

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1397

(Delegate Stull, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Milk Products - Threat to Public Health - Impoundment and Penalties

This bill requires the Secretary of Health and Mental Hygiene to impound a milk product that is a threat to the public health because it was handled improperly, not kept at the required temperature, is injurious to health if consumed, or is otherwise unsafe. The bill does not apply to retail establishments.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues depending on the number of civil monetary penalties imposed and paid. No effect on expenditures.

Local Effect: None.

Small Business Effect: Meaningful for small businesses that could pay a civil monetary penalty and avoid the disposal of their milk product.

Analysis

Bill Summary: If the Secretary impounds a milk product, the department may issue an order to dispose of the milk product, make the milk product unusable for consumption, or impose a civil monetary penalty according to health laws and regulations. If the milk product is disposed of or made unusable, the owner of the product may bring an action for damages against the Secretary. The Secretary is liable for damages only if the owner can prove by a preponderance of the evidence that at the time of the action the milk product did not pose an immediate threat. The Secretary is not personally liable.

An order of the Secretary that imposes a civil monetary penalty must state the basis on which the order is made, the penalty amount, and the manner the penalty is calculated. A person subject to a civil monetary penalty may appeal the order imposing the penalty. DHMH regulations must provide for adjusting the civil monetary penalty depending on the amount of milk found unusable for consumption.

Current Law: The Secretary must impound a milk product that has been handled improperly or not kept at the required temperature and must dispose of the milk product according to State health laws.

The Secretary is liable, only in his or her official capacity, for any action taken against food that poses an immediate threat only if the owner can prove by a preponderance of the evidence that when action was taken, the substance did not pose an immediate threat. Any liability is limited to the substance's market value at the time of the action. The Secretary does not have any personal liability for the payment of any judgment that is entered in any action brought against food that poses an immediate threat.

Background: The Department of Health and Mental Hygiene's Community Health Administration (CHA) reports that it had an incident where an unlicensed milk truck leaving a Frederick County farm with a load of milk was impounded and the truck's contents were dumped. This bill would allow CHA to impound milk products if the products pose a public health threat. It would have allowed CHA, in the above instance, to instead impose a civil monetary penalty on the violator.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of Administrative Hearings, Department of Health and Mental Hygiene, Department of Legislative Services

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