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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 273

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

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

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

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

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

10 WHEREAS, dairy producers in Delaware have declined by over 80% in the past 25 years and in the most recent
11 10 years have declined from 44 farms to just 14, and direct marketed raw milk, from a dairy producer to a consumer, may
12 increase profits for Delaware dairy producers; and

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

15 NOW, THEREFORE:

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

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

19 Subchapter VI. Fresh Milk and Raw Milk

20 § 3175. ~~Definitions.~~ Statement of Purpose.

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

24 § 3176. Definitions.

25 For purposes of this subchapter:

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

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

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

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

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

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

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

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

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

42 ~~§ 3176. § 3177. Labeling of milk.~~ fresh and raw milk.

43 ~~(a) Milk containers~~ A container of milk may be labeled as “fresh”, “Delaware fresh” or “Northeastern fresh” as
44 long as the requirements of § 3175 of this title are met. “fresh” only if the milk which has not been dehydrated, rehydrated
45 rehydrated, or reconstituted in whole or in part and ~~shall~~ does not contain caseins, casein products, or caseinates other than
46 those caseins, casein products, or caseinates which occur naturally.

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

49 § 3178. Raw milk permit.

50 (a) The Department shall establish a raw milk permit. A raw milk permit allows a raw milk permit holder to sell or
51 distribute raw milk or products derived from raw milk directly to a consumer within this State under the conditions listed in
52 § 3179 of this title.

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

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

59 § 3179. Actions authorized and required by a raw milk permit.

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

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

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

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

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

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

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

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

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

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

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

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

81 ~~§ 3177.~~ § 3180. Penalty.

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

83 ~~§ 3178. Enforcement.~~ § 3181. Regulatory authority and enforcement.

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

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

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

91 The Department shall have the following general powers and duties:

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

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

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

98 (1) 1 year from the date of the Act's enactment.

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

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

SYNOPSIS

This Act legalizes the sale and distribution of raw milk and products derived from raw milk by dairy producers directly to consumers for human consumption. This Act also removes the unused definitions of "Delaware fresh milk" and "northeastern fresh milk" from Subchapter VI of Title 3. The definition of "fresh milk" under current § 3175 of Title 3 is retained.

The sale of raw milk, which is unprocessed, unpasteurized, and unhomogenized, is currently prohibited by Section 9 of the current United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance, as amended, which the Delaware Department of Health and Social Services adopted by regulation. However, consumers are increasingly demanding the opportunity to purchase raw milk in Delaware, rather than traveling to other states that permit raw milk sales. Allowing raw milk and products derived from raw milk to be sold in Delaware will respond to that demand while also providing new economic opportunities for Delaware dairy producers. These economic benefits can be significant; the Raw Milk Institute estimates that raw milk producers can earn a profit that is nearly 10 times what they earn for regular milk sales.

To achieve these benefits and meet consumer demand, this Act creates a raw milk permit to be issued and enforced by the Department of Agriculture, and exempts raw milk permit holders from the State of Delaware Milk Code provided they comply with all requirements of the Act. This Act provides that no raw milk or product derived from raw milk may be sold in Delaware other than by a raw milk permit holder or an individual under the direct supervision of a raw milk permit holder, such as an employee. The sale or distribution of raw milk and products derived from raw milk must be made directly by the permit holder or individual under the supervision of the permit holder to the consumer and not for purposes of resale. This Act also establishes requirements for signage and labeling informing consumers that raw milk is unprocessed, unpasteurized, and unhomogenized and may contain harmful bacteria. The Department of Agriculture, in consultation with the Department of Health and Social Services, is responsible for promulgating regulations to administer the raw milk permit program and for ensuring compliance with this Act.

This Act goes into 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 Agriculture published in the Register of Regulations that final regulations to implement this Act have been adopted.

This Act may be cited as “The Consumer Choice Milk Act“.

Author: Senator Buckson