Draft Legislation on Food Safety 10/27/2017 (knm/jlw)

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [in brackets and struckthrough.]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to establishing the produce safety act and relative to milk and milk products.

Be it Enacted by the Senate and House of Representatives in General Court convened

1 New Chapter; Produce Safety. Amend RSA by inserting after chapter 143-A the following new chapter:

Chapter 143-B
PRODUCE SAFETY

143-B:1 Citation. – This chapter shall be known and may be cited as the "Produce Safety Act."

143-B:2 Purpose. – The purpose of this chapter is to ensure that the health of the public is protected from the consumption of food contaminated from produce pursuant to the Food Safety Modernization Act, 21 C.F.R. part 112.

143-B:3 Definitions. –
I. "Commissioner" means the commissioner of the department of health and human services.
II. "Covered produce" means any fruit of vegetable as listed in 143-B:4, including, but not limited to, any mix of fruits or vegetables, such as a fruit basket.
III. "Department" refers to the department of health and human services.

143-B:4 Applicability; Covered Produce. - Covered Produce includes all of the following: Fruits and vegetables such as almonds, apples, apricots, apriums, Artichokes-globe-type, Asian pears, avocados, babacos, bananas, Belgian endive, blackberries, blueberries, boysenberries, brazil nuts, broad beans, broccoli, Brussels sprouts, burdock, cabbages, Chinese cabbages (Bok Choy, mustard, and Napa), cantaloupes, carambolas, carrots, cauliflower, celeriac, celery, chayote fruit, cherries (sweet), chestnuts, chicory (roots and tops), citrus (such as clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and uniq fruit), cowpea beans, cress-garden, cucumbers, curly endive, currants, dandelion leaves, fennel-Florence, garlic, genip, gooseberries, grapes, green beans, guavas, herbs (such as basil, chives, cilantro, oregano, and parsley), honeydew, huckleberries, Jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leek, lettuce, lychees, macadamia nuts, mangos, other melons (such as Canary, Crenshaw, and Persian), mulberries, mushrooms, mustard greens, nectarines, onions, papayas, parsnips, passion fruit, peaches, pears, peas, peas-pigeon, peppers (such as bell and hot), pine nuts, pineapples, plantains, plums, plumcots, quince, radishes, raspberries, rhubarb, rutabagas, scallions, shallots, snow peas, soursop, spinach, sprouts (such as alfalfa and mung bean), strawberries, summer

squash (such as patty pan, yellow, and zucchini), sweetsop, Swiss chard, taro, tomatoes, turmeric, turnips (roots and tops), walnuts, watercress, watermelons, and yams; or a mix of intact fruits and vegetables, such as a fruit basket.

143-B:5 Exemptions. -
I. Covered Produce does not include:
(a) Produce that is rarely consumed raw, specifically the produce on the following exhaustive list: asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries, sour; chickpeas; cocoa beans; coffee beans; collards; corn, sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts;
(b) Produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management; or
(c) Produce that is not a raw agricultural commodity, as defined in 21 C.F.R § 112.3(c).
II. Produce is eligible for exemption from the requirements of this chapter under the following conditions:
(a) The produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance;
(b) The covered farm discloses in documents accompanying the produce, in accordance with the practice of the trade, that the food is not processed to adequately reduce the presence of microorganisms of public health significance;
(c) The covered farm complies with the requirements of 21 C.F.R. § 112.2(b)(3);
(d) The covered farm complies with the requirements of 21 C.F.R. § 112.2(b)(4);
(e) The requirements of 21 C.F.R. § 112 subpart A and subpart Q apply to such produce; and
(f) An entity that provides a written assurance under 21 C.F.R. § 112.2(b)(3)(i) or (ii) acts consistently with the assurance and documents its actions taken to satisfy the written assurance.

143-B:6 State Produce Sanitation Control Authorities. – Subject to sufficient funding, the department shall serve as the state produce sanitation control authority for the commercial sale and processing of produce. The department shall enforce the Food Safety Modernization Act, Public Law 111-353, codified at 21 U.S.C. section 301 et seq., for standards of growing, harvesting, packing, and holding of produce for human consumption, 21 C.F.R. Part 112, as incorporated by reference including any subsequent amendments thereto.

143-B:7 License Required; Labeling; Records. – No person or facility shall process produce until a license has been granted by the department. A license shall be issued to any facility which has complied with the rules adopted by the commissioner pursuant to RSA 541-A. All licenses issued under this section shall expire on April 1 of the following year next following the date of issuance. All records shall be open to inspection by agents of the department at any time.

143-B:8 Revocation of License. – In case any produce facility shall be deemed by the commissioner to be conducted in an unsanitary manner, or there shall be any practice deemed in violation of any law, or of any legally adopted regulation of the commissioner, it shall be the duty of the commissioner to notify the facility concerned, and in case the required changes in

conditions, methods or branding are not effected within the time specified, to close such facility, or to suspend, revoke or cancel the license as the commissioner may deem expedient.

143-B:9 Procedure. – When denying or revoking a license, the department shall give written notice of the reasons for the action and provide information related to the licensee's right to request a hearing.

143-B:10 Effect of Revocation. – Any person or facility whose license has been suspended or revoked, or for whom a renewal has been denied, shall discontinue the processing and sale of produce. The sale or processing of produce from a non-certified or unlicensed facility shall constitute a violation of this chapter.

143-B:11 Regulations. – The commissioner is authorized to make all necessary regulations for the proper administration and enforcement under this chapter.

143-B:12 Penalty. - Whoever violates any of the provisions of this chapter or fails to comply with the lawful orders and requirements of the commissioner shall, upon conviction of a:
I. First offense, be guilty of a violation;
II. Second offense, be guilty of a misdemeanor; and
III. Third offense, be guilty of a misdemeanor, if a natural person, or be guilty of a felony, if any other person.

143-B:13 Forfeitures. – Any produce sold in violation of this chapter may be forfeited pursuant to a civil or an equitable action filed with the Superior Court.

143-B:14 Funding of Program. – The commissioner is authorized to receive and expend federal funds appropriated for administration of this chapter, to adopt rules to effectuate the purposes of this chapter under RSA 541-A and to enforce the standards of 21 C.F.R. Part 112, et seq., and any subsequent amendments thereto.

2 Inspection and Sale of Dairy Products; Pasteurization Required. Amend RSA 184:30-a to read as follows:
184:30-a Pasteurization Required. – No milk or milk products as defined in RSA 184:79 shall be sold, offered for sale or served unless pasteurized. This shall not serve to prohibit the direct sale of raw milk or cream from the producer, store or milk pasteurization plant to the final consumer, or milk or cream from a producer to stores, [~~nor the serving of raw milk at bona fide boarding houses where the milk is produced on the premises, provided that in the dining room of such boarding houses a sign is prominently displayed stating that such raw milk is served therein,~~] nor the sale, within the state, of cheese made from raw milk when such cheese has been aged a minimum of 60 days at a temperature above 35 degrees Fahrenheit, and is clearly labeled as unpasteurized. This section shall not prohibit the direct sale of yogurt made with raw milk by the producer in this state, provided that such yogurt is clearly labeled as having been made with raw milk.

3 New Paragraphs; Milk for Drinking; Rulemaking. Amend RSA 184:30-h by inserting after paragraph VII the following new paragraphs VIII-IX:

VIII. Receiving station permits under RSA 184:60-a.
IX. Fees for permits and fines for licenses under RSA 184:76-a.

4 Receiving Stations for Milk, Etc.; Permit Required. Amend RSA 184:60-a to read as follows:
184:60-a Permit Required. – [~~Any person who purchases milk from producers in this state using the bulk tank collector system of collecting milk shall procure from the commissioner a permit to operate each individual route.~~] ***Any person who purchases milk from producers in this state using the bulk tank collector system of collecting milk shall not operate without a valid permit issued by the department of health and human services.***

5 Receiving Stations for Milk, Etc.; Weighing of Milk. Amend RSA 184:76-a to read as follows:
184:76-a Weighing of Milk – Any person who weighs, measures, or samples a producer's milk for the purpose of determining the amount and quality of milk as a basis for paying for product purchased shall procure from the commissioner ***of the department of health and human services*** a license showing that the holder is competent and qualified to perform such work, the competency and qualifications of such weighers and samplers to be determined by examination [~~by the state supervisor of dairy services or under his supervision~~].

6 Milk Sanitation Code; Terms Defined. Amend RSA 184:79, paragraphs IX, XII, XIX, XXII and XXIII to read as follows:
185:79 Terms Defined.
IX. The term "milk producer" means any person who owns or controls one or more [~~cows, sheep, or goats~~] ***hooved mammals***, a part or all of the milk or milk products from which are sold, or offered for sale.
XII. The term "dairy farm" means any place or premises where one or more [~~cows, sheep, or goats~~] ***hooved mammals*** are kept, a part or all of the milk or milk products from which is sold or offered for sale.
XIX. The term "communicable disease" means ***any disease as defined in RSA 141-C:2, VI*** [~~and shall include typhoid fever, tuberculosis, septic sore throat, scarlet fever, diphtheria, undulant fever, foot and mouth disease, dysentery, all intestinal infections and in addition thereto any other diseases described as infectious or communicable in the latest edition of the communicable disease manual published by the American Public Health Association~~].
XXII. The term "milk" means the lacteal secretion, practically colostrum free, obtained by the complete milking of one or more healthy [~~cows, sheep, or goats~~] ***hooved mammals***. Cow's milk shall contain not less than 8- 1/4 percent milk solids not fat and not less than 3- 1/4 percent milk fat. Goat's milk sold in retail packages shall contain not less than 7- 1/2 percent milk solids not fat and not less than 2- 1/2 percent milk fat.
XXIII. The terms "pasteurization", "pasteurized", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F., and holding it continuously at or above this temperature for at least 30 minutes, or to at least 161 degrees F., and holding it continuously at or above this temperature for at least 15 seconds, in equipment which is properly operated and approved by the health authority. The milk products which have a higher milkfat content than milk and/or contain added sweeteners shall be heated to at least 150 degrees F., and held continuously at or above this temperature for at least 30 minutes, or to at least 166 degrees F., and held continuously at or above this temperature for at least 15 seconds. Nothing in this

definition shall be construed as barring any other pasteurization process which has been recognized and demonstrated to be equally efficient and which is approved by the [~~milk sanitation board~~] ***department***.

7 New Paragraphs; Milk Sanitation Code; Terms Defined. Amend RSA 184:79 by inserting after paragraph XIV the following new paragraphs to read as follows:
185:79 Terms Defined.
XXV. The term "cream" means that portion of milk, rich in butterfat, which rises to the surface of milk on standing, and is fresh and clean. It contains less than 30 percent but not less than 18 percent by weight of milk fat and not more than 2/10 percent of acid-reacting substances, calculated in terms of lactic acid.
XXVI. The terms "butter" and "cheese" shall be understood to mean the products usually known by those names, and which are manufactured exclusively from milk, or cream, or both, with salt and with or without coloring matter, and, if cheese, with rennet.
XXVII. The term "receiving station" as used in this subdivision shall include creameries, cheese factories, condensaries, receiving stations, milk depots, bulk tank collector trucks and processing plants for milk and cream.

8 Sanitation Code; Milk Sanitation Board Established. Amend RSA 184:80 to read as follows:
184:80 Milk Sanitation Board Established –
I. The commissioner of agriculture, markets, and food***, or his or her designee***.
II. The commissioner of the department of health and human services or his [~~designated alternate~~] ***or her designee***.
III. The dean of the college of life science and agriculture at the University of New Hampshire or [~~a member of his teaching staff to be designated by him~~] ***his or her designee***.
IV. An individual who holds a milk plant license.
V. Three individuals who hold valid producer permits.
The milk plant licensee and the producer permit holders shall be residents of the state and shall be appointed by the governor with the consent of the council and each shall hold office for a term of 6 years and until his successor shall be appointed and qualified; provided, that the original appointments shall be one for a term of 2 years, one for a term of 3 years, one for a term of 4 years, and one for a term of 6 years. The milk plant licensee and producer permit holders shall receive no compensation for their services but shall receive necessary travel and other expenses while engaged in actual work of the board. [~~The chief of the bureau of food and chemistry of the department of health and human services shall act as technical secretary without voting power.~~]

9 Sanitation Code; Organization. Amend RSA 184:81 to read as follows:
184:81 Organization. – The board shall elect a chairman from among its members and shall hold meetings on the call of the chairman or the commissioner. [~~Five~~] ***Four*** members shall constitute a quorum.

10 Sanitation Code; Duties. Amend RSA 184:82 to read as follows:
184:82 Duties. – The board shall from time to time give advice to the commissioner upon problems affecting the adequacy of the milk supply or the sanitation thereof and hold such hearings and take such action as required in this subdivision. [~~The technical secretary, acting for the commissioner, shall make inspections and investigations or arrange for the conduct of such~~

~~by such employees of the department as necessary to carry out the provisions of this subdivision and all regulations promulgated hereunder.~~]

11 Sanitation Code; Duties; Department of Health and Human Services. Amend RSA 184:82-a to read as follows:
184:82-a Duties; Department of Health and Human Services. – The commissioner shall certify to the milk sanitation board that any laboratory in the state engaged in whole or in part in the analysis of milk or milk products meets the criteria established in rules adopted by the board under RSA 184:93, I(l)***, if requested by the board***.

12 Sanitation Code; Licenses; Fees. Amend RSA 184:85 paragraph I to read as follows:
184:85 Licenses; Fees. –
I. The commissioner may issue a license to any milk plant, out-of-state milk plant, milk distributor or producer-distributor upon receipt of a written application upon a form furnished by the commissioner and setting forth such information concerning the applicant and his operation and facilities as shall be required by rule. [~~All milk plants located within the state shall file with their application a listing of the names and addresses of all milk producers furnishing them with milk or milk products.~~]

13 Sanitation Code; Denial and Revocation. Amend RSA 184:86 paragraphs I-III to read as follows:
184:86 Denial and Revocation. – A license [~~will~~] ***shall*** be denied or revoked by the commissioner for failure to comply with any or all of the following requirements:
I. Any milk plant, milk distributor or producer-distributor located within the state who fails to comply with the provisions of this subdivision or rules adopted hereunder; or who purchases, processes or offers for sale any milk or milk products any part of which comes from any point outside the state unless such milk or milk products are produced within that state under provisions which are substantially equivalent to the requirements established by this subdivision or rules adopted hereunder, and said requirements are enforced with equal effectiveness as determined by an enforcement rating conducted on such forms and in such a manner and by such milk inspectors [~~as shall be approved by the commissioner, and said out-of-state supply of milk or milk products shall exhibit a milk sanitation rating equal to the overall New Hampshire milk sanitation rating~~].
II. Any milk plant located within the state which [~~after January 1, 1964~~] takes on a milk producer who does not hold a valid producer's permit.
III. Any milk plant, milk distributor or producer-distributor located outside the state unless their milk or milk products have been produced and processed under provisions which are substantially equivalent to the requirements established by this subdivision or regulations promulgated hereunder, and said requirements are enforced with equal effectiveness as determined by an enforcement rating [~~conducted on such forms and in such a manner and by such milk inspectors as shall be approved by the commissioner, and said supply shall exhibit a milk sanitation rating equal to the overall New Hampshire milk sanitation rating~~].

14 Sanitation Code; Procedure. Amend RSA 184:87 to read as follows:
184:87 Procedure –[~~Before denial or revocation of a license the commissioner shall give written notice stating that such action is contemplated and giving reasons therefor. Such notice shall~~

~~appoint a time of hearing and shall be sent by certified mail. On the day of hearing the licensee may present such evidence as he deems fit before the milk sanitation board.~~] ***When denying or revoking a license, the department shall give written notice of the reasons for the action and provide information related to the licensee's right to request a hearing.***

15 Sanitation Code; Producer Permit Required. Amend RSA 184:88 to read as follows:
184:88 Procedures Permit Required. – It shall be unlawful for any milk producer to offer for sale or sell milk or milk products to an in-state licensee as defined in RSA 184:84 who does not possess a valid producer permit issued by the commissioner. However, producers located beyond the limits of routine inspection are exempt from this requirement; provided, the milk from said producers shall have been produced under provisions which are substantially equivalent to the requirements of this subdivision and rules adopted hereunder and are enforced with equal effectiveness as determined by an enforcement rating which has been conducted on such forms and in such a manner and by such milk inspectors [~~as shall be approved by the commissioner~~].

16 Sanitation Code; Application; Issue. Amend RSA 184:89 to read as follows:
184:89 Application; Issue. – The commissioner may issue a permit to any milk producer upon receipt of a [~~written~~] ***completed*** application [~~upon a form~~] furnished by the commissioner and setting forth such information concerning the applicant and the applicant's operation and facilities as may by rules be required. A permit will be granted upon the condition that the applicant shall at all times conduct its operation and maintain its facilities in accordance with the requirements of this subdivision and all rules adopted under this subdivision. Permits shall not be transferable with respect to persons or locations. All permits once issued shall remain in effect until revoked or until 6 months following the date on which milk production ceased at the permitted facility. Permanent milking facilities at fairgrounds or other locations which are used at least annually shall be exempt from the 6-month period. A current listing of all valid permit holders shall be available for review [~~in~~] ***at*** the department of health and human services.

17 Sanitation Code; Suspension. Amend RSA 184:90-a to read as follows:
184:90-a Suspension. – The commissioner may suspend a producer's [~~permit~~] ***license*** if it is found after investigation that circumstances exist which threaten the health or safety of the public. If a producer's [~~permit~~] ***license*** is suspended, the commissioner shall provide the [~~permittee~~] ***licensee*** with written notice of the basis for the decision and shall include a notification of the time and place of a hearing before the milk sanitation board. The hearing following suspension shall be held within 10 working days of the date of the suspension. No milk producer shall operate during the pendency of any administrative proceeding following suspension of the producer's [~~permit~~] ***license***. If a producer demonstrates that the circumstances resulting in suspension have been corrected, and no longer constitute a threat to the health or safety of the public, the commissioner may reinstate the producer's [~~permit~~] ***license*** without requiring a hearing before the milk sanitation board.

18 Sanitation Code; Milk Sanitation Rating Required. Amend RSA 184:95 to read as follows:
184:95 Milk Sanitation Rating Required. – The commissioner, with the consent of the milk sanitation board, may at any time order the technical secretary to conduct a milk sanitation rating of both producers and milk plants located within the state in order to evaluate the sanitary quality of milk and other dairy products produced and processed within the state. Said rating shall be

conducted on such forms and in such a manner and with such personnel as approved by the commissioner and the milk sanitation board. The values obtained shall be considered official and shall indicate the overall degree of compliance with the sanitary requirements set forth in this subdivision and regulations promulgated hereunder. The commissioner, with the consent of the milk sanitation board, may at any time order the technical secretary to conduct an enforcement rating, utilizing such forms and conducted in such a manner and with such personnel as approved by the commissioner with the consent of the milk sanitation board as to determine whether an enforcement agency is carrying out the provisions of this subdivision and those regulations promulgated hereunder. [~~Such values are to be considered by the commissioner in carrying out the provisions of RSA 184:98.~~]

19 Sanitation Code; Access of Agents. Amend RSA 184:96 to read as follows:
184:96 Access of Agents. – The commissioner and his authorized milk inspectors, deputies and assistants, or any of them, shall have access, at any reasonable hours, to all premises and places where milk or milk products are produced, handled or processed or where the process of pasteurization is carried on for the enforcement of the provisions of this subdivision. ***Upon request of assistance by the department, the state veterinarian shall be available to accompany the department regarding issues of animal health and welfare.***

20 Sanitation Code; Enforcement. Amend RSA 184:98 to read as follows:
184:98 Enforcement. – The commissioner shall [~~order the technical secretary to~~] enforce the provisions of this subdivision[~~, provided, however, that the said commissioner, in his discretion may for the purpose of enforcing this subdivision, accept the milk inspection of the milk inspecting department of any city or town of any milk producer located in such city or town or of any producer, regardless of where located, who furnishes milk or milk products to a milk plant or milk distributor located within such city or town~~].

21 Sanitation Code; Injunctions. Amend RSA 184:102 to read as follows:
184:102 Injunctions. – In addition to the provisions of RSA 184:101, the superior court, upon complaint of the commissioner ***or the attorney general***, shall have jurisdiction to restrain and enjoin any act forbidden or declared illegal by this chapter. [~~It shall be the duty of the several county attorneys, in their respective counties, to enforce and restrain any violation of this chapter.~~]

22 Sanitation Code; Administrative Fines. Amend RSA 184:105 to read as follows:
184:105 Administrative Fines. – The commissioner, after notice and ***the opportunity for a*** hearing, may impose an administrative fine not to exceed $2,000 for each offense upon any person who violates any provision of this chapter or rules adopted under this chapter. ***Each day that the offense remains uncorrected shall constitute a separate offense subject to an additional fine.*** The range of administrative fines shall be scaled to reflect the scope and severity of the violation. Rehearings and appeals from a decision of the commissioner regarding imposition of an administrative fine shall be in accordance with RSA 541. No administrative fine imposed under this section shall preclude the imposition of further or additional penalties or administrative actions under this chapter. The commissioner shall adopt rules in accordance with RSA 541-A relative to the amount of administrative fines, process of imposition of fines, and hearing procedures. The sums obtained from the levying of administrative fines under this

chapter shall be forwarded to the state treasurer to be deposited into the general fund as unrestricted revenue.

23 Repeal. The following are repealed:
I. RSA 184:30-b, original containers.
II. RSA 184:30-c, exceptions.
III. RSA 184:30-d, use of milk containers.
IV. RSA 184:30-e, enforcement.
V. RSA 184:30-f, penalty.
VI. RSA 184:30-g, paragraph II, dating of retail containers of cream required.
VII. RSA 184:30-h, paragraphs I and II, rulemaking.
VIII. RSA 184:46, renovated or process butter, oleomargarine, etc.
IX. RSA 184:47, marking.
X. RSA 184:48, oleomargarine defined.
XI. RSA 184:48-a, standard of identity and label statements.
XII. RSA 184:49, labeling butter substitutes.
XIII. RSA 184:53, advertisements.
XIV. RSA 184:54, penalty.
XV. RSA 184:55, seizure and forfeiture.
XVI. RSA 184:56, definition.
XVII. RSA 184:57, official duty.
XVIII. RSA 184:58, connivance.
XIX. RSA 184:59, definition.
XX. RSA 184:60, weight certificate for milk.
XXI. RSA 184:60-b, rules and regulations; fees.
XXII. RSA 184:60-c, penalty.
XXIII. RSA 184:61, inspection, stations.
XXIV. RSA 184:62, inspection, dairies.
XXV. RSA 184:63, testing, samples.
XXVI. RSA 184:64, owners' records.
XXVII. RSA 184:65, testing, notice of result.
XXVIII. RSA 184:66, further tests.
XXIX. RSA 184:67, who to pay fees and expenses.
XXX. RSA 184:68, reports of tests.
XXXI. RSA 184:69, inspection of apparatus.
XXXII. RSA 184:70, rules.
XXXIII. RSA 184:71, station records.
XXXIV. RSA 184:72, penalty.
XXXV. RSA 184:73, statements, for vendors.
XXXVI. RSA 184:74, inspection of returns; changes.
XXXVII. RSA 184:75, annual reports.
XXXVIII. RSA 184:76, testers' licenses.
XXXIX RSA 184:78, division of dairy services.
XL. RSA 184:87-a, reciprocity required.
XLI. RSA 184:90, denial and revocation.
XLII. RSA 184:91, when denying or revoking a license.

XLIII. RSA 184:92, inspections and inspectors.
XLIV. RSA 184:99, application of statutes.
XLV. RSA 184:103, standards of identity.
XLVI. RSA 184:104, penalty.

24 Effective Date. This act shall take effect immediately upon passage.