

SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 346

As Amended by House Committee on
Agriculture

Brief*

SB 346, as amended, would allow for the on-farm retail sale of milk or milk products, regulate the labeling and advertising of such products, extend the sunset date for certain milk and dairy license fees, allow the Secretary of Agriculture (Secretary) to declare an imminent health hazard when necessary to protect the public health, and allow the Kansas Department of Agriculture (KDA) to assess a civil penalty for certain violations.

The bill would also would authorize the Animal Health Commissioner (Commissioner) to impose penalties for violations of the requirement to have a certificate of veterinarian inspection (CVI) when transporting animals into the state.

Standards and Definitions (New Section 1 and Section 4)

The bill would authorize the Secretary to adopt rules and regulations to apply the definitions and standards of identity attributed to milk and dairy products by the federal Food and Drug Administration.

The bill would create new law and amend continuing law regarding the standards and definitions for milk, goat milk, milk products, and Grade A pasteurized milk.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would also clarify the definition of “on-farm retail sales of milk or milk products” by stating it refers to unpasteurized raw milk or unpasteurized raw milk products. The bill would remove from the definition of “on-farm retail sales of milk or milk products” provisions prohibiting producers selling ungraded raw milk or ungraded raw milk products from promoting such sales other than by a sign on their dairy farm, including advertising and labeling requirements.

Label Requirements (New Section 2)

The bill would require each container of unpasteurized raw milk sold or offered for sale to bear a clearly visible label that states the following or the equivalent in a clearly visible font size: “Raw milk” and “Unpasteurized.”

On-farm Sales and Advertisements (New Section 2)

The bill would also permit any individual who engages in the on-farm retail sale of raw milk or products to advertise such products. The bill would prohibit such individuals from making any false or misleading advertisements and any advertisements would be required to state such milk or milk products are raw and unpasteurized. The bill would require any advertisement in print or visual form to state such milk or milk products are raw and unpasteurized.

Extension of Sunset Dates on Fees (Section 5-6)

The bill would extend the current sunset dates on various milk and dairy fees from 2023 to 2028.

Imported Milk and Fees (Section 6)

The bill would amend the existing inspection fee structure, which does not require Grade A milk that is

imported into Kansas and then processed into Grade B or ungraded products (e.g. cheese) to be inspected. The bill would subject processors that choose to import milk into Kansas to the same fees as in-state processors.

The bill would add “other dairy products” to include such imported Grade A milk to the list of milk inspected by the KDA. The bill would also reduce a portion of the inspection fee from \$0.01 to \$0.0075 per 100 pounds of Grade A raw milk for pasteurization.

Imminent Health Hazard (Section 7)

The bill would authorize the Secretary, when necessary to protect the public health, to declare an imminent health hazard, as defined in continuing law, at any point in a chain of events that ultimately may result in harm or danger to the public health.

The bill would not require the occurrence of the final anticipated injury or other disease-related condition to be a prerequisite for the establishment of the existence of an imminent health hazard and the use of any authority granted pursuant to this act, including any action taken pursuant to law regarding temporary suspension of licenses or stop sale or stop use orders.

Certificate of Veterinarian Inspection (Section 3)

The bill would authorize the Animal Health Commissioner (Commissioner) to impose a civil penalty and deem a violator guilty of a class C nonperson misdemeanor for intentional and knowing violations of the requirement to have a CVI when transporting animals into the state.

The bill would establish that a person found in violation of the requirement would be fined between \$100 to \$1,000 for each shipment of animals into the state, which would be

remitted to the State Treasurer and deposited into the State General Fund.

The bill would prohibit a civil penalty from being imposed except upon the written order of the duly authorized agent of the Commissioner to the person who committed the violation. The order would be required to state the violation, the civil penalty imposed, and the right of the person to appeal to the Commissioner. The bill would allow, within 20 days of notification, such person to make written request to the Commissioner for a hearing in accordance with the Kansas Administrative Procedure Act.

The bill would authorize the Commissioner to require that any records related to the animals and suspected transportation of the animals into the state in the possession of any person to be submitted to the Commissioner for review within a reasonable time; failure to cooperate with a request would be considered a violation of this act.

Technical Amendments

The bill would also make technical amendments.

Background

The bill contains the provisions of SB 346 and HB 2723. The House Committee on Agriculture held a hearing on HB 2723 on March 7, 2022. The provisions of HB 2723 are identical to the provisions of SB 345, as amended by the Senate Committee on Agriculture and Natural Resources. Background for the three bills follows below.

SB 346 – Milk and Dairy Products; On-farm Retail Sale of Raw Milk

The bill was introduced by the Senate Committee on Agriculture and Natural Resources at the request of the KDA.

[*Note*: The bill contains provisions similar to those of 2020 SB 308.]

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, **proponent** testimony was provided by the Chief Counsel of the KDA, who stated the bill would remove unconstitutional provisions regarding off-farm advertisements of raw milk and milk products, allow for the sale of raw milk and milk products on the farm if the product contains the prescribed warning label, and extend the sunset dates of fees from 2023 to 2028, but would not increase such fees.

Additional proponent testimony was provided by representatives of Kansas Farm Bureau and Kansas Livestock Association, who expressed support for requiring a label for raw milk and milk products and for extending the fee sunsets.

Opponent testimony was provided by a representative of the Kansas Justice Institute and private citizens, who stated that including the phrase “and could contain bacteria that may cause foodborne illness” in the labeling requirement was unnecessary and would pose an administrative burden for those who are handwriting the labels on raw milk containers.

Written-only opponent testimony was provided by the Farm-to-Consumer Legal Defense Fund and private citizens.

No other testimony was provided.

The Senate Committee amended the bill to:

- Change the labeling requirement from, “This product contains raw milk that is not pasteurized and could contain bacteria that may cause

foodborne illness” to either “Raw milk” or “Unpasteurized”; and

- Make technical amendments.

House Committee on Agriculture

In the House Committee hearing, **proponent** testimony was provided by the Chief Counsel of the KDA and representatives of the Kansas Dairy Association, Kansas Farm Bureau, and Kansas Justice Institute. Written-only proponent testimony was provided by a goat milk producer.

Opponent testimony was provided by a representative of the Kansas Livestock Association, who stated the organization had testified as a proponent in the Senate Committee hearing, but the amendments to the labeling requirements passed by the Senate will be confusing to the public and do not warn consumers of possible risks of foodborne illness.

No other testimony was provided.

The House Committee amended the bill to:

- Add the contents of HB 2723, regarding penalties for transporting animals into Kansas without a CVI;
- Maintain the definition for “imminent health hazard” in continuing law; and
- Require the phrases “Raw milk” and “Unpasteurized” to both be placed on the label on a container of unpasteurized raw milk sold or offered for sale at an on-farm retail location.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 346, as introduced, the KDA indicates enactment of the bill would have no fiscal effect on the agency.

HB 2723 – Transport of Animals into the State

The bill was introduced by the House Committee on Agriculture at the request of Representative Rahjes.

House Committee on Agriculture

In the House Committee hearing, **proponent** testimony was provided by the Assistant Animal Health Commissioner of the KDA and representatives of the Kansas Farm Bureau and Kansas Livestock Association, who stated the bill would assist the Animal Health Commissioner in enforcing CVI requirements for animals being brought into the state by someone who is intentionally disregarding current law. There was no other testimony provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the HB 2723, the KDA states the proposed legislation would have no measured effect on either the expenditures or the revenues of the agency. KDA estimates that the amount of penalties recovered and remitted to the State General Fund would be negligible. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

SB 345 – Transport of Animals into the State

The bill was introduced by the Senate Committee on Agriculture and Natural Resources at the request of a representative of the KDA.

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, **proponent** testimony was provided by the Assistant Animal Health Commissioner of the KDA, who stated the bill would provide authority to issue civil penalties for bringing livestock into the state without a CVI indicating the animals are healthy and would allow the Commissioner to properly fulfill their duties to protect the livestock of Kansas from the spread of contagious, infectious, and communicable disease.

Additional proponent testimony was provided by a representative of the Kansas Farm Bureau. The representative stated the bill would provide KDA with the tools necessary to encourage compliance and expressed that the monitoring and tracking of animal disease is important for the health, safety, and economic well-being of the Kansas livestock industry.

Neutral testimony was provided by a representative of the Kansas Livestock Association.

No other testimony was provided.

The Senate Committee amended the bill to:

- Clarify that violations must be done intentionally or knowingly;
- Change the penalty for a violation from a class A nonperson misdemeanor to a class C nonperson misdemeanor;

- Clarify civil penalties would be incurred for each shipment into the state; and
- Allow the Commissioner to require submission of any records related to the animals and suspected transportation of the animals into the state.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 345, as introduced, the KDA indicates enactment of the bill would have no fiscal effect on the agency. According to the Office of Judicial Administration, the bill would have no fiscal effect on the Judiciary. Enactment of the bill could result in the collection of civil penalties, which would be credited to the State General Fund. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Kansas Department of Agriculture; milk; dairy products; raw milk; on-farm sales; fees; livestock, Animal Health Commissioner; civil penalties