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**AB-1486 Milk products: licenses: fees.** (2017-2018)

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**Assembly Bill No. 1486**

**CHAPTER 153**

An act to amend Sections 33704, 34008, 35016, 35221, and 36806 of the Food and Agricultural Code, relating to milk products.

[ Approved by Governor July 31, 2017. Filed with Secretary of State July 31, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1486, Caballero. Milk products: licenses: fees.

The Milk and Milk Products Act of 1947, regulates the production and sale of milk and specified related products in this state and requires various entities to obtain a permit from the Secretary of Food and Agriculture to engage in specified related business practices.

The act authorizes the secretary to issue a limited packaging permit to a semifrozen (soft-serve) milk products plant for on-premises manufacture and packaging of hard frozen dairy products or hard frozen dairy product novelties.

This bill would repeal that provision.

The act requires specified entities that manufacture hard frozen or semifrozen dairy products for the use of any patron, guest, or employee to obtain a limited manufacturing permit.

This bill would instead require those entities to obtain a limited frozen manufacturing permit, which would replace the limited manufacturing permit, as specified, and would extend this requirement to additional entities, hard frozen and semifrozen nondairy desserts, and patients.

The act requires that all market milk and market milk products, and all milk for manufacturing purposes and manufactured milk products, be pasteurized at the plant where processed and packaged, except as specified.

This bill would additionally except from that requirement licensed milk products plants that are used exclusively for the preparation of frozen yogurt, frozen dairy dessert, or frozen dessert, as specified, and frozen and semifrozen products sold through establishments issued the limited frozen manufacturing permit.

The act requires every person that is engaged in the business of dealing in, receiving, manufacturing, freezing, or processing ice cream, ice milk, sherbet, or any similar frozen product, of manufacturing, freezing, or processing imitation ice cream, imitation ice milk, or any similar frozen product, or of processing any other dairy product for which a license is required, to pay specified permit and license fees. Under the act, the fee for a semifrozen (soft-serve) milk products plant license is \$225, and the fee for a limited manufacturing permit is \$225.

This bill increase these fees to \$325 and \$600 respectively. The bill would also authorize the secretary to increase these and other specified fees by an amount no more than 3% per annum, not to exceed the reasonable costs of services provided.

A violation of the act is a misdemeanor, punishable by a fine of not less than \$50 nor more than \$1,000, or by imprisonment in the county jail for not less than 10 days nor more than 90 days, or both.

By extending the provisions of the act to additional entities and products, this bill would expand the scope of a crime and would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** Section 33704 of the Food and Agricultural Code is amended to read:

**33704.** (a) (1) Sections 33701, 33731, 33732, 33733, 33734, 33767, 33768, 33770, 33771, 33776, and 34593 do not apply to the manufacture of ice cream that is manufactured from ice cream mix, to frozen dairy dessert that is manufactured from frozen dairy dessert mix, to frozen dessert that is manufactured from frozen dessert mix, to frozen yogurt that is manufactured from frozen yogurt mix, or to nondairy frozen dessert that is manufactured from nondairy frozen dessert mix, if those products are manufactured in a freezing device from which those products are served directly in a semifrozen state, without packaging of any type, for consumption on the premises in or from rooms where food is served to the public.

(2) Except for nondairy frozen dessert mix, all mixes shall be secured from a licensed manufacturer of milk products.

(3) Ice cream mix, frozen yogurt mix, frozen dairy dessert mix, frozen dessert mix, and nondairy frozen dessert mix shall be manufactured into a semifrozen state without adulteration and freezing device salvage shall not be reused as a mix.

(b) Nondairy frozen dessert mix shall be obtained from manufacturers licensed pursuant to Sections 38931 and 38934. Any dry or condensed mix to be reconstituted into freezable form shall be reconstituted on the premises in containers or equipment that meet the requirements of Sections 33763, 33764, 33765, and 33766. Any water used for reconstitution shall be treated in a manner to ensure a quality equal to potable pasteurized water. Upon reconstitution, the product shall be poured directly into the freezing unit or refrigerated at a temperature not to exceed 45 degrees Fahrenheit, and so maintained until frozen, or both.

(c) Where any retail establishment manufactures two or more of the products provided for under this section, each of those products shall be processed in a separate freezing device, and that freezing device shall be clearly identified as to the product being manufactured therein.

(d) The secretary may, by agreement with any approved milk inspection service, authorize the service to inspect and enforce requirements of this code applicable to the establishments covered by this section. Any agreement shall provide that the approved inspection service shall collect the applicable license fee for those establishments as provided in Sections 35221 and 38933. The fees collected shall be retained by the approved service to cover its cost of enforcement, but 15 percent of the fees collected shall be remitted to the secretary to cover the cost of administration.

### **SEC. 2.** Section 34008 of the Food and Agricultural Code is amended to read:

**34008.** (a) All market milk and market milk products, and all milk for manufacturing purposes and manufactured milk products, shall be pasteurized at the plant where processed and packaged unless otherwise provided in this division.

(b) This section does not apply to any of the following:

(1) Licensed milk products plants that are used exclusively for the preparation of ice cream, frozen yogurt, frozen dairy dessert, or frozen dessert that is manufactured on the premises from ice cream mix, frozen yogurt mix, frozen dairy dessert mix, or frozen dessert mix that is supplied by a licensed milk products plant.

(2) Products sold through soft-serve establishments pursuant to Section 33704, including frozen yogurts and frozen dairy desserts.

(3) Frozen and semifrozen products sold through establishments issued a limited frozen manufacturing permit pursuant to Section 35016.

(4) Goat milk cheese produced at a licensed milk products plant, excluding cottage cheese, manufactured from curds, provided the curds were made only from goat milk that has been pasteurized, ultrapasteurized, or aseptically processed, as defined in Sections 34001, 34001.5, and 39701, respectively, at either of the following:

(A) A licensed milk products plant.

(B) A milk products plant that meets sanitation requirements substantially similar to those established by Article 3 (commencing with Section 33761) of Chapter 6, and that is registered as a food facility with the United States Food and Drug Administration in accordance with the federal Food, Drug, and Cosmetics Act (21 U.S.C. Sec. 350d).

(c) The secretary may, by regulation, provide for additional exemptions from this section.

**SEC. 3.** Section 35016 of the Food and Agricultural Code is amended to read:

**35016.** (a) Except as provided in subdivision (b), any hotel, restaurant, food facility, boardinghouse, hospital, or other concern or agency that manufactures a product of milk for the use of, or purchase by, any patron, guest, patient, or employee shall obtain a milk products plant license.

(b) (1) Any hotel, restaurant, food facility, boardinghouse, hospital, or other concern or agency that manufactures hard frozen or semifrozen dairy products, or hard frozen or semifrozen nondairy desserts, for the use of, or purchase by, any patron, guest, patient, or employee shall obtain a limited frozen manufacturing permit from the secretary.

(2) The permit may be issued only after the secretary determines that the facility is suitable for manufacturing those products.

(3) A permit issued pursuant to this subdivision may be renewed annually, if the facility is found by the secretary, based on an onsite evaluation, to be in compliance with the conditions specified in subdivision (c).

(c) A hotel, restaurant, food facility, boardinghouse, hospital, or other concern or agency issued a limited frozen manufacturing permit pursuant to this section shall meet all of the following standards:

(1) The hard frozen and semifrozen products manufactured shall only be sold directly to purchasers on the premises of the permitted facility for the purpose of consumption. No hard frozen or semifrozen product manufactured pursuant to the limited frozen manufacturing permit shall be sold for wholesale or resale.

(2) All dairy ingredients used in the manufacture of hard frozen and semifrozen products shall have been prepasteurized at a licensed milk products plant. The receiving, processing, use, or handling of raw dairy ingredients is not permitted in a facility issued a limited frozen manufacturing permit.

(3) Adequate facilities, consistent with recognized good manufacturing practices for the manufacture of hard frozen and semifrozen dairy products, as determined by the secretary, shall be provided as a condition of the limited frozen manufacturing permit. The facilities shall include, but not be limited to, adequate utensil and container washing, sanitization and storage, and sufficient sanitary work areas, including handwashing facilities, dedicated to the manufacture of hard frozen and semifrozen dairy products or hard frozen and semifrozen nondairy desserts. Sanitation standards consistent with good manufacturing and handling practices for retail food establishments in conformance with Part 117 (commencing with Section 117.1) of Title 21 of the Code of Federal Regulations shall be utilized by the secretary as a condition for issuance and renewal of the limited frozen manufacturing permit.

(4) The hotel, restaurant, boardinghouse, hospital, or other concern or agency shall not manufacture more than 7,500 gallons of hard frozen or semifrozen dairy products and hard frozen and semifrozen nondairy desserts during any year. Records documenting the volume of production of these hard frozen and semifrozen products manufactured during the preceding 12-month period shall be maintained at a facility issued a limited frozen manufacturing permit and shall be available for inspection by the secretary.

(5) Hard frozen dairy products or nondairy frozen desserts manufactured at a facility issued a limited frozen manufacturing permit may be packaged exclusively for sale on the premises to patrons and guests. Packaging of frozen or semifrozen products for purposes of wholesale, resale, or for sale off the premises of the facility is prohibited. All packaged products shall be labeled with the manufacturer's name, address and limited frozen manufacturing permit number and comply with all applicable food labeling provisions of state and federal law.

**SEC. 4.** Section 35221 of the Food and Agricultural Code is amended to read:

**35221.** (a) Every person that is engaged in the business of dealing in, receiving, manufacturing, freezing, or processing ice cream, ice milk, sherbet, or any similar frozen product, of manufacturing, freezing, or processing imitation ice cream, imitation ice

milk, or any similar frozen product, or of processing any other dairy product for which a license is required, shall pay the following fees:

(1) For a license for all frozen milk products and all imitation frozen milk products, one hundred dollars (\$100) for the calendar year for which the license is issued. The fee for the renewal of this license is one hundred dollars (\$100), plus one dollar (\$1) for each additional 10,000 gallons or fraction of 10,000 gallons over and above 20,000 gallons that were manufactured during the preceding year, ending December 31.

(2) For a semifrozen (soft-serve) milk products plant license issued to persons making application under Section 33704, three hundred twenty-five dollars (\$325) for the calendar year for which the semifrozen (soft-serve) milk products plant license is issued. The fee for the renewal of this license is three hundred twenty-five dollars (\$325).

(3) For a limited frozen manufacturing permit issued to a hotel, restaurant, food facility, boardinghouse, hospital, or other concern or agency pursuant to Section 35016, six hundred dollars (\$600) for the initial permit. The fee for the annual renewal of this permit shall be six hundred dollars (\$600).

(4) For a person, except a hospital or sanitarium, that is engaged in the business of manufacturing any diabetic or dietetic frozen milk product or mix, one hundred dollars (\$100) for the calendar year for which a diabetic or dietetic frozen milk products license is issued. The fee for the renewal of this license is one hundred dollars (\$100).

(5) For any other product for which a license is required, one hundred dollars (\$100) for the calendar year for which the license is issued. The fee for the renewal of this license is one hundred dollars (\$100), plus one dollar (\$1) for each additional 10,000 pounds or fraction of 10,000 pounds over and above the first 100,000 pounds, of milk fat that was purchased or received during the preceding year, ending December 31.

(b) The license and permit fees required by this section shall be prorated on a quarterly basis for any licensee or permittee that commences operations after the first quarter in any calendar year, regardless of whether or not the milk products plant was licensed or permitted during the preceding calendar year.

(c) Notwithstanding the license and permit fees specified in this section, the secretary may increase the fees by an amount no more than 3 percent per annum, not to exceed the reasonable costs of services provided.

**SEC. 5.** Section 36806 of the Food and Agricultural Code is amended to read:

**36806.** Ice cream mix, frozen yogurt mix, frozen dairy dessert mix, and frozen dessert mix are unfrozen products that are used in the manufacture of ice cream, frozen yogurt, frozen dairy dessert, or frozen dessert. They shall have been pasteurized and comply with all the requirements for ice cream, frozen yogurt, frozen dairy dessert, or frozen dessert, respectively.

**SEC. 6.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.