

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 152

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO DAIRY PRODUCTS; AMENDING THE HEADING FOR CHAPTER 5, TITLE 37,  
2 IDAHO CODE, TO REMOVE REFERENCE TO BABCOCK TESTS AND TO PROVIDE FOR  
3 MILK COMPONENTS AND QUALITY TESTING; AMENDING SECTION 37-503, IDAHO  
4 CODE, TO REVISE PROVISIONS RELATING TO CERTAIN LICENSES AND TO REVISE  
5 DEFINITIONS; AMENDING SECTION 37-504, IDAHO CODE, TO PROVIDE FOR THE  
6 PRORATION OF LICENSE FEES AND TO REVISE PROVISIONS RELATING TO THE NON-  
7 ISSUANCE AND REVOCATION OF CERTAIN LICENSES; AMENDING SECTION 37-505,  
8 IDAHO CODE, TO REVISE REPORTING REQUIREMENTS; AMENDING SECTION 37-506,  
9 IDAHO CODE, TO REVISE TESTING PROVISIONS, TO AUTHORIZE THE DEPARTMENT  
10 OF AGRICULTURE TO CONDUCT CERTAIN AUDITS RELATING TO PAYMENTS FOR MILK  
11 AND CREAM AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 37-507,  
12 IDAHO CODE, TO REVISE PROVISIONS RELATING TO STATEMENTS OF MILK AND  
13 CREAM PURCHASED; AMENDING SECTION 37-509, IDAHO CODE, TO REMOVE MIS-  
14 DEMEANOR PENALTY PROVISIONS AND TO PROVIDE FOR CIVIL PENALTIES AND TO  
15 PROVIDE THAT THE DIRECTOR OF THE IDAHO DEPARTMENT OF AGRICULTURE SHALL  
16 NOT BE REQUIRED TO REPORT MINOR VIOLATIONS; AMENDING SECTION 37-510,  
17 IDAHO CODE, TO REMOVE REFERENCE TO BABCOCK TESTS AND TO REQUIRE EV-  
18 EVERY OPERATOR TESTING COMPONENTS IN MILK OR CREAM TO RETAIN SAMPLES FOR  
19 A SPECIFIED PERIOD OF TIME; AMENDING SECTION 37-513, IDAHO CODE, TO  
20 REMOVE REFERENCE TO BABCOCK TESTS AND TO REVISE CERTAIN EVIDENCE PROVI-  
21 SIONS; AMENDING SECTION 37-515, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT  
22 OF AGRICULTURE TO PROMULGATE CERTAIN RULES AND TO PROVIDE THAT CERTAIN  
23 PAYMENTS AND REFUNDS SHALL BE MADE TO AGGRIEVED PARTIES WITHIN A SPEC-  
24 IFIED TIME PERIOD; REPEALING SECTION 37-517, IDAHO CODE, RELATING TO  
25 VIOLATIONS CONSTITUTING MISDEMEANORS; REPEALING SECTION 37-518, IDAHO  
26 CODE, RELATING TO PROSECUTIONS; REPEALING SECTION 37-519, IDAHO CODE,  
27 RELATING TO CONSTRUCTION OF SPECIFIED LAW WITH SANITARY AND HEALTH  
28 LAWS; AND REPEALING CHAPTER 6, TITLE 37, IDAHO CODE, RELATING TO THE  
29 STANDARDIZATION OF GLASSWARE FOR BABCOCK TESTS.  
30

31 Be It Enacted by the Legislature of the State of Idaho:

32 SECTION 1. That the Heading for Chapter 5, Title 37, Idaho Code, be, and  
33 the same is hereby amended to read as follows:

34 CHAPTER 5

35 INSPECTION AND LICENSING OF DAIRY PRODUCT DEALERS AND ESTABLISHMENTS --  
36 ~~BABCOCK TESTS~~ MILK COMPONENTS AND QUALITY TESTING

37 SECTION 2. That Section 37-503, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 37-503. LICENSES -- RETAIL VENDOR EXCEPTED -- FEES -- POSTING -- DEF-  
40 INITIONS. Every creamery, milk plant, shipping or cream buying station,

1 milk condensing plant, cheese factory, mix making plant, ice cream factory,  
 2 reprocessing plant, casein plant, powdered milk plant, or factory of milk  
 3 products, or other person receiving or purchasing milk or cream in bulk other  
 4 than a retail vendor of milk on the basis of ~~the amount of milk fat volume,~~  
 5 milk components or milk quality therein, shall annually obtain a license  
 6 therefor. Such license shall be issued by the department upon being satis-  
 7 fied that the building, places, or premises where such milk or dairy products  
 8 are to be received or purchased are maintained in a sanitary manner, ~~and that~~  
 9 ~~cream scales are protected and placed on a solid foundation and away from~~  
 10 ~~drafts,~~ and that a laboratory or ~~inclosed~~ enclosed test room is provided in  
 11 which to test milk and cream, that ample light is provided therein, and that  
 12 at all times the room is kept in a clean and sanitary condition, and upon  
 13 payment of such license fee to the department according to the following  
 14 schedule:

15 Milk condensery, one hundred dollars (\$100), reprocessing plant, one  
 16 hundred dollars (\$100), creamery, fifty dollars (\$50.00), cheese fac-  
 17 tory, twenty dollars (\$20.00), ice cream factory, twenty dollars (\$20.00),  
 18 mix making plant, twenty dollars (\$20.00), casein plant, twenty dollars  
 19 (\$20.00), milk powder plant, thirty dollars (\$30.00), cream buying or ship-  
 20 ping station, fifteen dollars (\$15.00). When one (1) or more kinds of dairy  
 21 products are being manufactured by the same firm on the same premises, this  
 22 shall be construed to require that a separate license be procured for each  
 23 kind of product manufactured and sold. The license, when issued, shall be  
 24 posted in a conspicuous place in the plant for which issued.

25 The term "creamery" shall mean any place, building or structure wherein  
 26 milk or cream is manufactured into butter for sale.

27 The term "milk plant" shall mean any place, building or structure  
 28 wherein milk is received for bottling, pasteurizing, clarifying or other-  
 29 wise processing.

30 The term "shipping or cream buying station" shall mean any place where  
 31 milk or cream is delivered by the producers to a buyer, not a manufacturer, or  
 32 to the agent or representative of a manufacturer or processor of dairy prod-  
 33 ucts for shipment or transportation to such manufacturer or processor.

34 The term "milk condensing plant" shall mean any place, building or  
 35 structure wherein milk is condensed or processed by ~~evaporation of~~ removing  
 36 a considerable portion of the water or other milk constituents normally con-  
 37 tained therein.

38 The term "cheese factory" shall mean any place, building or structure  
 39 wherein milk is manufactured into cheese.

40 The term "ice cream factory" shall mean any place, building or structure  
 41 wherein milk or cream, regardless of butterfat content, and with or with-  
 42 out other constituents, shall be manufactured into a frozen or ~~semi-frozen~~  
 43 semifrozen product for human consumption and for sale at wholesale or re-  
 44 tail. This term shall not include "frozen dessert machines."

45 The term "frozen dessert machine" shall mean the freezer or other device  
 46 by which the liquid ingredients for frozen dessert are frozen to a solid or  
 47 semisolid consistency and are discharged, expelled or drawn off for sale at  
 48 retail.

49 The term "mix making plant" shall mean any place, building or structure  
 50 wherein milk or cream, with or without other constituents, shall be mixed

1 or processed for resale to ice cream factories; provided, that any duly li-  
 2 censed ice cream factory may carry on, as a part of its business, the business  
 3 of mix making plant without being required to pay therefor, additional li-  
 4 cense for so doing.

5 The term "reprocessing plant" shall mean any place, building or struc-  
 6 ture wherein a ~~cheese dairy~~ product is made by ~~comminuting and mixing one or~~  
 7 ~~more lots of cheese of the same variety or of different varieties into a ho-~~  
 8 ~~mogenous, plastic mass with or without the addition of water and emulsifying~~  
 9 ~~agents mixed, dried, shredded, packaged or further processed into a dairy~~  
 10 ~~product. A reprocessing plant does not include retail stores, restaurants~~  
 11 ~~or similar institutions.~~

12 The term "casein plant" shall mean any place, building or structure  
 13 wherein casein is manufactured for sale.

14 The term "powdered milk plant" shall mean any place, building or struc-  
 15 ture wherein milk or any product of milk is processed by evaporating or re-  
 16 moving therefrom the water or moisture contained therein to a point where the  
 17 product may be handled as a dry product. A powdered milk plant also includes  
 18 a facility wherein dry milk products are blended or processed into other milk  
 19 products.

20 SECTION 3. That Section 37-504, Idaho Code, be, and the same is hereby  
 21 amended to read as follows:

22 37-504. LICENSES -- DURATION AND REVOCATION. Licenses shall be issued  
 23 by the department for the period of one (1) year, fees for which shall be pro-  
 24 rated for the appropriate number of months until renewal, and shall expire  
 25 on December thirty-first of each year issued, and may be revoked by the de-  
 26 partment after a hearing on ten (10) days' notice to the licensee, if such li-  
 27 censee shall fail to comply with the provisions of this act. No such license  
 28 shall be issued, and if issued may be revoked, in the following cases:

29 ~~(a) If the milk or cream, or any product thereof, used in such manufac-~~  
 30 ~~turing or processing operations, has reached an advanced state of fermenta-~~  
 31 ~~tion or shows a stage of putrefactive fermentation;~~

32 ~~(b) If the milk or cream or any product thereof be stored or kept in cans~~  
 33 ~~or other containers that have not been sterilized with boiling water or live~~  
 34 ~~steam after each delivery;~~

35 ~~(c) If the utensils or apparatus that come in contact with milk or cream~~  
 36 ~~or the products thereof in the process of manufacture or processing are not~~  
 37 ~~thoroughly washed or sterilized by means of boiling water or live steam after~~  
 38 ~~each using;~~

39 ~~(d) If the floor of the building or room in which the manufacturing or~~  
 40 ~~processing is conducted, or the product kept or stored, is so constructed or~~  
 41 ~~in such condition as to permit the flowing or soaking of water, milk or other~~  
 42 ~~liquids underneath such floor or among the interstices of such floor in such~~  
 43 ~~manner as to permit fermentation and decay to take place;~~

44 ~~(e) If the condition of the floor in the building or room where the man-~~  
 45 ~~ufacturing or processing is conducted or the product stored or kept be such~~  
 46 ~~that it may not be readily kept free from dirt and filth;~~

47 ~~(f) If drains are not provided that will convey refuse milk, water and~~  
 48 ~~sewage to a point at least fifty (50) yards distant from such building or room~~  
 49 ~~where the manufacturing or processing is conducted or the product stored;~~

1       ~~(g) If any cesspool, privy vault, hog yard, slaughter-house, hen house,~~  
 2 ~~manure, or any decaying vegetable or animal matter that will emit or produce~~  
 3 ~~foul odors, shall be permitted to exist within such distance as will permit~~  
 4 ~~the odors therefrom to reach any such building or room where the manufactur-~~  
 5 ~~ing or processing is conducted or the product stored;~~

6       ~~(h) If the building or room where the manufacturing or processing is~~  
 7 ~~conducted or the product stored is so constructed or so maintained as not~~  
 8 ~~to permit access thereto of sufficient light and air to secure good ventila-~~  
 9 ~~tion;~~

10       ~~(i) If any room or building used in connection with the manufacturing or~~  
 11 ~~processing of the product, any insects, vermin or any species of animal life~~  
 12 ~~are permitted;~~

13       ~~(j) If upon the floor of any room or building where the manufacturing or~~  
 14 ~~processing of such product is conducted, or upon the sides of walls thereof,~~  
 15 ~~any milk or its products or any other filth is allowed to accumulate, ferment~~  
 16 ~~or decay;~~

17       ~~(k) If the body or wearing apparel of any person employed in the manu-~~  
 18 ~~facturing and processing of the product, or coming in contact with the milk,~~  
 19 ~~cream or the product thereof while the manufacturing or processing is car-~~  
 20 ~~ried on shall be unclean, or shall not be washed from time to time with rea-~~  
 21 ~~sonable frequency;~~

22       ~~(1) If there shall be permitted to exist any other cause or thing cal-~~  
 23 ~~culated or tending to render the milk or cream, or any product thereof, used~~  
 24 ~~or produced in such manufacturing or processing operations, unclean, impure~~  
 25 ~~and unhealthy.~~

26       ~~(2) If the licensee does not meet rules adopted by the department of~~  
 27 ~~agriculture for the processing of grade A and manufacturing grade milk and~~  
 28 ~~milk products.~~

29       SECTION 4. That Section 37-505, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31       37-505. REPORTS OF LICENSEES. All buyers of butterfat, cream, milk or  
 32 other dairy products, required to be licensed by the provisions of this act,  
 33 shall report to the director of the department of agriculture monthly the  
 34 number of pounds of each grade of cream, butterfat or other dairy products  
 35 purchased or manufactured and prices paid at each station operated by any  
 36 creamery, cheese factory, condensery, casein, milk powder or ice cream plant  
 37 in the state. Such report blanks are to be furnished by the department and  
 38 additional reports may be called for at the discretion of the department.

39       SECTION 5. That Section 37-506, Idaho Code, be, and the same is hereby  
 40 amended to read as follows:

41       37-506. METHOD OF TESTING MILK AND CREAM. All milk and cream purchased  
 42 or sold in the state of Idaho at a price based based upon or determined by the  
 43 milkfat, butterfat, protein, lactose, ~~or~~ solids content nonfat or somatic  
 44 cell counts thereof, shall be tested by the methods as are approved in the  
 45 latest edition of the Methods of Analysis of the Association of Analytical  
 46 Chemists and as approved by the director of the department of agriculture of  
 47 the state of Idaho. Samples must be taken from every shipment of milk and

1 cream. ~~Daily composite samples in the case of milk or sweet cream must be~~  
 2 ~~taken and individual samples taken in the case of sour cream.~~ Accurate ther-  
 3 mometers must be provided at all times. ~~All composite m~~Milk and sweet cream  
 4 samples must be kept protected and in a tamper-proof place between ~~forty~~  
 5 ~~(40) thirty-three (33) and fifty forty-five (450) degrees Fahrenheit, and be~~  
 6 ~~kept for three (3) days after testing in a protected place between forty (40)~~  
 7 ~~and fifty (50) degrees Fahrenheit.~~ Such samples may be examined and tested  
 8 by the department of agriculture at any time. The department of agriculture  
 9 is authorized to conduct audits of a person's, corporation's, cooperative's  
 10 or company's payments for milk or cream to determine if such payments comply  
 11 with established requirements.

12 SECTION 6. That Section 37-507, Idaho Code, be, and the same is hereby  
 13 amended to read as follows:

14 37-507. ~~STATEMENT TO SHOW NUMBER OF POUNDS OF MILK OR CREAM PUR-~~  
 15 ~~CHASED.~~ Every person, corporation, cooperative or company ~~operating a~~  
 16 ~~creamery, when using the Babcock test as a standard to that determines the~~  
 17 ~~value of any milk or cream received or bought by such person, corporation,~~  
 18 ~~cooperative or company to be manufactured into butter, on a milk volume, com-~~  
 19 ~~ponent or somatic cell count basis shall, when paying for such milk or cream,~~  
 20 ~~include in every statement or check issued to any patron in payment therefor~~  
 21 ~~a statement of the number of pounds of butterfat milk, milk components and~~  
 22 ~~the average somatic cell counts, if applicable, for which payment is made.~~  
 23 Records for such transactions shall be retained by the purchaser of the milk  
 24 or cream for at least one (1) year from the date the tests were conducted.

25 SECTION 7. That Section 37-509, Idaho Code, be, and the same is hereby  
 26 amended to read as follows:

27 37-509. PENALTY FOR VIOLATIONS. (1) ~~Whoever shall violate any of the~~  
 28 ~~provisions of sections 37-506 through 37-508, Idaho Code, shall be guilty~~  
 29 ~~of a misdemeanor and upon conviction thereof shall be punished by a fine of~~  
 30 ~~not less than twenty-five dollars (\$25.00) nor more than two hundred dollars~~  
 31 ~~(\$200), for each and every offense, or be imprisoned in the county jail not~~  
 32 ~~less than thirty (30) days nor more than sixty (60) days, or both such fine~~  
 33 ~~and imprisonment this chapter or the rules promulgated hereunder for car-~~  
 34 ~~rying out any requirements herein specified may be assessed a civil penalty~~  
 35 ~~by the department or its duly authorized agent of not more than ten thousand~~  
 36 ~~dollars (\$10,000) for each offense.~~

37 (2) Assessment of a civil penalty may be made in conjunction with any  
 38 other department administrative action.

39 (3) No civil penalty may be assessed unless the person, corporation,  
 40 cooperative or company charged was given notice and opportunity for a hear-  
 41 ing pursuant to the Idaho administrative procedure act.

42 (4) If the department is unable to collect such penalty or if any per-  
 43 son, corporation, cooperative or company fails to pay all or a set portion of  
 44 the civil penalty as determined by the department, it may recover such amount  
 45 by action in the appropriate district court.

46 (5) Any person, corporation, cooperative or company against whom the  
 47 department has assessed a civil penalty under the provisions of this section

1 may, within twenty-eight (28) days of the final action by the agency making  
 2 the assessment, appeal the assessment to the district court of the county in  
 3 which the violation is alleged by the department to have occurred.

4 (6) Nothing in this chapter shall be construed as requiring the direc-  
 5 tor to report minor violations for prosecution when he believes that the pub-  
 6 lic interest will be best served by suitable warnings or other administra-  
 7 tive action.

8 SECTION 8. That Section 37-510, Idaho Code, be, and the same is hereby  
 9 amended to read as follows:

10 37-510. RETENTION OF TESTED SAMPLES. Every operator ~~of a Babcock test~~  
 11 ~~for butterfat~~ testing components in milk or cream for the purpose of deter-  
 12 mining their commercial value when purchased or sold shall keep for the pe-  
 13 riod of forty-eight (48) hours after completing a test a portion sufficient  
 14 for two (2) tests of each and every sample tested. These samples shall be ac-  
 15 cessible to the director or his representative at any and all times and legi-  
 16 ble record of all tests made by the operator of said tests shall be accessible  
 17 to the department for a period of thirty (30) days following such tests.

18 SECTION 9. That Section 37-513, Idaho Code, be, and the same is hereby  
 19 amended to read as follows:

20 37-513. FALSE TESTS -- EVIDENCE. No person shall falsely manipulate or  
 21 misread ~~the Babcock test or any other~~ milk or cream testing apparatus. The  
 22 writing of a check or payment of money by such person, corporation, coopera-  
 23 tive or company for cream or milk shall constitute prima facie evidence that  
 24 such test was made.

25 SECTION 10. That Section 37-515, Idaho Code, be, and the same is hereby  
 26 amended to read as follows:

27 37-515. FEES AND FINES -- DISPOSITION. Fees and fines collected under  
 28 the provisions of this act shall be credited and paid into the dairy indus-  
 29 try and inspection fund. The department is authorized by rule to set forth  
 30 parameters relating to payments, refunds or other adjustments whenever the  
 31 department determines milk or cream component testing fails to meet require-  
 32 ments. The payments or refunds shall be made to the aggrieved party within  
 33 thirty (30) days.

34 SECTION 11. That Section [37-517](#), Idaho Code, be, and the same is hereby  
 35 repealed.

36 SECTION 12. That Section [37-518](#), Idaho Code, be, and the same is hereby  
 37 repealed.

38 SECTION 13. That Section [37-519](#), Idaho Code, be, and the same is hereby  
 39 repealed.

40 SECTION 14. That Chapter 6, Title 37, Idaho Code, be, and the same is  
 41 hereby repealed.