

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**S. B. No. 95**

**Senator Cates**

**Cosponsors: Senators Clancy, Schuler**

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**A B I L L**

To amend sections 917.01, 917.02, 917.03, 917.032, 1  
917.04, and 917.05 and to enact section 917.25 of 2  
the Revised Code to revise the statutes governing 3  
raw milk. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 917.01, 917.02, 917.03, 917.032, 5  
917.04, and 917.05 be amended and section 917.25 of the Revised 6  
Code be enacted to read as follows: 7

**Sec. 917.01.** As used in this chapter: 8

(A) "Person" means any individual, government agency, 9  
political subdivision, partnership, corporation, association, 10  
co-operative association, or other business unit. 11

(B) "Co-operative association" or "agricultural cooperative 12  
association" means any agricultural cooperative organized under 13  
Chapter 1729. of the Revised Code and qualified to do business in 14  
this state if the director of agriculture finds the association 15  
has, in good faith, its entire activities under the control of its 16  
members and has been and is exercising full authority in the sale 17  
of milk or cream for its members. 18

(C) "Market area" means any area that the director finds is a natural marketing area and designates as such. 19  
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(D) "Dealer" or "milk dealer" means a person who purchases or receives milk from a producer for the purpose of bottling, packaging, selling, processing, jobbing, brokering, or distributing the milk except where the milk is disposed of in the same container in which it is received, without removal from the container and without processing in any way except by necessary refrigeration. Any person who buys and distributes milk in containers under the person's own label is a dealer. 21  
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(E) "Imitation" means imitation as described in 21 C.F.R. 101.3, as amended. 29  
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(F) "Milk" means the lacteal secretion, substantially free from colostrum, obtained by the complete milking of one or more healthy cows, goats, sheep, or other animals and intended for either of the following purposes: 31  
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(1) To be sold for human consumption or for use in dairy products; 35  
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(2) To be used for human consumption or for use in dairy products on the premises of a governmental agency or institution. 37  
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"Milk" does not include a blend of the lacteal secretions of different species. 39  
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(G) "Grade A milk" means milk produced by a person holding a valid producer license of the grade A milk category issued pursuant to section 917.09 of the Revised Code. 41  
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(H) "Manufacture milk" means milk produced by a person holding a valid producer license of the manufacture milk category issued pursuant to section 917.09 of the Revised Code. 44  
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(I) "Producer" or "milk producer" means a grade A milk producer or a manufacture milk producer. 47  
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(J) "Grade A milk producer" means a person located in this state who sells or offers for sale grade A milk obtained from a cow, goat, sheep, or other animal that the person owns or controls.

(K) "Manufacture milk producer" means a person located in this state who sells or offers for sale manufacture milk obtained from a cow, goat, sheep, or other animal that the person owns or controls.

(L) "Grade A milk products" means products derived from grade A milk and having the standard of identity, quality, strength, purity, grade, and, if added, permitted optional ingredients found in the standards of identity established for the products in rules adopted by the director under section 917.02 or 3715.02 of the Revised Code, and includes:

(1) Cottage cheese;

(2) Raw, pasteurized, or aseptically processed products derived from milk and described in either of the following:

(a) The most recent published recommendations of the food and drug administration, public health service, United States department of health and human services;

(b) Rules adopted by the director.

(M) "Manufactured milk products" means all products, other than raw milk for sale to the ultimate consumer and grade A milk products, that are derived from milk and are for human consumption, including:

(1) Butter;

(2) Natural or processed cheese;

(3) Evaporated, condensed, and dry products;

(4) Frozen desserts;

(5) Such other products derived from milk as the director may specify by rule that have the standard of identity, quality, strength, purity, grade, and, if added, permitted optional ingredients found in the standards of identity established for the product in rules adopted by the director under section 917.02 or 3715.02 of the Revised Code.

(N) "Dairy products" means milk, raw milk for sale to the ultimate consumer, grade A milk products, and manufactured milk products.

(O) "Frozen desserts" means frozen desserts, including the mixes, described in 21 C.F.R. 135, as amended, unless otherwise specified by the director by rule.

(P) "Milk plant" means a grade A milk plant or manufacture milk plant.

(Q) "Grade A milk plant" means a place, including a governmental operation, where grade A milk or a grade A milk product is collected, handled, controlled, processed, stored, pasteurized, ultra-pasteurized, repasteurized, aseptically processed, bottled, or prepared for distribution, but does not include a place where a grade A milk product is purchased in packaged form and is stored and handled for the sole purpose of sale to the ultimate consumer.

(R) "Manufacture milk plant" means a place, including a governmental operation, where manufacture milk or a manufactured milk product is collected, handled, controlled, manufactured, processed, stored, pasteurized, ultra-pasteurized, repasteurized, commercially sterilized, aseptically processed, bottled, or prepared for distribution, but does not include a place where a manufactured milk product is purchased in packaged form and is stored and handled for the sole purpose of sale to the ultimate consumer.

(S) "Raw milk for sale to the ultimate consumer" means the raw milk sold or offered for sale by a raw milk retailer.

(T) "Raw milk retailer" means a person who, ~~prior to October 31, 1965, was engaged continuously in the business of selling or offering for sale~~ has been issued a raw milk directly to ultimate consumers retailer license under section 917.09 of the Revised Code.

(U) "Processor" or "milk processor" means a grade A milk processor or a manufacture milk processor.

(V) "Grade A milk processor" means a person who operates or controls a milk plant, transfer station, receiving station, or milk transport cleaning facility that is located in this state or from which grade A milk or grade A milk products are sold or offered for sale for human consumption, as applicable.

(W) "Manufacture milk processor" means any person who operates or controls a manufacture milk plant, transfer station, receiving station, or milk transport cleaning facility that is located in this state or from which manufacture milk or manufactured milk products are sold or offered for sale for human consumption, as applicable.

(X) "Weigher, sampler, or tester" means a person who, in order to determine volume, weight, or composition for the purpose of determining price, weighs, tests, or samples either of the following:

(1) Milk at a dairy farm;

(2) Milk or cream purchased by a dealer from a milk producer or co-operative association.

(Y) "Hauler" or "milk hauler" means a person who owns or leases a vehicle or conveyance used to transport raw milk, but does not include a producer transporting raw milk that the

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| producer has produced.   | 139 |
| (Z) "License" means a license issued under section 917.09 of       | 140 |
| the Revised Code and includes a registration issued under division | 141 |
| (J) of that section.   | 142 |
| <b>Sec. 917.02.</b> (A) The director of agriculture may do any of  | 143 |
| the following:   | 144 |
| (1) Adopt rules in accordance with Chapter 119. of the             | 145 |
| Revised Code regulating all of the following:                      | 146 |
| (a) The sanitary production, storage, transportation,              | 147 |
| manufacturing, handling, processing, sampling, testing,            | 148 |
| examination, and sale of dairy products;                           | 149 |
| (b) The suspension and revocation of licenses issued under         | 150 |
| section 917.09 of the Revised Code, provided that the rules are in | 151 |
| accordance with and do not conflict with section 917.22 of the     | 152 |
| Revised Code;  | 153 |
| (c) Terms and renewal periods, registration requirements,          | 154 |
| categories, and fees for licenses issued under section 917.09 of   | 155 |
| the Revised Code, except that the fee for a producer's license     | 156 |
| shall not exceed fifteen dollars;                                  | 157 |
| (d) Examinations that must be passed prior to issuance of a        | 158 |
| weigher, sampler, or tester license and inspections that must be   | 159 |
| passed prior to issuance of any other type of license issued under | 160 |
| section 917.09 of the Revised Code;                                | 161 |
| (e) Procedures for issuing and renewing licenses under             | 162 |
| section 917.09 of the Revised Code;                                | 163 |
| (f) Information that an applicant for a license issued under       | 164 |
| section 917.09 of the Revised Code is required to provide on the   | 165 |
| application for licensure;   | 166 |
| (g) Standards for equipment or materials used for the              | 167 |

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| production, processing, and handling of dairy products;  | 168                             |
| (h) Records to be kept by persons holding a license issued under this chapter and the inspection and auditing of books and records of those persons, and any other records that are required to be kept by other rules adopted under this section;                                 | 169<br>170<br>171<br>172        |
| (i) Security arrangements and evidence of financial responsibility for milk dealers, to ensure prompt payment to milk producers;   | 173<br>174<br>175               |
| (j) Standards of identity, quality, strength, purity, grading, and labeling of dairy products;   | 176<br>177                      |
| (k) The production, processing, and handling of dairy products and the prompt and accurate payment for milk and cream by milk dealers, but not the establishment or control of the price of milk and cream;  | 178<br>179<br>180<br>181        |
| (l) Criteria for the equipment, methods, or materials to be used in performing weighing, volumetric measuring, sampling, and testing of milk and its components when such an operation is used as the basis for determining payment for milk delivered to or purchased by dealers; | 182<br>183<br>184<br>185<br>186 |
| (m) The size and placement of labels and of words on labels required by section 917.04 of the Revised Code to be placed on final delivery containers used for the sale of raw milk to ultimate consumers;  | 187<br>188<br>189<br>190        |
| <u>(n) The size and placement of notices required to be displayed by a grade A milk producer for the sale of raw milk to the ultimate consumer under section 917.04 of the Revised Code;</u>   | 191<br>192<br>193               |
| <u>(o) Procedures and standards for the hand-filling, hand-capping, and on-premises storage of raw milk in single-use or reusable final delivery containers that are used for the sale of raw milk to the ultimate consumer by a grade A milk producer.</u>                        | 194<br>195<br>196<br>197        |

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| The director shall have exclusive authority to administer and      | 198 |
| enforce rules adopted under division (A)(1) of this section.       | 199 |
| (2) Enter into, with the approval of the milk sanitation           | 200 |
| board created in section 917.03 of the Revised Code, an agreement  | 201 |
| with a public or private entity that the director determines is    | 202 |
| properly qualified for the performance of any of the inspections   | 203 |
| and analyses required by this chapter;                             | 204 |
| (3) Adopt rules by reference to all or any part of the             | 205 |
| following recommendations:   | 206 |
| (a) The grade A pasteurized milk ordinance, as amended, and        | 207 |
| the "grade A condensed and dry milk products and condensed and dry | 208 |
| whey" supplement I to the grade A pasteurized milk ordinance of    | 209 |
| the food and drug administration, public health service, of the    | 210 |
| United States department of health and human services, to the      | 211 |
| extent those provisions do not conflict with the laws of this      | 212 |
| state;   | 213 |
| (b) The most recent recommendations for milk for                   | 214 |
| manufacturing purposes and its production and processing published | 215 |
| in final form in the Federal Register by the United States         | 216 |
| department of agriculture, to the extent those recommendations do  | 217 |
| not conflict with the laws of this state.                          | 218 |
| (4) Administer and enforce this chapter and rules adopted          | 219 |
| under it and appoint inspectors and other personnel necessary to   | 220 |
| carry out this chapter and those rules;                            | 221 |
| (5) Embargo a dairy product that the director reasonably           | 222 |
| suspects, believes, or determines is adulterated as described in   | 223 |
| section 3715.59 of the Revised Code or is misbranded as described  | 224 |
| in section 3715.60 of the Revised Code;                            | 225 |
| (6) Adopt by reference all or any part of the rules governing      | 226 |
| the dairy industry adopted by the United States food and drug      | 227 |
| administration and the United States department of agriculture;    | 228 |



(7) Annually, not later than ninety days after the end of the state fiscal year, determine the expense of administering and enforcing this chapter and rules adopted under it during the preceding state fiscal year and report the determinations to the milk sanitation board.

(B) The director shall do ~~both~~ all of the following:

(1) Adopt rules in accordance with Chapter 119. of the Revised Code establishing requirements for continuing education courses for weighers, samplers, and testers licensed under section 917.09 of the Revised Code;

(2) Review continuing education courses for weighers, samplers, and testers licensed under section 917.09 of the Revised Code and grant approval to those that meet the requirements established in rules adopted under division (B)(1) of this section;

(3) Adopt rules in accordance with Chapter 119. of the Revised Code establishing requirements governing the production, labeling, inspection, and sampling of raw milk that is not to be pasteurized prior to gift, sale, offer for sale, or exposure for sale to the ultimate consumer as authorized in section 917.04 of the Revised Code. The rules shall be no more stringent than the grade A pasteurized milk ordinance of the food and drug administration, public health service, of the United States department of health and human services, 2005 revision, to the extent those provisions do not conflict with the laws of this state.

**Sec. 917.03.** There is hereby created a milk sanitation board consisting of the director of agriculture or the director's authorized representative, the director of health or the director's authorized representative, and the following members to be appointed by the director of agriculture:

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| (A) Two grade A milk producers;  | 260  |
| (B) One manufacture milk producer;   | 261  |
| (C) Three milk processors, one of whom shall be a grade A<br>milk processor and one of whom shall be a manufacture milk<br>processor;  | 262<br>263<br>264  |
| (D) One milk hauler;   | 265  |
| <u>(E) Two raw milk retailers.</u>   | 266  |
| The <del>three</del> <u>five</u> members who are milk producers <u>or raw milk<br/>retailers</u> shall not be members or representatives of the same<br>co-operative association.  | 267<br>268<br>269  |
| The director of agriculture or the director's authorized<br>representative shall serve as chairperson of the board.  | 270<br>271   |
| Before making the appointments to the board required under<br>this section, the director of agriculture shall consult the<br>respective statewide trade organizations, <u>if any</u> , that represent<br>grade A milk producers, manufacture milk producers, milk<br>processors, <u>raw milk retailers</u> , and milk haulers.   | 272<br>273<br>274<br>275<br>276  |
| Of the initial appointments <u>made prior to the effective date<br/>of this amendment</u> , one grade A milk producer, one milk processor,<br>and the milk hauler shall serve for a term ending December 31,<br>1998, one grade A milk producer and the manufacture milk processor<br>shall serve for a term ending December 31, 1999, and the<br>manufacture milk producer and a grade A milk processor shall serve<br>for a term ending December 31, 2000. <u>Of the initial appointments<br/>made after the effective date of this amendment, one raw milk<br/>retailer shall serve for a term ending December 31, 2007, and one<br/>raw milk retailer shall serve for a term ending December 31, 2008.</u><br>Thereafter, members shall serve three-year terms that expire on<br>the thirty-first day of December. | 277<br>278<br>279<br>280<br>281<br>282<br>283<br>284<br>285<br>286<br>287<br>288 |
| Each member shall hold office from the date of appointment   | 289  |

until the end of the term for which the member was appointed. A 290  
member appointed to fill a vacancy occurring prior to the 291  
expiration of the term for which the member's predecessor was 292  
appointed shall hold office for the remainder of the term. A 293  
member shall continue in office subsequent to the expiration date 294  
of the member's term until the member's successor takes office or 295  
a period of sixty days has elapsed, whichever occurs first. A 296  
member shall continue in office for the entirety of the member's 297  
term unless removed for misfeasance, malfeasance, or nonfeasance. 298

The director shall provide the board with the personnel, 299  
office space, and incidentals necessary for it to perform its 300  
duties and exercise its powers. Members shall be reimbursed for 301  
their actual and necessary expenses incurred in the performance of 302  
their duties. Appointed members shall receive compensation in an 303  
amount determined pursuant to division (J) of section 124.15 of 304  
the Revised Code. 305

**Sec. 917.032.** The (A) In addition to the standing 306  
subcommittee created under division (B) of this section, the 307  
milk sanitation board shall create three standing subcommittees and may 308  
create other subcommittees consisting of board members or 309  
nonmembers to review and consider any issue relevant to this 310  
chapter and to report findings and make recommendations to the 311  
board. Each of the three standing subcommittees shall consist of 312  
eight members. One standing subcommittee shall represent grade A 313  
milk production and processing, one shall represent manufacture 314  
milk production and manufacturing, and one shall represent frozen 315  
dessert manufacturing. 316

The director of agriculture shall appoint members of the 317  
three standing subcommittees after consulting with statewide trade 318  
organizations representing grade A milk producers and processors, 319  
manufacture milk producers and manufacturers, and frozen dessert 320

manufacturers, respectively. The 321

(B) The milk sanitation board shall create a standing 322  
subcommittee to review and consider any raw milk issue relevant to 323  
this chapter and to report findings and make recommendations to 324  
the board. The standing subcommittee shall consist of eight 325  
members. The standing subcommittee shall represent raw milk 326  
production. The director shall appoint members of the standing 327  
committee who are raw milk retailers or consumers of raw milk. 328

(C) The director shall appoint at least one member of the 329  
milk sanitation board to serve on each standing subcommittee, and 330  
the director or the director's authorized representative shall 331  
appoint at least one member of the milk sanitation board to serve 332  
on each other subcommittee. The director shall appoint all other 333  
members of standing subcommittees, and the director or the 334  
director's authorized representative shall appoint all other 335  
members of the other subcommittees. The director shall determine 336  
the length of the term of office of each member of a standing 337  
subcommittee or other subcommittee and may remove a member for 338  
misfeasance, malfeasance, or nonfeasance. 339

(D) A standing subcommittee or any other subcommittee may do 340  
all of the following: 341

~~(A)~~(1) Advise and consult with the milk sanitation board in 342  
the administration and enforcement of this chapter and rules 343  
adopted under it; 344

~~(B)~~(2) Make recommendations to the milk sanitation board 345  
regarding proposed rules; 346

~~(C)~~(3) Approve or disapprove agreements between the director 347  
and any private or public entity desiring to perform or performing 348  
any of the inspections or analyses required under this chapter and 349  
rules adopted under it. 350

~~Sec. 917.04. No raw A grade A milk retailer shall producer~~ 351  
~~may give, sell, offer for sale, or expose for sale raw milk to the~~ 352  
~~ultimate consumer except a raw milk retailer who, prior to October~~ 353  
~~31, 1965, was engaged continuously in the business of selling or~~ 354  
~~offering for sale raw milk directly to ultimate consumers, if the~~ 355  
~~producer complies with all of the following:~~ 356

~~(A) The producer holds a valid raw milk retailer license~~ 357  
~~issued under section 917.09 of the Revised Code, and is subject to~~ 358  
~~the rules regulating the sale of raw milk adopted under this~~ 359  
~~chapter.~~ 360

~~No person shall fail to label, in accordance with rules~~ 361  
~~adopted by the director of agriculture under section 917.02 of the~~ 362  
~~Revised Code, all.~~ 363

~~(B) The gift, sale, offer for sale, or exposure for sale~~ 364  
~~occurs on the premises where the raw milk is produced.~~ 365

~~(C) The producer displays a notice, in a conspicuous place~~ 366  
~~and complying with the requirements established in rules adopted~~ 367  
~~under section 917.02 of the Revised Code, with the words "this~~ 368  
~~product has not been pasteurized and may contain disease producing~~ 369  
~~organisms."~~ 370

~~(D) All final delivery containers used for the sale of raw~~ 371  
~~milk to ultimate consumers have a label, complying with the~~ 372  
~~requirements established in rules adopted under section 917.02 of~~ 373  
~~the Revised Code, with the words "this product has not been~~ 374  
~~pasteurized and may contain disease producing organisms-" and have~~ 375  
~~been filled, capped, and stored in compliance with the procedures~~ 376  
~~and standards established in rules adopted under section 917.02 of~~ 377  
~~the Revised Code.~~ 378

~~Sec. 917.05. No person shall do any of the following or cause~~ 379  
~~any of the following to be done:~~ 380

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| (A) Represent an imitation to be a dairy product;   | 381  |
| (B) Use a measure, test, or equipment, for the purpose of determining the identity, quality, strength, purity, grade, quantity, or price of a dairy product, that does not comply with standards established by the director of agriculture by rule;  | 382<br>383<br>384<br>385                             |
| (C) Conduct a test to determine the identity, quality, strength, purity, grade, quantity, or price of a dairy product in a manner that is not in accordance with rules adopted by the director;   | 386<br>387<br>388<br>389                             |
| (D) Alter or destroy the results of a test conducted to determine the identity, quality, strength, purity, grade, quantity, or price of a dairy product;  | 390<br>391<br>392                                    |
| (E) Manufacture, sell, or deliver, hold, or offer for sale a dairy product that is not labeled or represented in accordance with the "Nutrition Labeling and Education Act of 1990," 104 Stat. 2353, 21 U.S.C.A. 343, as amended, and regulations adopted under it, and with this chapter and Chapter 3715. of the Revised Code and rules adopted under those chapters;   | 393<br>394<br>395<br>396<br>397<br>398               |
| (F) Manufacture, sell, or deliver, hold, or offer for sale a dairy product that is adulterated as described in section 3715.59 of the Revised Code or is misbranded as described in section 3715.60 of the Revised Code;  | 399<br>400<br>401<br>402                             |
| (G) Use for human consumption goat's milk, sheep's milk, or another animal's milk, except to manufacture dairy products that are described in 21 C.F.R., as amended, or recognized as nonstandardized traditional products normally manufactured from the animal's milk. <u>This division does not apply to the gift, sale, offering for sale, or exposing for sale of raw milk to the ultimate consumer in accordance with section 917.04 of the Revised Code.</u> | 403<br>404<br>405<br>406<br>407<br>408<br>409<br>410 |

Sec. 917.25. This chapter does not apply to an individual who 411  
owns an animal for the purpose of personal consumption of the 412  
dairy products produced by that animal. 413

**Section 2.** That existing sections 917.01, 917.02, 917.03, 414  
917.032, 917.04, and 917.05 of the Revised Code are hereby 415  
repealed. 416