

LAWS OF DELAWARE
VOLUME 84
CHAPTER 434
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 273

AN ACT TO AMEND TITLE 3 AND TITLE 16 OF THE DELAWARE CODE RELATING TO MILK AND MILK PRODUCTS.

WHEREAS, consumers are increasingly seeking the unaltered amino acids, antimicrobials, vitamins, minerals, and fatty acids found in milk that is unprocessed, unpasteurized, and unhomogenized, often referred to as raw milk; and

WHEREAS, Delaware consumers who wish to consume raw milk should have the option to access raw milk from a Delaware dairy producer; and

WHEREAS, other foods and products produced for human consumption with statistically similar health risks as raw milk are permitted for sale to consumers when regulated by state and federal governments; and

WHEREAS, the sale of raw milk is currently permitted in over half of the states in the U.S. and most European countries and New Zealand, and many Delaware consumers seeking to purchase raw milk are traveling to other states where raw milk sales are permitted; and

WHEREAS, dairy producers in Delaware have declined by over 80% in the past 25 years and in the most recent 10 years have declined from 44 farms to just 14, and direct marketed raw milk, from a dairy producer to a consumer, may increase profits for Delaware dairy producers; and

WHEREAS, a dairy producer permitted to sell raw milk directly to a consumer will be subject to product safety training, inspections, and ongoing bacterial testing requirements.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 31, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. Fresh Milk ~~and Raw Milk~~

§ 3175. ~~Definitions.~~ Statement of Purpose.

This subchapter establishes the permitting, testing, and inspection requirements applicable to the sale and distribution of fresh milk, raw milk, and products derived from raw milk that are intended for human consumption. Raw milk sold or distributed by a raw milk permit holder in compliance with this subchapter is exempt from the Milk Code.

§ 3176. Definitions.

For purposes of this subchapter:

(1) “Consumer” means an individual who purchases or acquires fresh milk from a producer, or who purchases or acquires raw milk or a product derived from raw milk from a producer holding a permit issued under § 3178 of this title.

(a) ~~“Delaware fresh milk” means milk consisting entirely of fresh milk produced in Delaware.~~

(2) “Department” means the Department of Agriculture.

(b) (3) “Fresh milk” means milk offered for sale to the public that meets the requirements under § 3177(a) of this title.

(4) “Milk Code” means the State of Delaware Milk Code in Regulation 4461 of Title 16 of the Delaware Administrative Code.

(c) ~~“Northeastern fresh milk” means milk consisting entirely of fresh milk produced in Delaware, Maryland, New Jersey, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire or Maine.~~

(5) “Permit holder” means a producer holding a raw milk permit issued under § 3178 of this title.

(6) “Producer” means a dairy farmer who files an Internal Revenue Service Schedule F form with the United States Department of Agriculture and who owns or operates a dairy in this State.

(7) “Raw milk” means fresh milk that is unprocessed, unpasteurized, and unhomogenized, and that is derived from a cow, sheep, or goat.

~~§ 3176. § 3177. Labeling of milk.~~ fresh and raw milk.

(a) ~~Milk containers~~ A container of milk may be labeled as “fresh”, “Delaware fresh” or “Northeastern fresh” as long as ~~the requirements of § 3175 of this title are met.~~ “fresh” only if the milk which has not been dehydrated, rehydrated rehydrated,

or reconstituted in whole or in part and ~~shall~~ does not contain caseins, casein products, or caseinates other than those caseins, casein products, or caseinates which occur naturally.

(b) A container of raw milk or the packaging of a product derived from raw milk must include a prominent label stating that raw milk is unprocessed, unpasteurized, and unhomogenized and may contain harmful bacteria.

§ 3178. Raw milk permit.

(a) The Department shall establish a raw milk permit. A raw milk permit allows a raw milk permit holder to sell or distribute raw milk or products derived from raw milk directly to a consumer within this State under the conditions listed in § 3179 of this title.

(b) The Department shall issue a raw milk permit to an applicant after the Department has received, reviewed, and approved a permit application from the applicant. A raw milk permit is valid for 1 year, unless revoked or suspended by the Department, and may be renewed.

(c) The Department may revoke or suspend a permit for failure to comply with this subchapter. The process for suspending or revoking a permit must comply with the administrative procedures under Subchapter III of Chapter 101 of Title 29.

§ 3179. Actions authorized and required by a raw milk permit.

(a) It is unlawful for raw milk or products derived from raw milk to be sold or distributed in this State other than by a raw milk permit holder or by an individual under the direct supervision of a raw milk permit holder, such as an employee.

(b) A permit holder or an individual under the direct supervision of the raw milk permit holder may sell, offer for sale, or distribute raw milk or products derived from raw milk if all of the following conditions are met:

(1) The sale or distribution is made directly to a consumer and not for resale.

(2) A sign issued by the Department is posted conspicuously at the point of sale or distribution stating that raw milk and products derived from raw milk do not provide the protection of pasteurization and may contain harmful bacteria.

(3) A prominent label stating that raw milk and products derived from raw milk are unprocessed, unpasteurized, and unhomogenized and may contain harmful bacteria is placed on the outside of the container or package in which the raw milk or product derived from raw milk is sold or distributed.

(c) A raw milk permit holder must do all of the following in order to sell or distribute raw milk or products derived from raw milk:

(1) Comply with all applicable laws and regulations of this State.

(2) Maintain the health and welfare of the herd and the safety procedures of the raw milk operation in compliance with the standards established by the Department.

(3) Submit to inspection under subsection (d) of this section to ensure compliance with this subchapter.

(4) Prepare a raw milk risk management plan that covers sanitation, handling, and testing methods.

(5) Comply with testing, temperature, training, and disposal requirements as determined by the Department.

(d) The Department shall conduct inspections to ensure a permit holder's compliance with this subchapter.

~~§ 3177.~~ § 3180. Penalty.

Whoever violates this subchapter shall be assessed a civil penalty of \$1,000 per instance.

~~§ 3178. Enforcement.~~ § 3181. Regulatory authority and enforcement.

~~The Department of Agriculture Department, in consultation with the Department of Health and Social Services, shall adopt regulations to administer and enforce this subchapter and may make rules and regulations as are necessary for such enforcement.~~ subchapter. The Department will consider the size and scale of dairy operations in this State when developing regulations.

Section 2. Amend § 122, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 122. Powers and duties of the Department of Health and Social Services.

The Department shall have the following general powers and duties:

(3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state and local public health officials, to do all of the following:

f. Provide for the sanitary production, distribution, and sale of market milk and dairy products and other ~~foods~~; foods, except for raw milk as defined in § 3176 of Title 3.

Section 3. This Act takes effect on enactment and is to be implemented the earlier of the following:

(1) 1 year from the date of the Act's enactment.

(2) Notice by the Secretary of the Department of Agriculture published in the Register of Regulations that final regulations to implement this Act have been adopted.

Section 4. This Act may be cited as "The Consumer Choice Milk Act".

Approved September 26, 2024