

HB 1273-FN – AS INTRODUCED

2014 SESSION

14-2292
08/10

HOUSE BILL

1273-FN

AN ACT exempting New Hampshire dairy products from the FDA Food Safety and Modernization Act.

SPONSORS: Rep. Itse, Rock 10

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill declares New Hampshire dairy products exempt from the FDA Food Safety and Modernization Act.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT exempting New Hampshire dairy products from the FDA Food Safety and Modernization Act.

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

1 1 Findings. The general court finds that foods produced and sold within the state of
2 New Hampshire are not part of interstate commerce, and therefore, are not lawfully subject to the
3 power delegated to the Congress of the United States of America under Article 1, Section 8 “To
4 regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

5 2 New Subdivision; Regulation of Dairy Products Produced and Consumed in New Hampshire.
6 Amend RSA 184 by inserting after section 111 the following new subdivision:

7 Regulation of Dairy Products Produced and Consumed in New Hampshire

8 184:112 Prohibitions. Notwithstanding any other law to the contrary, dairy products produced
9 commercially or privately in New Hampshire and which remain within the state of New Hampshire
10 shall not be subject to the FDA Food Safety and Modernization Act of 2010 (PL 111-353). It is
11 declared by the legislature that those items have not traveled in interstate commerce. This section
12 applies only to dairy products that are wholly produced in New Hampshire.

13 184:113 Marketing of Dairy Products. Dairy products produced, sold, and consumed in
14 New Hampshire under this chapter shall have the words “Made in New Hampshire” clearly
15 stamped, inscribed, or otherwise marked on the dairy product or on the container holding such dairy
16 products.

17 184:114 Penalty.

18 I. Any public servant of the state of New Hampshire as defined in RSA 640:2 that enforces
19 or attempts to enforce an act, order, law, statute, rule, or regulation of the government of the
20 United States upon a container of dairy products that are produced commercially or privately in
21 New Hampshire and that remain within the state of New Hampshire as provided in this subdivision
22 shall be guilty of a class A misdemeanor.

23 II. Any official, agent, or employee of the government of the United States, or employee of a
24 corporation providing services to the government of the United States that enforces or attempts to
25 enforce an act, order, law, statute, rule, or regulation of the government of the United States upon
26 dairy products that are produced commercially or privately in New Hampshire and which remain
27 within the state of New Hampshire as provided in this subdivision shall be guilty of a class B felony.

28 184:115 Applicability. This subdivision shall apply to dairy products produced and retained in
29 New Hampshire after January 1, 2015.

30 3 Effective Date. This act shall take effect January 1, 2015.

HB 1273-FN - FISCAL NOTE

AN ACT exempting New Hampshire dairy products from the FDA Food Safety and Modernization Act.

FISCAL IMPACT:

The Judicial Branch, Department of Justice, Department of Corrections, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. The Department of Agriculture, Markets and Food states this bill will have an indeterminable fiscal impact on state expenditures in FY 2015 and each year thereafter. There will be no fiscal impact on local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill adds RSA 184:112 through 115 to exempt dairy products produced in New Hampshire from regulation by the FDA Food Safety Modernization Act of 2010. This bill also contains a class A misdemeanor for violations by a New Hampshire public servant and a class B felony for violations by an official, agent or employee of the United States government. The Branch has no information to estimate how many additional prosecutions may result but does have the average cost to process each type of case. The cost for a class A misdemeanor will be \$66.17 in FY 2015, and \$67.64 in FY 2016 and each year thereafter, and the cost for a class B felony, which is processed as an average routine criminal case, will be \$425.27 in FY 2015, and \$433.34 in FY 2016 and each year thereafter. The possibility for a case to be appealed increases the cost. All costs are estimated based on case weight information from the last needs assessment completed in 2005. Since that timeframe there have been various changes that may impact the costs, such as the creation of the circuit court, the increase in self-represented litigants, and the change to presume that an unspecified misdemeanor be treated as a class B misdemeanor.

The Department of Justice states the criminal offenses contained in this bill are typically prosecuted by the county attorney. The Department would handle any appeals for a conviction for such an offense. The Department may also need to defend this bill from any constitutional challenges that might occur if it were to become law. The Department does not have the information to determine the exact fiscal impact this bill might have on the Department's expenditures.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2013 was \$32,872. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2013 was \$570.

The New Hampshire Association of Counties states to the extent individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties will have expenditures. The Association is unable to determine the number of individuals who may be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Judicial Council assumes that since all violations of this statute would take place within the context of a person's occupation and gainful employment, it would be unlikely that an individual would meet the eligibility standards for the appointment of counsel for indigent defense. The Council also assumes that because the violation would take place in the context of a person's work on behalf of the government, that person would be defended or indemnified by the government or by the individuals' employer. As a result, the Council states this bill will have no impact on the Council's expenditures.

The Department of Agriculture, Markets and Food states the fiscal impact of this bill is indeterminable as federal rules pertaining to the FDA Food Safety Modernization Act of 2010 are in proposed form and it is unclear the role in which agencies, such as the NH Department of Agriculture, Markets and Food and NH Department of Health and Human Services, will play in administering the regulations.

The Department of Health and Human Services does not anticipate a fiscal impact related to the bill.