

House Bill 2612

Sponsored by Representative BREESE-IVERSON; Representatives NEARMAN, POST, SMITH DB, STARK (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs State Department of Agriculture to establish state grades and standards of quality and identity for unpasteurized butter. Authorizes person to sell or offer for sale within this state unpasteurized butter that conforms to grades and standards established by department.

Prohibits person from selling or offering for sale unpasteurized butter that does not conform to grades and standards established by department. Provides that violation is punishable by maximum of 364 days' imprisonment, \$6,250 fine, or both. Provides that violation is also subject to civil penalty not exceeding \$10,000.

Provides that prohibition applies to sale or offer for sale of unpasteurized butter on or after effective date of rules adopted by department establishing grades and standards for unpasteurized butter.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the sale of raw butter; creating new provisions; amending ORS 621.073, 621.094, 621.116,
3 621.117, 621.122, 621.991 and 621.995; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 621.**

6 **SECTION 2. (1) The State Department of Agriculture shall establish by rule, as provided**
7 **in ORS chapter 183, official state grades and standards of quality and identity for**
8 **unpasteurized butter.**

9 **(2) The department may adopt by rule recommended or required practices for ensuring**
10 **the safety or marketability of unpasteurized butter.**

11 **(3) A person may sell or offer for sale within this state unpasteurized butter that con-**
12 **forms to the grades and standards established by the department.**

13 **(4) A person may not sell or offer for sale unpasteurized butter that does not conform**
14 **to the grades and standards established by the department.**

15 **SECTION 3. ORS 621.116 is amended to read:**

16 621.116. (1) A person may not sell or distribute for sale unpasteurized milk or fluid milk from
17 cows, or dairy products from unpasteurized milk or fluid milk from cows, other than to a distributor,
18 producer-distributor, dairy products plant licensee or nonprocessing cooperative.

19 **(2) This section does not apply to:**

20 **(a) The sale or distribution of cheese otherwise exempt from pasteurization requirements or to**
21 **sales or distributions by a person described under ORS 621.012.**

22 **(b) The sale or distribution of butter made from unpasteurized milk from cows.**

23 **SECTION 4. ORS 621.117 is amended to read:**

24 621.117. (1) A distributor, producer-distributor or dairy products plant licensee [*shall*] **may** not
25 sell or offer or expose for sale any dairy product or fluid milk for human consumption unless the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 milk used in the dairy product or fluid milk has been pasteurized.

2 **(2) This section does not apply to any dairy product or fluid milk made from** *[or is]* goat
3 or sheep's milk that was produced by a disease-free herd, except that if not more than one reactor
4 animal appears when the goat or sheep herd is tested for brucellosis, the milk, dairy products or
5 fluid milk may still be sold if the animal is slaughtered and no additional reactor animals appear
6 when the herd is retested, as provided in ORS chapter 596 and regulations promulgated thereunder.
7 If one or more reactor animals appear when the herd is retested, no milk, dairy products or fluid
8 milk from the herd may be sold until the herd regains a brucellosis-free status.

9 **(3) This section does not apply to butter made from unpasteurized cow's milk.**

10 **SECTION 5.** ORS 621.122 is amended to read:

11 621.122. (1) A person *[shall]* **may** not operate or permit the operation of any pasteurization
12 equipment except under the direct personal supervision of a person licensed as a pasteurizer oper-
13 ator under ORS 621.266.

14 (2) A distributor, producer-distributor or dairy products plant licensee *[shall]* **may** not sell, offer
15 or expose for sale any milk or cream that has not been pasteurized or produced by a disease-free
16 goat or sheep herd, except to another distributor, producer-distributor or dairy products plant
17 licensee for the manufacture of milk, fluid milk or dairy products.

18 (3) Except as permitted by ORS 621.003, 621.012, 621.060 and 621.076, a person *[shall]* **may** not
19 knowingly sell, offer or expose for sale any milk or cream that has not been pasteurized or produced
20 by a disease-free goat or sheep herd, except to a distributor, producer-distributor or dairy products
21 plant licensee for the manufacture of milk, fluid milk or dairy products.

22 (4) A distributor, producer-distributor or dairy products plant licensee *[shall]* **may** not sell, offer
23 or expose for sale any milk, fluid milk or dairy product processed or manufactured by the distribu-
24 tor, producer-distributor or licensee unless all of the milk or cream constituents from cows have
25 been pasteurized and all milk or cream constituents from goats or sheep were produced by a
26 disease-free herd or have been pasteurized.

27 (5) A person *[shall]* **may** not knowingly sell, offer or expose for sale any dairy product unless
28 all of the milk or cream constituents of the product from cows have been pasteurized and all con-
29 stituents from goats or sheep were produced by a disease-free herd or have been pasteurized.

30 (6) Excepting cottage cheese and any cheese required to be pasteurized by rule of the State
31 Department of Agriculture, the pasteurization requirement of subsections (4) and (5) of this section
32 *[shall]* **does** not apply to cheese that has been aged for at least 60 days from the date of manufac-
33 ture. The manufacture date must appear on the cheese or its container.

34 **(7) The pasteurization requirement of subsections (4) and (5) of this section does not ap-**
35 **ply to butter made from milk or cream constituents from cows.**

36 *[(7)]* **(8)** A person *[shall]* **may** not falsely represent by word, design, device or by any other
37 means that any milk, cream, fluid milk, dairy product, frozen dessert mix or frozen dessert has been
38 pasteurized.

39 *[(8)]* **(9)** A distributor, producer-distributor or dairy products plant licensee *[must]* **shall** provide
40 for the grading of all milk transported, received or purchased by the distributor, producer-distributor
41 or licensee as required by ORS 621.056, 621.057, 621.084 and 621.226 and regulations adopted under
42 ORS 621.096.

43 *[(9)]* **(10)** A person *[shall]* **may** not alter, remove or tamper with any condemnation tag affixed
44 by the State Department of Agriculture or a grader pursuant to the provisions of ORS 621.203 or
45 621.226.

1 [(10)] (11) A distributor, producer-distributor or dairy products plant licensee or grader *[shall]*
 2 **may not:**

3 (a) Negligently sample, weigh or test any milk or cream.

4 (b) Fraudulently manipulate any weight, sample or test of milk or cream.

5 (c) Make a false entry or record of the weight, or test of milk or cream on any statement, record
 6 or invoice.

7 **SECTION 6.** ORS 621.073 is amended to read:

8 621.073. (1) In addition to the powers conferred on the State Department of Agriculture under
 9 ORS 621.018, 621.060, 621.072, 621.076, 621.083 and 621.226, the department may suspend the privilege
 10 of any person to use a grade designation on containers of fluid milk produced or distributed by the
 11 person. The power of suspension may be exercised by the department for any violation of ORS
 12 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122 [(7)] (8), 621.226 or 621.259, stan-
 13 dards adopted under ORS 621.060, 621.083 or 621.224 or any department rules.

14 (2) A suspension shall not exceed 10 days except that, before lifting the suspension, the depart-
 15 ment shall ensure that the violation causing the suspension has been corrected.

16 (3) The provisions of ORS 183.413 to 183.470 do not apply to suspensions imposed under au-
 17 thority of this section, although appeal shall be in the manner provided by ORS 183.484, 183.486,
 18 183.490 and 183.497. This subsection shall not deprive a person of the right to present any defense
 19 to a criminal prosecution instituted for violation of ORS 621.062, 621.070, 621.072, 621.076, 621.084,
 20 621.088, 621.117, 621.122 [(7)] (8), 621.226 or 621.259, nor shall it deprive a person of the right to a
 21 declaratory judgment.

22 **SECTION 7.** ORS 621.094 is amended to read:

23 621.094. (1) If a distributor, producer-distributor or dairy products plant licensee fails to comply
 24 with any provision of ORS 621.056, 621.057, 621.084, 621.092, 621.122 [(7) to (10)] (8) to (11) or 621.226
 25 or regulations adopted under ORS 621.096, the State Department of Agriculture may revoke the li-
 26 cense or, with the written consent of the distributor, producer-distributor or licensee, may perform
 27 the weighing, sampling and testing of the milk or cream received or purchased by the distributor,
 28 producer-distributor or licensee.

29 (2) The department shall employ competent personnel of its own choice to perform the weighing,
 30 sampling or testing under subsection (1) of this section. The salary and necessary expenses of the
 31 personnel shall be paid by the department. The distributor, producer-distributor or licensee shall
 32 reimburse the department for the salary and expenses monthly.

33 (3) The department shall continue to perform the weighing, sampling and testing of the milk or
 34 cream received or purchased by the distributor, producer-distributor or dairy products plant licensee
 35 until the department is satisfied that the distributor, producer-distributor or licensee is willing and
 36 able to comply with all the provisions of ORS 621.056, 621.057, 621.084, 621.092, 621.122 [(7) to (10)]
 37 (8) to (11) and 621.226 and regulations adopted under ORS 621.096. When the department is so sat-
 38 isfied, control of the weighing, sampling and testing shall be returned to the distributor, producer-
 39 distributor or licensee.

40 **SECTION 8.** ORS 621.991 is amended to read:

41 621.991. Violation of any provision of ORS 621.056, 621.057, 621.062, 621.070, 621.072, 621.076,
 42 621.084, 621.088, 621.117, 621.122, 621.124, 621.161, 621.166, 621.183, 621.198, 621.207, 621.226, 621.259,
 43 621.335, 621.340, 621.345, 621.418, 621.445, [or] 621.730 or section 2 of this 2021 Act or any rule or
 44 standard adopted under ORS 621.060, 621.083, 621.096, 621.224 or 621.261, or failure to pay a fee
 45 assessed under ORS 621.166, is a Class A misdemeanor.

1 **SECTION 9.** ORS 621.995 is amended to read:

2 621.995. (1) In addition to any penalty available under ORS 561.190 or 621.991, the State De-
3 partment of Agriculture may impose a civil penalty for a violation of ORS 621.056, 621.057, 621.062,
4 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161, 621.166, 621.183, 621.198,
5 621.207, 621.226, 621.259, 621.335, 621.340, 621.345, 621.418, 621.445 or 621.730 **or section 2 of this**
6 **2021 Act** or of rules, regulations or standards adopted under ORS 621.060, 621.083, 621.096, 621.224
7 or 621.261. For the purposes of this section, each day a violation continues after the period of time
8 established for compliance shall be considered a separate violation unless the department finds that
9 a different period of time is more appropriate to describe a specific violation event.

10 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
11 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
12 violation.

13 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
14 partment shall impose the penalty in the manner provided by ORS 183.745, except that the written
15 application for a hearing must be received by the department no later than 10 days after the date
16 of mailing or personal service of the notice of civil penalty.

17 (4) Moneys received by the department from civil penalties imposed under this section shall be
18 deposited in the General Fund to the credit of the Department of Agriculture Account.

19 **SECTION 10.** **The prohibition established by section 2 (4) of this 2021 Act applies to the**
20 **sale or offer for sale within this state of unpasteurized butter on or after the effective date**
21 **of rules adopted by the State Department of Agriculture under section 2 (1) of this 2021 Act**
22 **establishing official state grades and standards of quality and identity for unpasteurized**
23 **butter.**

24 **SECTION 11.** **This 2021 Act takes effect on the 91st day after the date on which the 2021**
25 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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