

**RAW MILK TESTING AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Cheryl K. Acton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill makes changes relating to the sale and regulation of raw milk products.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ updates the labeling requirement for raw milk products;
- ▶ requires the department to make rules regarding raw milk testing at third-party laboratories;
- ▶ clarifies the standard for reissuing a suspended permit;
- ▶ clarifies the standard for removing a cease and desist order following a foodborne illness outbreak;
- ▶ provides the circumstances under which the department shall provide information to a producer related to:
  - a suspended permit or a cease and desist order; and
  - the right to a hearing; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **4-3-503**, as last amended by Laws of Utah 2023, Chapter 78



32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **4-3-503** is amended to read:

34 **4-3-503. Sale of raw milk products -- Suspension of producer's permit --**

35 **Severability not permitted -- Disclosure to producers.**

36 (1) As used in this section:

37 (a) "Batch" means all the milk emptied from one bulk tank and bottled in a single day.

38 (b) "Foodborne illness outbreak" means the event of two or more individuals getting  
39 the same illness from the same batch of contaminated food or drink.

40 ~~[(b)]~~ (c) "Raw milk product" means any product produced from raw milk.

41 ~~[(c)]~~ (d) "Self-owned retail store" means a retail store:

42 (i) of which the producer owns at least 51% of the value of the real property and  
43 tangible personal property used in the operations of the retail store; or

44 (ii) for which the producer has the power to vote at least 51% of any class of voting  
45 shares or ownership interest in the business entity that operates the retail store.

46 (2) Except as provided in Subsection (5), a raw milk product may be manufactured,  
47 distributed, sold, delivered, held, stored, or offered for sale if:

48 (a) the producer obtains a permit from the department to produce the raw milk product  
49 under Subsection **4-3-301**(6);

50 (b) the sale and delivery of the raw milk product is made upon the premises where the  
51 raw milk product is produced, except as provided by Subsection (3);

52 (c) the raw milk product is sold to consumers for household use and not for resale;

53 (d) the raw milk product is bottled or packaged under sanitary conditions and in  
54 sanitary containers on the premises where the raw milk product is produced;

55 (e) the raw milk product is labeled "raw milk product" and meets the labeling  
56 requirements under 21 C.F.R. Parts 101 and 131 and rules established by the department;

57 (f) the raw milk used to produce the raw milk product is:

58 (i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being

- 59 drawn from the animal;
- 60 (ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the  
61 animal; and
- 62 (iii) maintained at 41 degrees Fahrenheit or a lower temperature until the raw milk is  
63 delivered to the consumer or used to produce the raw milk product;
- 64 (g) the bacterial count of the raw milk used to produce the raw milk product does not  
65 exceed 20,000 colony forming units per milliliter;
- 66 (h) the coliform count of the raw milk used to produce the raw milk product does not  
67 exceed 10 colony forming units per milliliter;
- 68 (i) the production of the raw milk product conforms to departmental rules for the  
69 production of grade A milk products;
- 70 (j) the dairy animals on the premises are:
- 71 (i) permanently and individually identifiable; and
- 72 (ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and
- 73 (k) any [~~person~~] individual on the premises performing any work in connection with  
74 the production, bottling, packaging, handling, or sale of the raw milk product is free from  
75 communicable disease.
- 76 (3) A producer may distribute, sell, deliver, hold, store, or offer for sale a raw milk  
77 product at a self-owned retail store, that is properly staffed, or from a mobile unit where the  
78 raw milk product is maintained through mechanical refrigeration at 41 degrees Fahrenheit or a  
79 lower temperature, if, in addition to the requirements of Subsection (2), the producer:
- 80 (a) transports the raw milk product from the premises where the raw milk product is  
81 produced to the self-owned retail store in a refrigerated truck where the raw milk product is  
82 maintained at 41 degrees Fahrenheit or a lower temperature;
- 83 (b) retains ownership of the raw milk product until it is sold to the final consumer,  
84 including transporting the raw milk product from the premises where the raw milk product is  
85 produced to the self-owned retail store without any:
- 86 (i) intervening storage;
- 87 (ii) change of ownership; or
- 88 (iii) loss of physical control;
- 89 (c) stores the raw milk product at 41 degrees Fahrenheit or a lower temperature in a

90 display case equipped with a properly calibrated thermometer at the self-owned retail store;

91 (d) places a sign above each display case that contains a raw milk product at the  
92 self-owned retail store that:

93 (i) is prominent;

94 (ii) is easily readable by a consumer;

95 (iii) reads in print that is no smaller than .5 inch in bold type, "This milk product is raw  
96 and unpasteurized. Please keep refrigerated."; and

97 (iv) meets any other requirement established by the department by rule;

98 (e) labels the raw milk product with:

99 (i) a date, no more than nine days after the raw milk product is produced, by which the  
100 raw milk product should be sold;

101 (ii) the statement "Raw milk products, no matter how carefully produced, may be  
102 unsafe. The following individuals are at greater risk when consuming raw milk products:  
103 pregnant women, the elderly, children under the age of seven, and those with a compromised  
104 immune system.";

105 (iii) handling instructions to preserve quality and avoid contamination or spoilage;

106 (iv) a specific colored label as determined by the department by rule; and

107 (v) any other information required by rule;

108 (f) refrains from offering the raw milk product for sale until:

109 (i) the department or a third party certified by the department tests each batch of raw  
110 milk used to produce a raw milk product for standard plate count and coliform count; and

111 (ii) the test results meet the minimum standards established for those tests;

112 (g) (i) maintains a database of the raw milk product sales; and

113 (ii) makes the database available to the Department of Health and Human Services  
114 during the self-owned retail store's business hours for purposes of epidemiological  
115 investigation;

116 (h) ensures that the plant and retail store complies with Chapter 5, Utah Wholesome  
117 Food Act, and the rules governing food establishments enacted under Section 4-5-301; and

118 (i) complies with the applicable rules adopted as authorized by this chapter.

119 (4) A producer may distribute, sell, deliver, hold, store, or offer for sale a raw milk  
120 product and pasteurized milk at the same self-owned retail store if:

- 121 (a) the self-owned retail store is properly staffed; and  
122 (b) the producer:  
123 (i) meets the requirements of Subsections (2) and (3);  
124 (ii) operates the self-owned retail store on the same property where the raw milk  
125 product is produced; and  
126 (iii) maintains separate, labeled, refrigerated display cases for raw milk products and  
127 pasteurized milk.
- 128 (5) A producer may, without meeting the requirements of Subsection (2), sell up to 120  
129 gallons of raw milk per month if:  
130 (a) the sale is directly to an end consumer, for household use and not for resale;  
131 (b) the sale and delivery of the raw milk is made upon the premises where the raw milk  
132 is produced;  
133 (c) the producer labels the raw milk with:  
134 (i) the producer's name and address;  
135 (ii) a date, no more than nine days after the raw milk is produced, by which the raw  
136 milk should be sold;  
137 (iii) the statement "This raw milk has not been licensed or inspected by the state of  
138 Utah. Raw milk, no matter how carefully produced, may be unsafe. The following individuals  
139 are at greater risk when consuming raw milk products: pregnant women, the elderly, children  
140 under the age of seven, and those with a compromised immune system."; and  
141 (iv) handling instructions to preserve quality and avoid contamination or spoilage;
- 142 (d) the raw milk is:  
143 (i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being  
144 drawn from the animal; and  
145 (ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the  
146 animal;
- 147 (e) the producer conducts a monthly test ensuring the coliform count of the raw milk  
148 does not exceed 10 colony-forming units per milliliter;  
149 (f) the dairy animals on the producer's premises are free of tuberculosis, brucellosis,  
150 and other diseases carried through milk;  
151 (g) the producer maintains records of tests and sales for a minimum of two years; and

152 (h) the producer notifies the department of the producer's intent to sell raw milk  
153 pursuant to this Subsection (5) and includes in the notification the producer's name and  
154 address.

155 (6) A person who conducts a test required by Subsection (3) shall send a copy of the  
156 test results to the department as soon as the test results are available.

157 (7) (a) The department shall [~~adopt~~] make rules, as authorized by Section 4-3-201 and  
158 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the  
159 sale of raw milk products at a self-owned retail store.

160 (b) The rules adopted by the department shall include rules regarding:

161 (i) permits;

162 (ii) building and premises requirements;

163 (iii) sanitation and operating requirements, including bulk milk tanks requirements;

164 (iv) additional tests;

165 (v) use of third-party testing laboratories;

166 [~~(v)~~] (vi) frequency of inspections, including random cooler checks;

167 [~~(vi)~~] (vii) recordkeeping; and

168 [~~(vii)~~] (viii) packaging and labeling.

169 (c) The department may make rules, in accordance with Title 63G, Chapter 3, Utah  
170 Administrative Rulemaking Act, regarding the standards of identity for a raw milk product.

171 (d) (i) The department shall establish and collect a fee for the tests and inspections  
172 required by this section and by rule in accordance with Section 63J-1-504.

173 (ii) Notwithstanding Section 63J-1-504, the department shall retain the fees as  
174 dedicated credits and may only use the fees to administer and enforce this section.

175 (8) (a) The department shall suspend a permit issued under Section 4-3-301 if:

176 (i) two out of four consecutive samples or two samples in a 30-day period violate  
177 sample limits established under this section; or

178 (ii) a producer violates this section or a rule adopted as authorized by this section.

179 (b) The department may reissue a permit that has been suspended under Subsection  
180 (8)(a) if the producer has:

181 (i) obtained a sample result that meets the standards described in Subsections (2)(g)  
182 and (h); and

183           (ii) complied with all of the requirements of this section and rules adopted as  
184 authorized by this section.

185           (9) (a) If any subsection of this section or the application of any subsection to any  
186 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,  
187 the remainder of the section may not be given effect without the invalid subsection or  
188 application.

189           (b) The provisions of this section may not be severed.

190           (10) Nothing in this chapter shall be construed to impede the Department of Health and  
191 Human Services or the Department of Agriculture and Food in investigation of a foodborne  
192 illness outbreak.

193           (11) (a) The department shall issue a cease and desist order to a producer linked to a  
194 foodborne illness [and shall stop sale of a raw milk product currently being sold.] outbreak.

195           (b) A producer that receives a cease and desist order from the department shall stop  
196 sale of the raw milk product that the department names in the cease and desist order.

197           (c) To link a producer to a foodborne illness outbreak, the department or the  
198 Department of Health and Human Services shall show probable cause that the foodborne  
199 illness outbreak originated with the producer's raw milk product.

200           (d) The department shall notify a producer that the department has linked the producer  
201 to a foodborne illness outbreak before:

202           (i) notifying the public; or

203           (ii) including the producer's name or identifying information in a press release.

204           (12) Upon written request by a producer with a suspended permit as described in  
205 Subsection (8), the department shall provide to the producer:

206           (a) a positive test result or positive test results that the department used to suspend a  
207 permit; and

208           (b) information on how to request a hearing regarding the department's decision to  
209 suspend the permit.

210           (13) Upon written request by a producer linked to a foodborne illness outbreak as  
211 described in Subsection (11), the department shall provide to the producer:

212           (a) evidence the department used to link the producer to a foodborne illness outbreak  
213 with probable cause, with all medical patient identifying information redacted; and

214 (b) information on how to request a hearing regarding the department's decision to  
215 issue the cease and desist order.

216 ~~[(12)]~~ (14) The cease and desist order described in Subsection (11) shall remain in  
217 effect until the department verifies that the producer:

218 (a) adheres to this section; and

219 (b) has three consecutive clean tests of the raw milk product.

220 ~~[(13) In addition to Subsections (11) and (12), if a producer's raw milk product has~~  
221 ~~been linked to a foodborne illness outbreak,]~~

222 (15) (a) If the department or the Department of Health and Human Services links a  
223 producer's raw milk product to a foodborne illness outbreak and the department finds that the  
224 producer has violated the applicable provisions of this section, the department may impose  
225 upon the producer the following administrative penalties:

226 ~~[(a)]~~ (i) upon the first violation, a penalty of no more than \$300;

227 ~~[(b)]~~ (ii) upon a second violation, a penalty of no more than \$750; and

228 ~~[(c)]~~ (iii) upon a third or subsequent violation a penalty of no more than \$1,500.

229 (b) The department may impose the penalties described in Subsection 15(a) in addition  
230 to issuing a cease and desist order.

231 Section 2. **Effective date.**

232 This bill takes effect on May 1, 2024.