

### Agriculture and Natural Resources

#### A-1 State Water Plan Fund, Kansas Water Authority, and State Water Plan

##### State Water Plan Fund

The State Water Plan Fund is a statutory fund (KSA 82a-951) that was created by the 1989 Legislature for the purpose of implementing the State Water Plan (KSA 82a-903). The State Water Plan Fund is subject to appropriation acts by the Legislature and may be used for the establishment and implementation of water-related projects or programs and related technical assistance. Funding from the State Water Plan Fund may not be used to replace full-time equivalent (FTE) positions or for recreational projects that do not meet the goals or objectives of the State Water Plan.

##### *Revenue*

Revenue for the State Water Plan Fund is generated from the following sources.

**Water protection fees.** A water protection fee of \$0.03 per 1,000 gallons of water is assessed on the following:

- Water sold at retail by public water supply systems;
- Water appropriated for industrial use; and
- Water appropriated for watering livestock.

**Fees imposed on fertilizer and pesticides.** A tonnage fee on fertilizer and a fee for the registration of pesticides is assessed and transferred to the State Water Plan Fund in the following amounts:

- Inspection fees are imposed on each ton of fertilizer sold, offered or exposed for sale, or distributed in Kansas. Of that fee, \$1.40 per ton is credited to the State Water Plan Fund; and
- Every agricultural chemical that is distributed, sold, or offered for sale within the state must be registered, with an annual fee assessed for each registration. The law requires that \$100 from each registration fee be credited to the State Water Plan Fund.

**Sand royalty receipts.** A fee of \$0.15 per ton of sand sold is deposited in the State Water Plan Fund.

**Pollution fines.** Certain fines and penalties are levied by the Kansas Department of Health and Environment (KDHE) for water-related pollution, including:

- Violation of terms or conditions relating to public water supply systems;
- Commission of prohibited acts in relation to the operation of a public water supply system; and
- Violations of law governing the disposal of solid and hazardous waste.

**Clean water drinking fee.** A clean water drinking fee of \$0.03 per 1,000 gallons of water is assessed on retail water sold by a public water supply system and delivered through mains, lines, or pipes. Since July 1, 2007, revenue from the clean water drinking fee has been distributed as follows:

- 5/106 to the State Highway Fund;
- Of the remaining, not less than 15.0 percent for on-site technical assistance for public water supply systems; and
- The remainder to renovate and protect lakes used for public water supply.

**State General Fund transfer.** By statute, \$6.0 million annually is to be transferred from the State General Fund (SGF) to the State Water Plan Fund. In recent fiscal years, this amount has been reduced in appropriations bills. The 2020 Legislature approved a transfer from the SGF to the State Water Plan Fund of \$4.0 million for fiscal year (FY) 2020 and the full statutory transfer of \$6.0 million for FY 2021.

**Economic Development Initiatives Fund transfer.** By statute, \$2.0 million is to be transferred from the Economic Development Initiatives Fund to the State Water Plan Fund. The 2020 Legislature approved a transfer from the Economic Development Initiatives Fund to the State Water Plan Fund of \$500,000 for FY 2020 and \$913,325 for FY 2021.

State Water Plan Fund Receipts and Transfers*			
Receipts and Transfers In	FY 2019 Actual	FY 2020 Approved	FY 2021 Approved
State General Fund	\$2,750,000	\$4,005,632	\$6,000,000
Economic Development Initiatives Fund	500,000	500,000	913,325
Municipal Water Fees	3,364,968	3,208,301	3,305,836
Industrial Water Fees	931,122	950,983	930,000
Stock Water Fees	336,237	430,297	350,000
Pesticide Registration Fees	1,382,211	1,374,886	1,390,000
Fertilizer Registration Fees	3,630,506	3,584,360	3,638,611
Pollution Fines and Penalties	220,533	150,000	230,000
Sand Royalty Receipts	31,153	16,466	30,000
Clean Drinking Water Fees	2,995,608	2,710,279	2,800,000
<b>Total Receipts/Transfers In</b>	<b>\$16,142,338</b>	<b>\$16,931,204</b>	<b>\$19,587,772</b>
* Does not include cash forward, released encumbrances, or other service charges.			

**Expenditures**

Expenditures from the State Water Plan Fund are based on priorities of the State Water Plan.

The State Water Plan is developed and approved by the Kansas Water Authority. The following table summarizes recent actual and approved expenditures from the State Water Plan Fund.

<b>State Water Plan Fund Expenditures</b>			
<b>Agency/Project</b>	<b>FY 2019 Actual</b>	<b>FY 2020 Approved</b>	<b>FY 2021 Approved</b>
<b>Department of Agriculture</b>			
Interstate Water Issues	\$ 438,457	\$ 584,172	\$ 490,007
Water Use Study	47,600	142,778	72,600
Basin Management	463,386	777,957	608,949
Water Resources Cost Share	1,869,148	2,571,508	2,698,289
Nonpoint Source Pollution Assistance	1,720,546	2,299,045	1,857,836
Aid to Conservation Districts	2,092,637	2,192,637	2,342,637
Water Transition Assistance/CREP	223,589	469,367	699,745
Watershed Dam Construction	550,000	550,000	750,000
Water Quality Buffer Initiative	110,506	414,516	200,000
Riparian & Wetland Program	200,546	479,997	154,024
Streambank Stabilization	0	1,000,000	750,000
Irrigation Technology	67,460	132,540	100,000
Crop and Livestock Water Research	0	350,000	350,000
Crop Research-Hemp	100,000	0	0
Crop Research- Sorghum	150,000	0	0
Water Supply Restoration Program	0	0	0
Real-Time Water Management-Telemetry	0	0	0
<i>Subtotal – Department of Agriculture</i>	<u>\$ 8,033,875</u>	<u>\$ 11,964,517</u>	<u>\$ 11,074,087</u>
<b>Kansas Water Office</b>			
Assessment and Evaluation	\$ 401,454	\$ 796,522	\$ 829,900
MOU – Storage Operation and Maintenance	367,702	410,000	480,100
Technical Assistance to Water Users	341,000	348,219	325,000
Streamgaging	413,580	423,130	423,130
Kansas River Alluvial Aquifer Observation	50,000	0	0
Reservoir Bathymetric Surveys	200,000	350,000	350,000
Watershed Conservation Practices Implementation	900,000	700,000	1,000,000
Milford Lake Regional Conservation Partnership Program	400,000	200,000	200,000
Water Vision Education	100,000	100,000	100,000
Streambank Stabilization Effectiveness Research	100,000	0	0
Harmful Algae Bloom Research	100,000	0	0
Water Technology Farms	75,000	75,000	75,000
Equus Beds Chloride Plume	50,000	50,000	50,000
Arbuckle Study	0	68,000	0
Water Injection Dredging	0	0	660,000
Water Resource Planner	101,791	0	0
Flood Response Study	0	100,000	0
<i>Subtotal – Kansas Water Office</i>	<u>\$ 3,600,527</u>	<u>\$ 3,620,871</u>	<u>\$ 4,493,130</u>
<b>Kansas Department of Health and Environment-Division of Environment</b>			
Contamination Remediation	\$ 700,955	1,088,301	\$ 1,088,301
Total Maximum Daily Load	271,439	290,871	280,738
Nonpoint Source Program	251,031	365,880	303,208
Harmful Algae Bloom Pilot	6,870	893,130	450,000
Watershed Restoration and Protection (WRAPS)	625,874	840,898	730,884
Drinking Water Protection Program	0	350,000	350,000
<i>Subtotal – KDHE-Environment</i>	<u>\$ 1,856,169</u>	<u>\$ 3,829,080</u>	<u>\$ 3,203,131</u>
<b>University of Kansas</b>			
Geological Survey	\$ 26,841	\$ 26,841	\$ 26,841
<b>Total Agency/Project Expenditures</b>	<u><b>\$ 13,517,412</b></u>	<u><b>\$ 19,441,309</b></u>	<u><b>\$ 18,797,189</b></u>

## Kansas Water Authority

The Kansas Water Authority (Authority) is a 24-member board that provides water policy advice to the Governor, the Legislature, and the Director of the Kansas Water Office. The Authority is responsible for approving water storage sales, the State Water Plan, federal water contracts, and regulations and legislation proposed by the Kansas Water Office. The Authority meets quarterly. The Authority consists of 13 voting members and 11 ex officio members.

Voting membership includes:

- One member appointed by the Governor (also serving as chairperson);
- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House;
- A representative of large municipal water users;
- A representative of small municipal water users;
- A board member of a western Kansas Groundwater Management District (including districts 1, 3, and 4);
- A board member of a central Kansas Groundwater Management District (including districts 2 and 5);
- A member of the Kansas Association of Conservation Districts;
- A representative of industrial water users;
- A member of the State Association of Watershed Districts;
- A member with a demonstrated background and interest in water use, conservation, and environmental issues; and
- Two representatives of the general public.

Ex officio membership includes:

- The State Geologist;

- The Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture;
- The Secretary of Health and Environment;
- The Director of the Kansas Water Office (also serving as secretary);
- The Director of the Agricultural Experiment Station of Kansas State University;
- The Chairperson of the Kansas Corporation Commission;
- The Secretary of Wildlife, Parks and Tourism;
- The Secretary of Commerce;
- The Executive Director of the Division of Conservation of the Kansas Department of Agriculture;
- The Secretary of Agriculture; and
- The Director of the Kansas Biological Survey.

One primary responsibility of the Authority is to consider and approve policy for inclusion in the State Water Plan. The State Water Plan includes policy recommendations that have specific statewide or local impact and priority issues and recommendations for each of the 12 river basins in Kansas.

### **Budgetary Process**

Historically, the Division of the Budget has assigned allocations to each agency for the expenditure of State Water Plan Fund moneys.

Beginning with the FY 2008 budget cycle, the Authority and the Division of the Budget agreed to allow the Authority to develop a budget recommendation in lieu of the Division's allocation process.

A budget subcommittee of the Authority meets in the summer to develop a State Water Plan Fund budget proposal. The budget is presented to the full Authority each August. The Authority-approved budget is used by the state agencies to develop their budgets.

The Governor's budget includes recommended expenditures for the State Water Plan Fund when it is presented to the Legislature each January.

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## Agriculture and Natural Resources

### A-2 Alternative Meat Products

#### Alternative Meat Products and Labeling

[*Note:* The terms for alternative meat products vary greatly; “analog meat,” “imitation meat,” “meat substitutes,” “non-meat,” and the use of brand names for alternative meat products, among others, have been found in use. This article focuses on alternative meat products that are made with non-animal cell tissue. Limited analysis regarding cell-cultured meat products is provided.]

Alternative meat products have existed for decades; however, in recent years, some alternative meat product manufacturers have begun incorporating the word “meat” into their product naming and marketing.

Meat labeling is regulated by the U.S. Department of Agriculture (USDA) and must comply with the regulations of the USDA Food Safety Inspection Service (FSIS), essentially requiring agency approval before being offered for sale. Alternative meat product labeling, however, is regulated by the U.S. Food and Drug Administration (FDA), which does not have a counterpart to the FSIS and does not require approval of labels before the product is offered for sale.

#### Disagreements on Terms, Labeling, and Marketing Impacts

Some commodity and livestock associations believe the term “meat” in an alternative meat product’s name or marketing confuses consumers about what is and is not an animal-based meat product. As such, these associations have pursued legislation at the state level to address their industries’ concerns over labeling and marketing alternative meat products.

Opponents of this type of legislation have stated there are concerns that labeling and marketing restrictions may violate First Amendment rights to free speech. Other concerns include that by creating patchwork laws across the 50 states, it makes it difficult for alternative meat product manufacturers to sell their products. Opponents also contend that consumers are not confused by plant-based products and their labels.

Several states have recently passed legislation to specify how alternative meat products may be labeled and marketed. Included in this article is a list of the legislation by state, the date the legislation was enacted, and a summary of what changes the legislation made to previous law. Information on other related bills introduced during the 2019-2020 biennium is also included.

**Kansas Legislation**

HB 2437 was introduced during the 2020 Legislative Session by Representative Highland.

The bill would have amended the Kansas Food, Drug and Cosmetic Act (Act) to include several new terms, including “meat analog” and “identifiable meat term,” along with adopting

the Code of Federal Regulations definitions for “meat,” “meat food product,” “poultry product,” and “poultry food product.” The bill also would have specified what labeling requirements there would be for meat analog products and when such foods would be deemed misbranded under the Act.

The House Committee on Agriculture held a hearing on the bill on January 23, 2020. The Committee passed the bill on February 6, 2020; however, the bill was rereferred back to the House Committee on Appropriations on February 26, 2020. The bill again was rereferred to the House Committee on Agriculture on March 5, 2020. On March 11, 2020, the Committee passed the bill. The bill died on the House Calendar on May 11, 2020.

Enacted Cell-cultured and Alternative Meat Product Labeling Laws (as of 2020)			
State	Bill	Status	Summary and Keywords
Alabama	2019 AL H 518	Enacted 5/29/2020	Food products containing cultured animal tissue that is produced from animal cell cultures and not derived directly from an animal may not be labeled as meat or meat food product.
Arkansas	2019 AR H 1407	Enacted 3/18/2019	Truth in labeling of agriculture products that are edible to humans to prevent confusion or misleading of consumers due to false or misleading labeling. Civil penalties.
Colorado	2019 CO HR 1005	Enacted 4/10/2019	House resolution that gives consumers notice of cell-cultured meat products and asks the USDA and FDA to expedite necessary rule-making to require accurate food labeling of cell-cultured food to educate and inform consumers.
Georgia	2019 GA S 211	Enacted 7/24/2020	Unlawful to represent nonanimal products and non-slaughtered animal flesh as meat.
Kentucky	2019 KY H 311	Enacted 3/21/2019	Food is misbranded if it purports to be or is represented as meat or a meat product and it contains any cultured animal tissue produced from <i>in vitro</i> animal cell cultures outside of the organism from which it is derived.
	2019 KY HR 105	Enacted 2/28/2019	House resolution that asks Congress to enact legislation granting USDA jurisdiction over labeling of imitation meat products.
Louisiana	2019 LA S 152	Enacted 6/11/2019	Creates a truth in labeling of food products act and defines “cell cultured food product” as any cultured animal tissue produced from <i>in vitro</i> animal cell cultures outside of the organism from which it is derived. The definition of meat specifically excludes cell cultured food product grown in a laboratory from animal cells.  Also prohibits intentional misbranding or misrepresenting of any food product as meat or meat product when it is not derived from a harvested beef, pork, poultry, alligator, farm-raised deer, turtle, domestic rabbit, crawfish, or shrimp carcass. [Note: This also includes representing food as rice when it is not rice.]  Civil penalty of not more than \$500 for each violation of this act. Each day of violation is a separate offense.

Enacted Cell-cultured and Alternative Meat Product Labeling Laws (as of 2020)			
State	Bill	Status	Summary and Keywords
Missouri	2018 MO SB 627 & 925	Enacted 6/1/2018	Adds misrepresenting a product as meat that is not derived from harvested production livestock or poultry as a misleading or deceptive practice.
Mississippi	2019 MS S 2922	Enacted 3/12/2019	Cultured animal tissue food products shall not be labeled as meat or a meat food product. Cultured animal tissue is animal cells cultured outside of the organism from which it is derived. Plant based or insect based food product shall not be labeled as meat or meat food product.
Montana	2019 MT H 327	Enacted 4/18/2019	Cell-cultured edible product is the concept of meat, including but not limited to, muscle cells, fat cells, connective tissue, blood, and other components produced <i>via</i> cell culture, rather than from a whole slaughtered animal. Cell-cultured edible products derived from meat muscle cells, fat cells, connective tissue, blood, or other meat components must contain labeling indicating it is derived from those cells, tissues, blood, or components. Cell-cultured edible products do not fall within the definition of hamburger or ground beef or meat. Cell-cultured edible product is misbranded when it is labeled as meat but does not meet the definition of meat.
North Dakota	2019 ND H 1400	Enacted 3/12/2019	The definition of meat is the edible flesh of an animal born and harvested for the purpose of human consumption. Meat food product is a product usable as human food which contains any part of a carcass from an animal born and harvested for the purpose of human consumption. Misrepresentation of cell cultured protein as meat food product is prohibited. A person may not advertise, offer for sale, sell, or misrepresent cell cultured protein as a meat food product. A cell cultured food product may not be packaged in the same or deceptively similar packaging as a meat food product and must be labeled as a cell cultured food product. Deceptively similar means packaging that could mislead the reasonable person to believe the product is a meat food product.
	2019 ND HCR 3024	Enacted 3/4/2019	Congressional resolution to USDA to amend the federal law, policies, and regulations relating to food safety and labeling of cell cultured meat products.
South Carolina	2019 SC H 4245	Enacted 5/16/2019	Unlawful to advertise, sell, label, or misrepresent as “meat” or “clean meat” all or part of a carcass that is cell cultured meat or protein, or is not derived from harvested production livestock, poultry, fish, or crustaceans. This does not apply to plant-based meat substitutes. Provides for a misdemeanor charge for a guilty conviction for violating the article with not more than a year of imprisonment or fined not more than \$1000, or both.
South Dakota	2019 SD S 68	Enacted 3/18/2019	Defines misbranding of a food product if the product is labeled or branded in a false, deceptive, or misleading manner that intentionally misrepresents the product as a meat food product as defined in Section 39-5-6, a meat by-product as defined in Section 39-5-6, or as poultry.



<b>Enacted Cell-cultured and Alternative Meat Product Labeling Laws (as of 2020)</b>			
<b>State</b>	<b>Bill</b>	<b>Status</b>	<b>Summary and Keywords</b>
Wyoming	2019 WY S 68	Enacted 2/26/2019	Prohibits misrepresenting a product as meat that is not derived from harvested production of livestock or poultry.

<b>Introduced Cell-cultured and Alternative Meat Product Labeling Bills (2019-2020)</b>			
<b>State</b>	<b>Bill</b>	<b>Status</b>	<b>Summary and Keywords</b>
Illinois	2019 and 2020 IL H 2556	Introduced 2/13/2019	Amends the Meat and Poultry Inspection Act to provide that a carcass, meat or meat food product, or poultry is misbranded if it purports or is represented as meat or meat food product or poultry or poultry product but is a cell cultured food product.  Cell-cultured food product means food products derived from the cells of animals or poultry, grown in laboratories from cell cultures.
Kansas	2020 KS HB 2437	Introduced 1/13/2020	Prohibits the use of meat terms on labels or in advertisements of meat analogs without a disclaimer that the products don't contain meat or the inclusion of the word "imitation" before the meat being imitated.
Vermont	2019 VT H 233	Introduced 2/13/2019	Clarifies that meat is not cell-cultured meat. Cell-culture meat is a food product derived from controlled growth of animal cells from livestock, poultry, fish, and other animals, the subsequent differentiation into various cell types, and the collection and processing into the food product grown in a cell culture instead of from an animal.  Misbranding if cell cultured meat is represented as meat or a meat byproduct.
Washington	2019 WA H 1519	Introduced 1/23/2019	Restriction on cell cultured meat.
<b>Introduced Federal Legislation – U.S. Senate</b>			
	2019 US S 1056	Introduced 4/4/2019	Clarifies oversight and jurisdiction over the regulation, inspection, and labeling of cell-cultured meat and poultry.

Source: National Conference of State Legislatures

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**A-1**  
**State Water Plan**  
**Fund, Kansas Water**  
**Authority, and State**  
**Water Plan**

**A-2**  
**Alternative Meat**  
**Products**

**A-3**  
**Raw Milk**

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## Agriculture and Natural Resources

### A-3 Raw Milk

Raw milk is milk that has not been pasteurized. Pasteurization is the process of heating milk to high temperatures for the purposes of prolonging shelflife and eliminating disease-causing microorganisms, such as brucella, campylobacter, E. coli, listeria, and salmonella. According to the Centers for Disease Control and Prevention (CDC), health risks associated with consuming raw milk that contains these microorganisms include diarrhea, stomach cramping, vomiting, Guillain-Barre Syndrome, and kidney failure. Because raw milk may carry these microorganisms and may pose a serious health risk, the CDC and the U.S. Food and Drug Administration (FDA) recommend against raw milk consumption.

Despite the CDC's and FDA's warnings, consumer demand for raw milk is increasing. Raw milk advocates disagree with the CDC and FDA about the health risks associated with consuming raw milk. These advocates believe raw milk and raw milk products provide more nutritional benefits than pasteurized milk, can improve physical health, and can cure some diseases.

The conflicting opinions about the risks and benefits of raw milk consumption have led to legislatures and courts joining the conversation, including the Kansas Legislature and a Kansas district court.

### Raw Milk Regulation at the Federal Level

Title 21, part 1240 of the Code of Federal Regulations prohibits the interstate sale of raw milk and raw milk products in final package form and for direct human consumption. Additionally, the FDA prohibits the sale of raw unpasteurized milk and raw milk products for human consumption in § 9 of the Grade "A" Pasteurized Milk Ordinance (PMO).

However, the Code of Federal Regulations prohibition does not apply to intrastate sales, and the FDA does not regulate raw milk sales. Therefore, states may permit sales of raw milk and raw milk products within the state and override § 9 of the PMO. States can override the PMO by enacting state statutes, creating state administrative rules and regulations, and making state policy decisions that conflict with § 9.

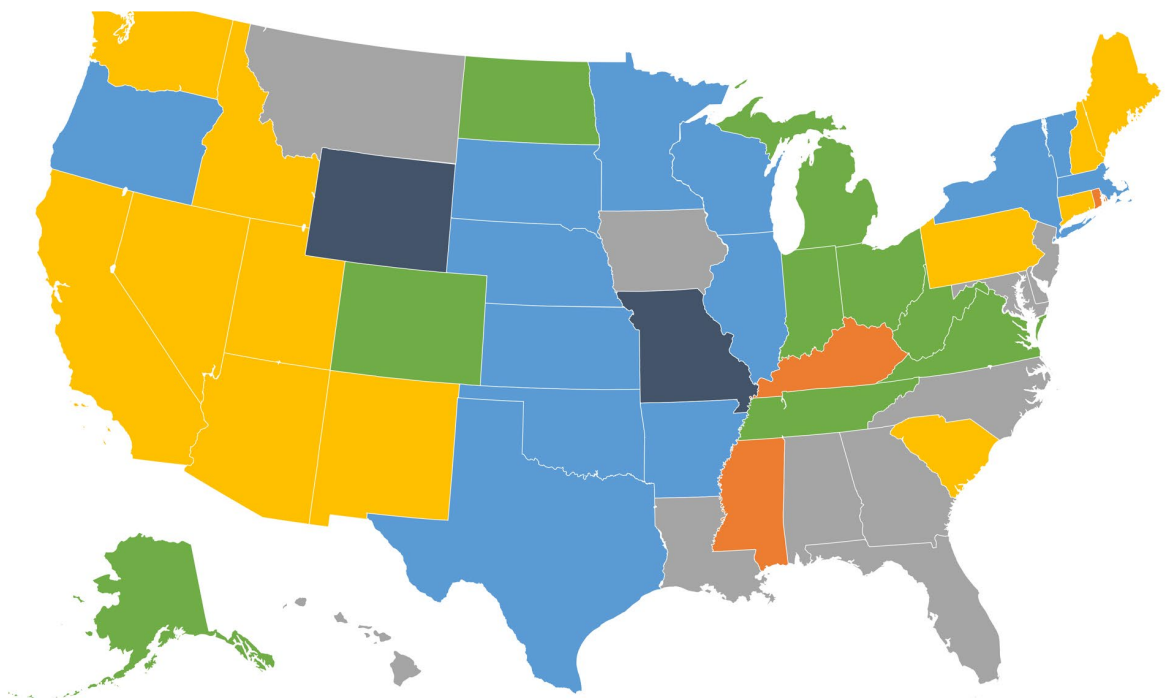
Overall, 31 states, including Kansas, have overridden the PMO to permit intrastate sales of raw milk and raw milk products for human consumption.

### Raw Milk Regulation at the State Level

States that have overridden the PMO allow the sale of raw milk and raw milk products in a variety of ways. The most common ways for consumers

to purchase raw milk and raw milk products are on-farm sales and “cow-share” or “herd-share” programs. “Cow-share” programs are programs in which consumers can purchase a dairy cow or a percent of a dairy cow, and then they are allowed to receive the raw milk produced by that cow. Consumers can also purchase raw milk and raw milk products at farmers markets in 2 states and at retail stores in 12 states. The illustration below shows the various purchase options found in each state.

**Raw Milk Laws**



- States that permit the sale of raw milk in retail stores
- States that allow the sale of raw milk at farmers’ markets and other venues
- States that allow the sale of raw milk on the farm
- States that permit cow-share programs
- States that only allow the sale of raw goat milk
- States in which raw milk sales are illegal

Source: National Conference of State Legislatures, “State Milk Laws,” 8/29/2016

## Raw Milk Regulation in Select Midwestern States

### Kansas

#### Current Law

KSA 65-771 *et seq.* permits the on-farm sale of raw milk and raw milk products to consumers. Each container of raw milk must be clearly labeled as “ungraded raw milk.” Dairy farmers who only conduct on-farm sales are not required to obtain an operating license. However, dairy farmers who sell raw butter or raw cream are required to obtain a dairy manufacturing plant license. Dairy farmers who sell raw milk and raw milk products are inspected by the State only if there is a complaint. The current statute requires that dairy farmers can advertise the sale of raw milk and raw milk products only on the farm.

#### *Mark Bunner, et al. v. Mike Beam – Secretary of the Kansas Department of Agriculture*

In 2019, Mark and Coraleen Bunner filed a lawsuit against Mike Beam in his official capacity as the Secretary of Agriculture. The Bunnors sought a declaratory judgment and injunctive relief from KSA 65-771(cc), commonly referred to as the Kansas Raw Milk Advertising Ban (Ban). The Ban prohibited any off-farm advertising for raw milk and raw milk products.

In November 2019, the Shawnee County District Court entered a judgment by consent and permanent injunction in the case. The specific language at issue was “[...] so long as the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm.” The court found that this language in KSA 65-771(cc) was a violation of the First and Fourteenth Amendments of the *U.S. Constitution* and *Kansas Constitution Bill of Rights* § 11. Therefore, the Kansas Department of Agriculture was permanently enjoined from enforcing the Ban and any provision related to enforcing the Ban.

### 2020 SB 308

In response to the Shawnee County District Court’s judgment, a bill was introduced and referred to the Senate Committee on Agriculture and Natural Resources (Senate Committee) during the 2020 Legislative Session. The bill was introduced at the request of the Kansas Department of Agriculture and would have amended KSA 65-771 to allow on-farm sales of raw milk and raw milk products and repealed the problematic language identified in *Bunner*; thus, off-farm advertising for raw milk and raw milk products would be permitted. Furthermore, the bill would have required each container of unpasteurized raw milk sold or offered for sale to bear a clearly visible label to state the following or the equivalent of the following: “This product contains raw milk that is not pasteurized.”

The Senate Committee passed SB 308 with amendments, and the Senate Committee of the Whole passed the bill by a vote of 37-3. The bill was then introduced in the House of Representatives and referred to the House Committee on Agriculture (House Committee). The House Committee held a hearing, but it ultimately took no action on the bill in the wake of the COVID-19 pandemic and abbreviated legislative session. SB 308 died in the House Committee on *Sine Die* (May 21, 2020).

### Illinois

The Grade A Pasteurized Milk and Milk Products Act (410 ILCS 635/8) permits the on-farm sale of raw milk in Illinois; however, dairy farmers and consumers must comply with the following conditions:

- The dairy farmer must place a placard at the point of sale or distribution stating the milk is not pasteurized and stating the potential danger to certain individuals;
- Customers must bring their own containers;
- The dairy farmer cannot process the milk in any way; and

- The dairy farmer must produce the milk in accordance with the Department of Public Health rules and regulations.

### **Indiana**

Ind. Code § 15-18-1 prohibits raw milk sales for human consumption. While not expressly authorized by statute, cow-share programs are operated in the state and used by consumers to purchase raw milk. Raw milk sales for animal consumption, on the other hand, are legal on the farm and in stores so long as the dairy farmer has properly obtained a commercial feed license from the State.

### **Iowa**

Iowa Code § 192.103 prohibits raw milk sales in Iowa.

### **Michigan**

Per the Grade A Milk Law of 2001 (Mich. Comp. Laws § 288.538), raw milk sales for human and animal consumption are illegal in Michigan. The State, however, does not regulate cow-share programs, so consumers can legally obtain raw milk through cow-sharing. Consumers in a cow-share program cannot resell the raw milk.

### **Minnesota**

Minn. Stat. § 32D.20 notes sales of raw milk and raw milk products in Minnesota are legal only when the following conditions are met:

- Milk must be occasionally secured or purchased (*i.e.*, not on a routine basis);
- Milk must be for the consumer's personal use;
- Milk must be purchased or secured at the place or farm where the milk is produced;
- Customers must bring their own containers; and
- The farmers cannot advertise raw milk or raw milk products.

Although the first condition requires raw milk and raw milk products only be occasionally secured or purchased, dairy farmers can sell raw milk and raw milk products on a routine basis (more than "occasionally") if they obtain a license. The licensing requirement for routine sales of raw milk and raw milk products has been challenged by Minnesota dairy farmers. For example, in *In re Application for an Order for Inspection of Berglund (Berglund)*, a dairy farmer challenged the Minnesota Department of Agriculture's authority to regulate his raw milk sales and to inspect his farm. The basis for his challenge stemmed from the State's interpretation of the licensing exemption found in the *Minnesota Constitution* and state statutes. The exemption states "any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license thereof." The State has interpreted this licensing exemption to apply only to produce farmers and dairy farmers who sell raw milk occasionally. The Minnesota Department of Agriculture applied this interpretation in *Berglund*, and it did not dispute Berglund's assertion that he was exempt from the licensing requirement.

### **Nebraska**

The Nebraska Milk Act (Neb. Rev. Stat. § 2-3965 *et seq.*) regulates the sale of milk, but exempts from such regulation milk and cream produced exclusively for sale on the farm directly to customers for consumption. Like Kansas dairy farmers, Nebraska dairy farmers whose businesses involve only on-farm sales of raw milk and raw milk products do not have to obtain permits.

### **North Dakota**

N.D. Cent. Code § 4.1-25-40 permits the transfer of raw milk under a shared animal ownership agreement ("cow-share program"). On-farm raw milk sales for pet consumption are permitted by the policy of the North Dakota Department of Agriculture.

## Ohio

Ohio Rev. Code §917.01 *et seq.* prohibits raw milk sales, but the statute allows raw milk sales from vendors who hold a valid raw milk retailer license issued by the State and who have been continuously engaged in the business of selling raw milk to consumers since 1965. However, there are no dairy farmers in the state who meet both criteria.

Notwithstanding the state statutes, raw milk can be obtained legally through a cow-share program in the state. The cow-share agreements must comport with Ohio contract law to be legally recognized.

## South Dakota

S.D. Codified Laws § 39-6-3 permits dairy farmers to sell raw milk on the farm and through home delivery. The state adopted § 9 of the PMO, but it also created an exception that permits the sale of raw milk, cream, skim milk, or goat milk when these conditions are met:

- Must be occasionally secured or purchased;
- Must be for the customer's personal use;
- Must be obtained at the place or farm where the milk is produced;
- Must be sold directly to consumers;
- Must be bottled by dairy farmers with a milk plant license; and
- Must be clearly labeled as "raw milk" on each container.

## Wisconsin

Per Wis. Stat. § 97.24, raw milk and raw milk product sales are generally illegal. However, there is an exception for incidental sales of raw milk directly to consumers and on the farm where the milk is produced. The incidental sales exception also applies to sales to employees or persons shipping milk to a dairy plant. However, the exception does not apply to sales regularly made in the course of business or to sales preceded by

any advertising or other offer to solicit members of the public.

Wisc. Admin. Code § ATCP 65.52 prohibits the sale of unpasteurized milk or dairy products, but does not prohibit such sale to:

- The milk producer licensed to operate that dairy farm;
- Individuals with a *bona fide* ownership interest in the dairy farm and milking operation, if the milk producer operating the dairy farm is a legal entity other than an individual or married couple; or
- Family members or nonpaying household guests who consume the milk at the home of the individual milk producer or *bona fide* owner.

Raw Milk Restrictions in Midwest States						
State	Statute	Retail Store Sales Legal	On-farm Sales Legal	Off-farm Sales Legal	Cow-share Programs Legal	Advertising Legal
Illinois	410 ILCS 635/8	No	Yes	No	Yes	No law on advertising
Indiana	Ind. Code § 15-18-1	No	No	No	Yes	No law on advertising
Iowa	Iowa Code § 192.103	No	No	No	No law on cow-shares	No
Kansas	KSA § 65-771 <i>et seq.</i>	No	Yes	No	No law on cow-shares	Yes, on-farm only limitation ruled unconstitutional
Michigan	MCL 288.538	No	No	No	No law on cow-shares	No law on advertising
Minnesota	Minn. Stat. 32D.20	No	Yes	No	No law on cow-shares	No
Nebraska	Neb. Rev. Stat. § 2-3965 <i>et seq.</i>	No	Yes	No	No law on cow-shares	No law on advertising
North Dakota	NDCC § 4.1-25-01 <i>et seq.</i>	No	No	No	Yes	No law on advertising
Ohio	9 Ohio Rev. Code § 917.01 <i>et seq.</i>	No	No	No	Yes	No law on advertising
South Dakota	SDCL § 39-6-3	No	Yes	Yes, only direct delivery by farm	No law on cow-shares	No law on advertising
Wisconsin	Wis. Stat. § 97.24	No	Yes, incidental sales only	No	Yes, if certain conditions are met	No

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