or a similar operation at the facility.

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

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

16 (2) The penalty is imposed by the department giving a written
17 notice which is either personally served upon or transmitted by
18 certified mail, return receipt requested, to the person incurring the
19 penalty. The notice of the civil penalty shall be a final order of the
20 department unless, within fifteen days after the notice is received,
21 the person incurring the penalty appeals the penalty by filing a notice
22 of appeal with the department. If a notice of appeal is filed in a
23 timely manner, a hearing shall be conducted on behalf of the department
24 by the office of administrative hearings in accordance with chapters
25 34.05 and 34.12 RCW (~~and, to the extent they are not inconsistent with~~
26 ~~this subsection, the provisions of RCW 15.36.580)). At the conclusion~~
27 of the hearing, the department shall determine whether the penalty
28 should be affirmed, reduced, or not imposed and shall issue a final
29 order setting forth the civil penalty assessed, if any. The order may
30 be appealed to superior court in accordance with chapter 34.05 RCW.
31 Tests performed for the component parts of milk products by a state
32 laboratory of a milk sample collected by a department official shall be
33 admitted as prima facie evidence of the amounts of milk components in
34 the product.

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

37 (4) All penalties received or recovered from violations of this
38 section shall be remitted by the violator to the department and

1 deposited in the revolving fund of the Washington state dairy products
2 commission. One-half of the funds received shall be used for purposes
3 of education with the remainder one-half to be used for dairy
4 processing or marketing research, or both. No appropriation is
5 required for disbursements from this fund.

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

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

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