



2015 ASSEMBLY BILL 645

January 7, 2016 – Introduced by Representatives NERISON, E. BROOKS, BALLWEG, HUTTON, T. LARSON, MURPHY, MURTHA, A. OTT and TAUCHEN, cosponsored by Senators MOULTON and MARKLEIN. Referred to Committee on Agriculture.

1 **AN ACT** *to repeal* 97.20 (1) (g), 97.20 (2) (e) 5. b., 97.21 (1) (d), 97.22 (1) (e), 97.23
2 (1) (b), 97.24 (1) (cm), 97.29 (1) (g) 1. and 2., 97.29 (1) (g) 3. and 97.29 (1) (g) 4.
3 to 8.; *to renumber and amend* 97.20 (1) (b), 97.29 (1) (g) (intro.), 97.29 (1) (h)
4 and 97.29 (1) (h); *to consolidate, renumber and amend* 97.20 (2) (e) 5.
5 (intro.) and a.; *to amend* 97.01 (1), 97.01 (10) (a), 97.01 (11), 97.09 (1), 97.18 (1)
6 (a), 97.20 (1) (a), 97.20 (1) (h), 97.24 (1) (ar), 97.25 (1) (b), 97.27 (1) (b) 5., 97.29
7 (1) (h) 2., 126.01 (17) and 234.90 (1) (cp); *to create* 97.01 (10) (b), 97.01 (10) (c),
8 97.20 (1) (b) 1. to 5., 97.20 (1) (fg), 97.20 (1) (fm) and 97.29 (1) (h) 1. to 13. of the
9 statutes; and *to affect* 1983 Wisconsin Act 536; **relating to:** dairy plant and
10 food processing plant licensing requirements and granting rule-making
11 authority.

Analysis by the Legislative Reference Bureau

This bill makes changes to food regulations for dairy plants and food processing plants.

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Under current law, an operator of a dairy plant must obtain a license to operate from the Department of Agriculture, Trade and Consumer Protection (DATCP). The operator of a food processing plant must obtain a separate license from DATCP.

Under the bill, a licensed food processing plant that processes dairy products into prepared foods that are not dairy products need not also obtain a dairy plant license if the dairy products used at the plant are produced by a licensed dairy plant and are pasteurized or otherwise treated for safe consumption. The bill changes the definition of “dairy product” to include milk from cows, goats, sheep, or hooved or camelid mammals, any product or by-product derived solely from that milk, any item that meets a standard of identity under the federal regulations or the U.S. Code, and any item that fails to meet a federal standard of identity solely because it contains milk from goats, sheep, or hooved or camelid mammals instead of cow’s milk.

The bill also changes other definitions relating to dairy plants and food processing plants.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 97.01 (1) of the statutes is amended to read:

2 97.01 (1) “Butter” means the clean, nonrancid product made by gathering in
3 any manner the fat of fresh or ripened cow’s milk or cream into a mass, which also
4 contains a small portion of the other milk constituents, with or without salt or added
5 coloring matter, and contains not less than 80% of milk fat. Renovated or process
6 butter is the product made by melting butter and reworking, without the addition
7 or use of chemicals or any substances except milk, cream, or salt, and contains not
8 more than 16% of water and at least 80% of milk fat.

9 **SECTION 2.** 97.01 (10) (a) of the statutes is amended to read:

10 97.01 (10) (a) “Milk” means the ~~whole, fresh, clean,~~ lacteal secretion,
11 practically free of colostrum, obtained by the complete milking of one or more healthy
12 cows, goats, or sheep. Milk from cows shall contain not less than 3% of milk fat, and
13 not less than 8.25% of milk solids not fat. Milk from cows may be standardized by
14 the addition or removal of cream or by the addition of concentrated milk, dry whole

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1 milk, skim milk, concentrated skim milk, or nonfat milk. Milk from cows may also
2 be standardized by removing water through reverse osmosis or other nonthermal
3 methods and adding potable water. When so standardized, milk from cows sold in
4 final package form shall contain not less than 3.25% of milk fat, and not less than
5 8.25% of milk solids not fat. Milk may be homogenized.

6 **SECTION 3.** 97.01 (10) (b) of the statutes is created to read:

7 97.01 (10) (b) “Lowfat milk” means cow’s milk from which sufficient milk fat
8 has been removed to produce a food having a milk fat content of either 0.5 percent,
9 1 percent, 1.5 percent, or 2 percent and a milk solids not fat content of not less than
10 10 percent.

11 **SECTION 4.** 97.01 (10) (c) of the statutes is created to read:

12 97.01 (10) (c) “Skim milk” means cow’s milk from which sufficient milk fat has
13 been removed to reduce its milk fat content to less than 0.5 percent and which has
14 a milk solids not fat content of not less than 9 percent.

15 **SECTION 5.** 97.01 (11) of the statutes is amended to read:

16 97.01 (11) “Nonfat dry milk” means the product resulting from the removal of
17 fat and water from cow’s milk, and contains the lactose, milk proteins and milk
18 minerals in the same relative proportions as in the fresh cow’s milk from which made.
19 It contains not over 5% by weight of moisture. The fat content is not over 1 1/2% by
20 weight unless otherwise indicated.

21 **SECTION 6.** 97.09 (1) of the statutes is amended to read:

22 97.09 (1) Definitions and standards of identity, composition, quality and fill of
23 container for foods, and amendments thereto, now or hereafter adopted under the
24 federal act or this chapter are definitions and standards of identity, composition,
25 quality and fill of container under s. 97.03. However, when such action will promote

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1 honesty and fair dealing in the interest of consumers, the department may amend,
2 stay or reject such federal regulations or make rules establishing definitions and
3 standards of identity, composition, quality and fill of container for foods where no
4 federal regulations exist, or which differ from federal regulations.

5 **SECTION 7.** 97.18 (1) (a) of the statutes is amended to read:

6 97.18 (1) (a) For the purposes of this section “oleomargarine” or “margarine”
7 includes oleomargarine, margarine, butterine and other similar substances, fats and
8 fat compounds sufficiently adaptable to the ordinary uses of butter, to lead readily
9 to use as an alternative to butter, but this section shall not apply to lard, cream
10 cheese, cheese food compounds, nor to any other dairy product made exclusively of
11 cow’s milk or milk solids with or without added vitamins, if such product is sold or
12 distributed in such manner and form as will clearly distinguish it from butter. Nor
13 shall this section apply to shortenings not churned or emulsified in milk or cream or
14 having a melting point of 112 degrees Fahrenheit or more as determined by the
15 capillary tube method unless there is sold or given away with such shortening any
16 compound which, when mixed with such shortening, makes oleomargarine,
17 butterine or similar substances.

18 **SECTION 8.** 97.20 (1) (a) of the statutes is amended to read:

19 97.20 (1) (a) “Dairy plant” means ~~any place where a dairy product is~~
20 ~~manufactured or processed for sale or distribution, and includes a processing plant,~~
21 ~~receiving station, or transfer station.~~

22 **SECTION 9.** 97.20 (1) (b) of the statutes is renumbered 97.20 (1) (b) (intro.) and
23 amended to read:

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1 97.20 (1) (b) (intro.) “Dairy product” means ~~milk or any product or by-product~~
2 ~~of milk, or any commodity in which milk or any milk product or by-product is a~~
3 ~~principal ingredient.~~ any of the following:

4 **SECTION 10.** 97.20 (1) (b) 1. to 5. of the statutes are created to read:

5 97.20 (1) (b) 1. Milk or any product or by-product derived solely from milk.

6 2. Hooved or camelid mammals’ milk or any product or by-product derived
7 solely from hooved or camelid mammals’ milk.

8 3. An item that meets a definition or standard of identity under 21 CFR 131,
9 133, 135.3 to 135.140, or 184.1979 or under 21 USC 321a or 321c.

10 4. An item that fails to meet a definition or standard of identity specified in
11 subd. 3. solely because the item contains hooved or camelid mammals’ milk or milk
12 from goats or sheep instead of or in addition to milk from cows.

13 5. A product that is ready to eat, sell, distribute, or market and that is made
14 solely of 2 or more of the items under subds. 1. to 4.

15 **SECTION 11.** 97.20 (1) (fg) of the statutes is created to read:

16 97.20 (1) (fg) “Hooved or camelid mammal” includes water buffalo, yaks, and
17 other bovine species; camels, llamas, alpacas, and other camelid species; and horses,
18 donkeys, and other equine species.

19 **SECTION 12.** 97.20 (1) (fm) of the statutes is created to read:

20 97.20 (1) (fm) “Hooved or camelid mammals’ milk” means the lacteal secretion,
21 practically free of colostrum, obtained by the complete milking of one or more healthy
22 hooved or camelid mammals.

23 **SECTION 13.** 97.20 (1) (g) of the statutes is repealed.

24 **SECTION 14.** 97.20 (1) (h) of the statutes is amended to read:

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1 97.20 (1) (h) “Processing plant” means a ~~dairy plant~~ facility engaged in
2 pasteurizing, ~~processing~~ or manufacturing milk ~~or dairy products,~~ or processing
3 dairy products into other dairy products, for sale or distribution.

4 **SECTION 15.** 97.20 (2) (e) 5. (intro.) and a. of the statutes are consolidated,
5 renumbered 97.20 (2) (e) 5. and amended to read:

6 97.20 (2) (e) 5. A food processing plant licensed under s. 97.29 that processes
7 dairy products into a prepared food that is not a dairy product if all of the following
8 apply: a. ~~The~~ the dairy products used by the food processing plant are manufactured
9 at a dairy plant from ingredients that are pasteurized or are produced under other
10 processes that eliminate or reduce to an acceptable level the food safety hazards
11 associated with the dairy products, including aseptically processed foods, high acid
12 foods, heat treated foods, aged foods, cold pack foods, and similarly processed foods.

13 **SECTION 16.** 97.20 (2) (e) 5. b. of the statutes is repealed.

14 **SECTION 17.** 97.21 (1) (d) of the statutes is repealed.

15 **SECTION 18.** 97.22 (1) (e) of the statutes is repealed.

16 **SECTION 19.** 97.23 (1) (b) of the statutes is repealed.

17 **SECTION 20.** 97.24 (1) (ar) of the statutes is amended to read:

18 97.24 (1) (ar) “Fluid milk product” means cream, sour cream, half and half,
19 whipped cream, concentrated milk, concentrated milk products, cottage cheese, skim
20 milk, flavored milk, buttermilk, cultured buttermilk, cultured milk, yogurt, vitamin
21 and mineral fortified milk or milk products, and any other product made by adding
22 any substance to milk or any of these products.

23 **SECTION 21.** 97.24 (1) (cm) of the statutes is repealed.

24 **SECTION 22.** 97.25 (1) (b) of the statutes is amended to read:

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1 97.25 (1) (b) “Dairy product” ~~has the meaning given in s. 97.20 (1) (b)~~ means
2 cow’s milk or any product or by-product derived solely from cow’s milk, or any item
3 in which cow’s milk or any product or by-product derived solely from cow’s milk is
4 a principal ingredient.

5 **SECTION 23.** 97.27 (1) (b) 5. of the statutes is amended to read:

6 97.27 (1) (b) 5. A warehouse operated by a milk distributor licensed under s.
7 97.21 (3), and used primarily for the storage and distribution of milk, as defined in
8 s. 97.01 (10) (a), and fluid milk products, as defined in s. ~~97.20 (1) (c) and (g)~~ 97.24
9 (1) (ar).

10 **SECTION 24.** 97.29 (1) (g) (intro.) of the statutes is renumbered 97.29 (1) (g) and
11 amended to read:

12 97.29 (1) (g) “Food processing” means the manufacture or preparation of food
13 for sale through the process of canning, extracting, fermenting, distilling, pickling,
14 freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing,
15 packing, bottling, or packaging, or through any other treatment or preservation
16 process. “Food processing” includes the activities of a bakery, confectionary, or
17 bottling establishment, and also includes the receipt and salvaging of distressed food
18 for sale or use as food. ~~“Food processing” does not include any of the following:~~

19 **SECTION 25.** 97.29 (1) (g) 1. and 2. of the statutes are repealed.

20 **SECTION 26.** 97.29 (1) (g) 3. of the statutes, as affected by 2015 Wisconsin Act
21 55, is repealed.

22 **SECTION 27.** 97.29 (1) (g) 4. to 8. of the statutes are repealed.

23 **SECTION 28.** 97.29 (1) (h) of the statutes is renumbered 97.29 (1) (h) (intro.) and
24 amended to read:

ASSEMBLY BILL 645**SECTION 28**

1 97.29 (1) (h) (intro.) “Food processing plant” means any place where used
2 primarily for food processing is conducted, where the processed food is not intended
3 to be sold or distributed directly to a consumer. “Food processing plant” does not
4 include any establishment subject to the requirements of s. 97.30 or any restaurant
5 or other establishment holding a permit under s. 254.64, to the extent that the
6 activities of that establishment are covered by s. 97.30 or the permit under s. 254.64.
7 of the following:

8 **SECTION 29.** 97.29 (1) (h) of the statutes, as affected by 2015 Wisconsin Act 55,
9 is renumbered 97.29 (1) (h) (intro.) and amended to read:

10 97.29 (1) (h) (intro.) “Food processing plant” means any place where used
11 primarily for food processing is conducted, where the processed food is not intended
12 to be sold or distributed directly to a consumer. “Food processing plant” does not
13 include any establishment subject to the requirements of s. 97.30 or an
14 establishment holding a license under s. 97.605, to the extent that the activities of
15 that establishment are covered by s. 97.30 or the license under s. 97.605. of the
16 following:

17 **SECTION 30.** 97.29 (1) (h) 1. to 13. of the statutes are created to read:

18 97.29 (1) (h) 1. A retail food establishment if the food processing activities at
19 that establishment are authorized by a license issued under s. 97.30.

20 2. A restaurant or other establishment where meals are prepared or processed
21 for retail sale directly to consumers or through vending machines if the food
22 processing activities at that establishment are authorized by a permit issued under
23 s. 254.64.

24 3. An establishment covered by a license or permit under ch. 125 to sell alcohol
25 beverages if the food processing activities related to alcohol beverages at that

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1 establishment are limited to preparing individual servings of alcohol beverages that
2 are sold on the premises in accordance with the terms of the establishment's license
3 or permit under ch. 125.

4 4. A dairy plant if the food processing activities at that plant are authorized by
5 a license issued under s. 97.20.

6 5. A meat or poultry establishment if the food processing activities at that
7 establishment are authorized by a license issued under s. 97.42 or are authorized
8 under 21 USC 451 to 472 or 21 USC 601 to 695.

9 6. An egg products plant if the food processing activities at that establishment
10 are inspected by the federal department of agriculture under 21 USC 1031 to 1056.

11 7. A dairy farm and milking operation licensed under s. 97.22 that produces
12 milk for shipment to a dairy plant licensed under s. 97.20 or under the equivalent
13 laws of another state.

14 8. A place used by a beekeeper solely for extracting honey from the comb or
15 producing and selling raw honey or raw bee products.

16 9. A place used solely for washing or packaging fresh or otherwise unprocessed
17 fruits or vegetables.

18 10. A place used by a nonprofit organization solely for receiving and salvaging
19 distressed food pursuant to the organization's purposes if the organization is
20 described in section 501 (c) (3) of the Internal Revenue Code and is exempt from
21 federal income tax under section 501 (a) of the Internal Revenue Code.

22 11. A place on a farm used by an egg producer solely for handling, cleaning, or
23 packaging whole eggs, including nest-run eggs, that are produced as allowed under
24 s. 97.28 (2).

