

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 67

Introduced by Schilz, 47.

Read first time January 10, 2013

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-3965, 2-3966,
2 2-3971, 2-3975, 2-3976, 2-3977, 2-3981, 2-3982, 2-3986,
3 2-3988, and 2-3989, Reissue Revised Statutes of Nebraska;
4 to update and change provisions of the Nebraska Milk Act;
5 to repeal the original sections; and to declare an
6 emergency.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-3965, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-3965 (1) Sections 2-3965 to 2-3992 and section 9 of
4 this act and the publications adopted by reference in subsections (2)
5 and (3) of this section shall be known and may be cited as the
6 Nebraska Milk Act.

7 (2) The Legislature adopts by reference the following
8 official documents of the National Conference on Interstate Milk
9 Shipments as published by the United States Department of Health and
10 Human Services, United States Public Health Service/Food and Drug
11 Administration:

12 (a) Grade A Pasteurized Milk Ordinance, ~~2005—2011~~
13 Revision, as delineated in subsection (3) of this section;

14 (b) Methods of Making Sanitation Ratings of Milk
15 Supplies, ~~2005—2011~~ Revision;

16 (c) Procedures Governing the Cooperative State-Public
17 Health Service/Food and Drug Administration Program of the National
18 Conference on Interstate Milk Shipments, ~~2005—2011~~ Revision; and

19 (d) Evaluation of Milk Laboratories, ~~2005—2011~~ Revision.

20 (3) All provisions of the Grade A Pasteurized Milk
21 Ordinance, ~~2005—2011~~ Revision, including footnotes relating to
22 requirements for cottage cheese, and the appendixes with which the
23 ordinance requires mandatory compliance are adopted with the
24 following exceptions:

25 (a) Section 9 of the ordinance is replaced by section

1 2-3969;

2 (b) Section 15 of the ordinance is replaced by section
3 2-3970;

4 (c) Section 16 of the ordinance is replaced by section
5 2-3974;

6 (d) Section 17 of the ordinance is not adopted; ~~and~~

7 (e) Section 3 of the ordinance, Administrative
8 Procedures, Issuance of Permits, is adopted with the following
9 modifications:

10 (i) The department may suspend a permit for a definite
11 period of time or place the holder of a permit on probation upon
12 evidence of violation by the holder of any of the provisions of the
13 Nebraska Milk Act; and

14 (ii) Decisions of the department may be appealed and such
15 appeals shall be in accordance with the Administrative Procedure Act;
16 and -

17 (f) Section 1 of the ordinance, Definitions, is adopted
18 except for paragraph W.

19 (4) Copies of the Ordinance, the Appendixes, and the
20 publications, adopted by reference, shall be filed in the offices of
21 the Secretary of State, Clerk of the Legislature, and Department of
22 Agriculture.

23 Sec. 2. Section 2-3966, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 2-3966 For purposes of the Nebraska Milk Act, unless the

1 context otherwise requires:

2 ~~(1) 3-A sanitary standards means the standards for dairy~~
3 ~~equipment formulated by the 3-A sanitary standards committees~~
4 ~~representing the International Association of Milk, Food and~~
5 ~~Environmental Sanitarians, the United States Department of Health and~~
6 ~~Human Services, and the Dairy Industry Committee and published by the~~
7 ~~International Association of Milk, Food and Environmental Sanitarians~~
8 ~~in effect on July 1, 2001;~~

9 (1) 3-A Sanitary Standards means the standards for dairy
10 equipment promulgated jointly by the Sanitary Standards Subcommittee
11 of the Dairy Industry Committee, the Committee on Sanitary Procedure
12 of the International Association for Food Protection and the Milk
13 Safety Team, Food and Drug Administration, Public Health Service,
14 Center for Food Safety and Applied Nutrition, Department of Health
15 and Human Services in effect on January 1, 2013;

16 (2) Acceptable milk means milk that qualifies under
17 sections 2-3979 to 2-3982 as to sight and odor and that is classified
18 acceptable for somatic cells, bacterial content, drug residues, and
19 sediment content;

20 (3) Components of milk means whey, whey and milk protein
21 concentrate, whey cream, cream, butter, skim milk, condensed milk,
22 ultra-filtered milk, milk powder, dairy blends that are at least
23 fifty-one percent dairy components, and any similar milk by-product;

24 (4) C-I-P or cleaned-in-place means the procedure by
25 which sanitary pipelines or pieces of dairy equipment are

1 mechanically cleaned in place by circulation;

2 (5) Dairy products means products allowed to be made from
3 milk for manufacturing purposes and not required to be of Grade A
4 quality;

5 (6) Department means the Department of Agriculture;

6 (7) Director means the Director of Agriculture or his or
7 her duly authorized agent or designee;

8 (8) Field representative means an individual qualified
9 and trained in the sanitary methods of production and handling of
10 milk as set forth in the Nebraska Milk Act and who is generally
11 employed by a processing or manufacturing milk plant or cooperative
12 for the purpose of quality control work;

13 (9) First purchaser means a person who purchases raw milk
14 directly from the farm for processing or for resale to a processor,
15 who purchases milk products or components of milk for processing or
16 resale to a processor, or who utilizes milk from the first
17 purchaser's own farm for the manufacturing of milk products or dairy
18 products;

19 ~~(9)~~—(10) Milk for manufacturing purposes means milk
20 produced for processing and manufacturing into products not required
21 by law to be of Grade A quality;

22 (11) Milk distributor means a person who distributes
23 milk, fluid milk, milk products, or dairy products whether or not the
24 milk is shipped within or into the state. The term does not include a
25 milk plant, a bulk milk hauler/sampler, or a milk producer, as such

1 terms are defined in the Grade A Pasteurized Milk Ordinance, or a
2 food establishment, as defined in the Nebraska Pure Food Act;

3 ~~(10)~~ (12) Probational milk means milk classified
4 undergrade for somatic cells, bacterial content, or sediment content
5 that may be accepted by plants for specific time periods; and

6 ~~(11)~~ (13) Reject milk means milk that does not qualify
7 under sections 2-3979 to 2-3982.

8 Sec. 3. Section 2-3971, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 2-3971 ~~(1)~~ Until July 31, 2008, as a condition precedent
11 to the issuance of a permit issued pursuant to the Nebraska Milk Act,
12 on or before August 1 of each year, the following described annual
13 permit fees shall be paid to the department:

14	Milk Plant	\$100.00
15	Receiving Station	100.00
16	Plant Fabricating Single Service Articles ..	100.00
17	Milk Distributor	75.00
18	Transfer Station	50.00
19	Milk Tank Truck Cleaning Facility	50.00
20	Milk Transportation Company	25.00
21	Milk Hauler	25.00
22	Milk Producer	No Fee
23	Milk Tank Truck	No Fee

24 ~~(2)~~ If the applicant is an individual, the application
25 for a permit shall include the applicant's social security number.

1 ~~(3) Until September 30, 2007, all raw milk produced on~~
2 ~~farms or pasteurized in plants holding permits issued under the act~~
3 ~~shall be subject to the payment of inspection fees as prescribed in~~
4 ~~subsections (4) through (7) of this section. All fees shall be paid~~
5 ~~on or before the fifteenth of the month for milk produced or~~
6 ~~processed during the preceding month. Inspection fees for milk~~
7 ~~pasteurized outside of Nebraska shall be paid by the person shipping~~
8 ~~such raw milk outside the state. Inspection fees for milk pasteurized~~
9 ~~within Nebraska shall be paid by the plant pasteurizing such raw~~
10 ~~milk.~~

11 ~~(4) The inspection fee on raw milk produced on a Grade A~~
12 ~~farm holding a permit issued under the act and pasteurized at a Grade~~
13 ~~A plant holding a permit issued under such law shall be three cents~~
14 ~~per hundredweight of raw milk pasteurized.~~

15 ~~(5) The inspection fee on raw milk produced on a Grade A~~
16 ~~farm holding a permit issued under the act and pasteurized at a~~
17 ~~manufacturing milk plant shall be two and one half cents per~~
18 ~~hundredweight of raw milk pasteurized in Nebraska, or per~~
19 ~~hundredweight of raw milk shipped from Nebraska, as appropriate.~~

20 ~~(6) The inspection fee on raw milk produced on a Grade A~~
21 ~~farm holding a permit issued under the act and pasteurized at a plant~~
22 ~~located outside of Nebraska shall be two and one half cents per~~
23 ~~hundredweight of raw milk shipped from Nebraska.~~

24 ~~(7) The inspection fee on raw milk produced on a Grade A~~
25 ~~farm not holding a permit issued under the act and pasteurized at a~~

1 ~~Grade A plant holding a permit issued under such law shall be three-~~
2 ~~fourths of one cent per hundredweight of raw milk pasteurized.~~

3 ~~(8)(a) Beginning August 1, 2008, as (1)(a) As a condition~~
4 precedent to the issuance of a permit pursuant to the Nebraska Milk
5 Act, the annual permit fees shall be paid to the department on or
6 before August 1 of each year as follows:

7 (i) Milk ~~Plant~~ plant processing 100,000 or less pounds
8 per month...\$100.00;

9 (ii) Milk ~~Plant~~ plant processing 100,001 to 2,000,000
10 pounds per month...\$500.00;

11 (iii) Milk ~~Plant~~ plant processing more than 2,000,000
12 pounds per month...\$1,000.00;

13 (iv) Receiving ~~Station~~ station.....
14 \$200.00;

15 (v) Plant ~~Fabricating Single Service Articles~~ fabricating
16 single-service articles..\$300.00;

17 (vi) Milk ~~Distributor~~
18 distributor.....\$150.00;

19 (vii) Transfer ~~Station~~ station.....
20 \$100.00;

21 (viii) Milk ~~Tank Truck Cleaning Facility~~ tank truck
22 cleaning facility.....\$100.00;

23 (ix) Bulk Milk ~~Hauler/Sampler~~ milk hauler/
24 sampler.....\$25.00;

25 (x) Field Representative

1 representative.....\$25.00; and
 2 (xi) Grade A Milk Producer
 3 producer.....No Fee; and -
 4 (xii) Manufacturing milk
 5 producer.....No Fee.

6 (b) ~~Beginning August 1, 2008, and on~~ On or before each
 7 August 1 thereafter a Milk Transportation Company shall pay twenty-
 8 five dollars for each milk tank truck in service on July 1 of the
 9 current year, but in no case shall the fee be less than one hundred
 10 dollars.

11 ~~(9)(a) Beginning October 1, 2007, all~~ (2)(a) All milk or
 12 components of milk produced or processed in Nebraska and milk or
 13 components of milk shipped in for processing shall be subject to the
 14 payment of inspection fees as provided in this subsection.

15 (b) There shall be three categories of inspection fees as
 16 follows:

17 (i) The inspection fee for raw milk purchased directly
 18 off the farm by first purchasers shall have a maximum inspection fee
 19 of two and five-tenths cents per hundredweight for raw milk and shall
 20 be paid by first purchasers;

21 (ii) The inspection fee for milk processed by a milk
 22 plant shall be seventy-five percent of the fee paid by first
 23 purchasers and shall be paid by the milk plant; and

24 (iii) The inspection fee for components of milk processed
 25 shall be fifty percent of the fee paid by first purchasers and shall

1 be paid by the milk plant.

2 (c) All fees shall be paid on or before the ~~fifteenth~~
3 last day of the month for milk or components of milk produced or
4 processed during the preceding month. Any unpaid fee shall be
5 increased one and one-half percent each month beginning with the day
6 following the date the fee was due. Any remaining amount due,
7 including any unpaid charges previously made pursuant to this
8 section, shall be increased at the same rate on the corresponding day
9 of each succeeding month until paid. The purpose of increasing the
10 fees is to cover the administrative costs associated with collecting
11 fees and all money collected as increased fees shall be remitted to
12 the State Treasurer for credit to the Pure Milk Cash Fund.

13 (d) The director may raise or lower the inspection fees
14 each year, but the fees shall not exceed the maximum fees set out in
15 subdivision (b) of this subsection. The director shall determine the
16 fees based on the estimated annual revenue and fiscal year-end fund
17 balance determined as follows:

18 (i) The estimated annual revenue shall not be greater
19 than one hundred seven percent of the program cash fund
20 appropriations allocated for the Nebraska Milk Act;

21 (ii) The estimated fiscal year-end cash fund balance
22 shall not be greater than seventeen percent of the program cash fund
23 appropriations allocated for the act; and

24 (iii) All fee increases or decreases shall be equally
25 distributed between categories to maintain the percentages set forth

1 in subdivision (b) of this subsection.

2 ~~(10)~~(3) If any person required to have a permit pursuant
3 to the act has been operating prior to applying for a permit, an
4 additional fee of one hundred dollars shall be paid upon application.

5 Sec. 4. Section 2-3975, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 2-3975 The director shall make and publish the results of
8 periodic surveys of milksheds to determine the degree of compliance
9 with the sanitary requirements for the production, processing,
10 handling, distribution, sampling, and hauling of milk and milk
11 products as provided in the Nebraska Milk Act. The director shall
12 have the power to adopt and promulgate reasonable rules and
13 regulations in accordance with the procedure defined in the
14 Administrative Procedure Act for the interpretation and enforcement
15 of this section. Such a survey or rating of a milkshed shall follow
16 the procedures prescribed by the United States Department of Health
17 and Human Services, United States Food and Drug Administration, in
18 its documents entitled Methods of Making Sanitation Ratings of Milk
19 Supplies, 2005—2011 Revision, and Procedures Governing the
20 Cooperative State-Public Health Service/Food and Drug Administration
21 Program for Certification of Interstate Milk Shippers, 2005—2011
22 Revision.

23 Sec. 5. Section 2-3976, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 2-3976 All fees paid to the department in accordance with

1 the Nebraska Milk Act shall be remitted to the State Treasurer for
2 credit to the Pure Milk Cash Fund, which fund is hereby created. All
3 money credited to the fund shall be appropriated to the uses of the
4 department to aid in defraying the expenses of administering the act.
5 Any money in the fund available for investment shall be invested by
6 the state investment officer pursuant to the Nebraska Capital
7 Expansion Act and the Nebraska State Funds Investment Act. ~~Any money~~
8 ~~in the Manufacturing Milk Cash Fund on September 1, 2007, shall be~~
9 ~~transferred to the Pure Milk Cash Fund on such date.~~

10 Sec. 6. Section 2-3977, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 2-3977 (1) ~~Beginning August 1, 2008, milk-Milk~~ plants or
13 any entity purchasing raw milk from producers holding a permit under
14 the Nebraska Milk Act may employ, contract with, or otherwise provide
15 for the services of a competent and qualified field representative
16 who may:

17 (a) Inform new producers about the requirements of dairy
18 farm sanitation and assist dairy producers with milk quality
19 problems;

20 (b) Collect and submit samples at the request of the
21 department; and

22 (c) Advise the department of any circumstances that could
23 be of public health significance.

24 (2) An applicant for a field representative permit shall
25 be trained in the sanitation practices for the sampling, care of

1 samples, and milk hauling requirements of the Nebraska Milk Act.
2 Prior to obtaining a field representative permit, the applicant shall
3 take and pass an examination approved by the department and shall pay
4 the permit fee set forth in section 2-3971. The permit shall expire
5 on July 31 of the year following issuance.

6 Sec. 7. Section 2-3981, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 2-3981 (1) All dairy plants using milk for manufacturing
9 purposes shall run the quality tests set out in this section in a
10 state-certified laboratory and report the results to the department
11 upon request. The test methods shall be those stated in laboratory
12 procedures.

13 (2) Milk for manufacturing purposes shall be classified
14 for bacterial content by the standard plate count or plate loop
15 count. Bacterial count limits of individual producer milk shall not
16 exceed five hundred thousand per milliliter.

17 (3) Bacterial counts for milk for manufacturing purposes
18 shall be run at least four times in six consecutive months at
19 irregular intervals at times designated by the director on
20 representative samples of each producer's milk. Whenever any two out
21 of four consecutive bacterial counts exceed five hundred thousand per
22 milliliter, the producer shall be sent a written notice by the
23 department. Such notice shall be in effect so long as two of the last
24 four consecutive samples exceed the limit of the standard set out in
25 subdivision (1) of this section. A producer sample shall be taken

1 between three and twenty-one days after the second excessive count.
2 If that sample indicates an excessive bacterial count, the producer's
3 milk shall be rejected until subsequent testing indicates a bacterial
4 count of five hundred thousand per milliliter or less.

5 (4) All standards and procedures of the Grade A
6 Pasteurized Milk Ordinance, ~~2005 Revision~~, relating to somatic cells
7 shall apply to milk for manufacturing purposes.

8 (5) The industry shall test all producer's milk and bulk
9 milk pickup tankers for drug residues in accordance with Appendix N,
10 Drug Residue Testing and Farm Surveillance, of the Grade A
11 Pasteurized Milk Ordinance, ~~2005 Revision~~.

12 Sec. 8. Section 2-3982, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 2-3982 (1) Milk for manufacturing purposes shall be
15 classified for sediment content, regardless of the results of the
16 appearance and odor examination described in section 2-3980,
17 according to sediment standards as follows:

18 (a) No. 1: Acceptable, not to exceed fifty-hundredths
19 milligrams or its equivalent;

20 (b) No. 2: Acceptable, not to exceed one and fifty-
21 hundredths milligrams or its equivalent;

22 (c) No. 3: Probational, not over ten days, not to exceed
23 two and fifty-hundredths milligrams or its equivalent; and

24 (d) No. 4: Reject, over two and fifty-hundredths
25 milligrams or its equivalent.

1 (2) Methods for determining the sediment content of the
2 milk of individual producers shall be the methods described in 7
3 C.F.R. 58.134, as such section existed on July 1, ~~2006-~~ 2011.

4 (3) Sediment testing shall be performed at least four
5 times every six months at irregular intervals as designated by the
6 director.

7 (4) If the sediment disc is classified as No. 1, No. 2,
8 or No. 3, the producer's milk may be accepted. If the sediment disc
9 is classified as No. 4, the milk shall be rejected. A producer's milk
10 that is classified as No. 3 may be accepted for a period not to
11 exceed ten calendar days. If at the end of ten days the producer's
12 milk does not meet acceptable sediment classification No. 1 or No. 2,
13 it shall be rejected from the market. If the sediment disc is
14 classified as No. 4, the milk shall be rejected and no further
15 shipments accepted unless the milk meets the requirements of No. 3 or
16 better.

17 Sec. 9. A facility producing milk for manufacturing
18 purposes in existence prior to July 1, 2013, which does not meet all
19 of the requirements of the Grade A Pasteurized Milk Ordinance shall
20 be acceptable for use only if it meets the requirements of sections
21 2-3983 to 2-3989. After July 1, 2013, all new facilities that produce
22 milk and facilities that produce milk that are under new ownership
23 shall be required to meet the requirements of the Grade A Pasteurized
24 Milk Ordinance.

25 Sec. 10. Section 2-3986, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 2-3986 Milk for manufacturing purposes in farm bulk tanks
3 shall be cooled to forty degrees Fahrenheit or lower within two hours
4 after milking and maintained at fifty degrees Fahrenheit or lower
5 until transferred to the transport tank. Milk offered for sale for
6 manufacturing purposes shall be in a farm bulk tank that meets all 3-
7 ~~A sanitary standards.~~ Sanitary Standards.

8 Sec. 11. Section 2-3988, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 2-3988 At a facility producing milk for manufacturing
11 purposes, utensils, milk cans, milking machines, including pipeline
12 systems, and other equipment used in the handling of milk shall be
13 maintained in good condition, shall be free from rust, open seams,
14 milkstone, or any unsanitary condition, and shall be washed, rinsed,
15 and drained after each milking, stored in suitable facilities, and
16 sanitized immediately before use. New or replacement can lids shall
17 be umbrella type. All new utensils, new farm bulk tanks, and
18 equipment shall meet 3-A ~~sanitary standards~~ Sanitary Standards and
19 comply with applicable rules and regulations of the department.
20 Equipment manufactured in conformity with 3-A Sanitary Standards
21 complies with the sanitary design and construction standards of the
22 Nebraska Milk Act.

23 Sec. 12. Section 2-3989, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 2-3989 The water supply at a facility producing milk for

1 manufacturing purposes shall be safe, clean, and ample for the
2 cleaning of dairy utensils and equipment. The water supply shall meet
3 the bacteriological standards established by the Department of Health
4 and Human Services at all times. Water samples shall be taken,
5 analyzed, and found to be in compliance with the requirements of the
6 Nebraska Milk Act prior to the issuance of a permit to the producer
7 and whenever any major change to the well or water source occurs.
8 Wells or water sources which do not meet the construction standards
9 of the Department of Health and Human Services shall be tested
10 annually, and wells or water sources which do meet the construction
11 standards of the Department of Health and Human Services shall be
12 tested every three years. Whenever major alterations or repairs occur
13 or a well or water source repeatedly recontaminates, the water supply
14 shall be unacceptable until such time as the construction standards
15 are met and an acceptable supply is demonstrated. ~~On and after~~
16 ~~October 1, 1989, all~~ All new producers issued permits under the
17 Nebraska Milk Act shall be required to meet the construction
18 standards established by the Department of Health and Human Services
19 for private water supplies.

20 Sec. 13. Original sections 2-3965, 2-3966, 2-3971,
21 2-3975, 2-3976, 2-3977, 2-3981, 2-3982, 2-3986, 2-3988, and 2-3989,
22 Reissue Revised Statutes of Nebraska, are repealed.

23 Sec. 14. Since an emergency exists, this act takes effect
24 when passed and approved according to law.