



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1729/1  
MCP:wlj&amn

## 2015 SENATE BILL 512

January 6, 2016 – Introduced by Senators MOULTON and MARKLEIN, cosponsored by Representatives NERISON, E. BROOKS, BALLWEG, HUTTON, T. LARSON, MURPHY, MURTHA, A. OTT and TAUCHEN. Referred to Committee on Agriculture, Small Business, and Tourism.

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.

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*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.

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***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:

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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).

