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ENGROSSED SUBSTITUTE SENATE BILL 5379

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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 reenacting and amending RCW 15.36.115.

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

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

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

17 (2) The penalty is imposed by the department giving a written  
18 notice which is either personally served upon or transmitted by  
19 certified mail, return receipt requested, to the person incurring the

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

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

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

30 (5) In case of a violation of the antibiotic, pesticide, or other  
31 drug residue test requirements, an investigation shall be made to  
32 determine the cause of the residue which shall be corrected.  
33 Additional samples shall be taken as soon as possible and tested as  
34 soon as feasible for antibiotic, pesticide, or other drug residue by  
35 the department or a certified laboratory. After the notice has been  
36 received by the producer and the results of a test of such an  
37 additional sample indicate that residues are above the actionable level  
38 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. An entity licensed under chapter 15.32 or 15.36 RCW is  
19 not required to obtain a license under this chapter.

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