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LEGISLATIVE ACTION

Senate

House

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Floor: 3/AD/2R

05/05/2011 02:56 PM

Senator Siplin moved the following:

Senate Amendment (with title amendment)

Between lines 604 and 605

insert:

Section 15. Section 381.0014, Florida Statutes, is amended to read:

381.0014 Regulations and ordinances superseded.—The rules adopted by the department under the provisions of this chapter shall, as to matters of public health, supersede all rules enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities, except that this chapter does not alter or supersede any of the provisions set forth in chapter ~~chapters~~ 502 and ~~503~~ or any rule



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14 adopted under that chapter ~~the authority of those chapters.~~

15 Section 16. The title of chapter 502, Florida Statutes, is
16 redesignated as "MILK, MILK PRODUCTS, AND FROZEN DESSERTS."

17 Section 17. Section 502.012, Florida Statutes, is amended
18 to read:

19 502.012 Definitions. ~~As used in this chapter, the term~~ The
20 following definitions shall apply in the interpretation and
21 enforcement of this law:

22 (1) "Bulk milk pickup tanker" means a vehicle, including
23 the truck and tank, and necessary attachments, used by a milk
24 hauler to transport bulk raw milk for pasteurization from a
25 dairy farm to a milk plant, receiving station, or transfer
26 station.

27 (2) "Dairy farm" means any place or premises where one or
28 more cows, goats, sheep, water buffalo, or other hooved mammals
29 are kept and from which a part or all of the milk is provided,
30 sold, or offered for sale.

31 (3) "Department" means the Department of Agriculture and
32 Consumer Services.

33 (4) "Frozen dessert" means a specific standardized frozen
34 dessert described in 21 C.F.R. part 135 and any other food
35 defined by rule of the department that resembles such
36 standardized frozen dessert but does not conform to the specific
37 description of such standardized frozen dessert in 21 C.F.R.
38 part 135. The term includes, but is not limited to, a
39 quiescently frozen confection, a quiescently frozen dairy
40 confection, a frozen dietary dairy dessert, and a frozen dietary
41 dessert.

42 (5) "Frozen desserts manufacturer" means a person who



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43 manufactures, processes, converts, partially freezes, or freezes
44 any mix or frozen dessert for distribution or sale.

45 (6) "Frozen desserts plant" means any location or premises
46 at which frozen desserts or mix are manufactured, processed, or
47 frozen for distribution or sale at wholesale.

48 (7) "Frozen desserts retail establishment" means any
49 location or premises, including a retail store, stand, hotel,
50 boardinghouse, restaurant, vehicle, or mobile unit, at which
51 frozen desserts are frozen, partially frozen, or dispensed for
52 sale at retail.

53 (8) "Frozen dietary dairy dessert" or "frozen dietary
54 dessert" means a food for any special dietary use, prepared by
55 freezing, with or without agitation, and composed of a
56 pasteurized mix that may contain fat, protein, carbohydrates,
57 natural or artificial sweeteners, flavoring, stabilizers,
58 emulsifiers, vitamins, and minerals.

59 (9)-(4) "Grade 'A' pasteurized milk ordinance" means the
60 document entitled "Grade 'A' Pasteurized Milk Ordinance, United
61 States Department of Health and Human Services, Public Health
62 Service, Food and Drug Administration," including all associated
63 appendices, as adopted by department rule.

64 (10)-(5) "Imitation milk and imitation milk products" means
65 those foods that have the physical characteristics, such as
66 taste, flavor, body, texture, or appearance, of milk or milk
67 products as defined in this chapter and the Grade "A"
68 pasteurized milk ordinance but do not come within the definition
69 of "milk" or "milk products" and are nutritionally inferior to
70 the product imitated.

71 (11)-(6) "Milk" means the lacteal secretion, practically



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72 free from colostrum, obtained by the complete milking of one or
73 more healthy cows, goats, sheep, water buffalo, or other hooved
74 mammals.

75 (12)~~(7)~~ "Milk distributor" means any person who offers for
76 sale or sells to another person any milk or milk product.

77 (13)~~(8)~~ "Milk products" means products made with milk that
78 is processed in some manner, including being whipped, acidified,
79 cultured, concentrated, lactose-reduced, or sodium-reduced or
80 aseptically processed, or having the addition or subtraction of
81 milkfat, the addition of safe and suitable microbial organisms,
82 or the addition of safe and suitable optional ingredients for
83 protein, vitamin, or mineral fortification. "Milk products" do
84 not include products such as evaporated milk, condensed milk,
85 eggnog in a rigid metal container, dietary products, infant
86 formula, or ice cream and other desserts.

87 (14)~~(9)~~ "Milkfat" or "butterfat" means the fat contained in
88 milk.

89 (15)~~(10)~~ "Milk hauler" means any person who transports raw
90 milk or raw milk products to or from a milk plant, receiving
91 station, or transfer station.

92 (16)~~(11)~~ "Milk plant" means any place, premises, or
93 establishment where milk or milk products are collected,
94 handled, processed, stored, pasteurized, aseptically processed,
95 bottled, or prepared for distribution.

96 (17)~~(12)~~ "Milk plant operator" means any person responsible
97 for receiving, processing, pasteurizing, or packaging milk and
98 milk products, or performing any other related operation.

99 (18)~~(13)~~ "Milk producer" means any person who operates a
100 dairy farm and provides, sells, or offers for sale milk to a



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101 milk plant, receiving station, or transfer station.

102 (19)~~(14)~~ "Milk tank truck" means either a bulk milk pickup
103 tanker or a milk transport tank.

104 (20)~~(15)~~ "Milk transport tank" means a vehicle, including
105 the truck and tank, used by a milk hauler to transport bulk
106 shipments of milk from a milk plant, receiving station, or
107 transfer station to another milk plant, receiving station, or
108 transfer station.

109 (21) "Quiescently frozen confection" means a clean and
110 wholesome frozen, sweetened, flavored product that, while being
111 frozen, was not stirred or agitated (generally known as
112 quiescent freezing). The confection may be acidulated with food-
113 grade acid, may contain milk solids or water, or may be made
114 with or without added harmless pure or imitation flavoring and
115 with or without harmless coloring. The finished product must not
116 contain more than 0.5 percent by weight of stabilizer composed
117 of wholesome, edible material and must not contain less than 17
118 percent by weight of total food solids. In the production of the
119 confection, processing or mixing before quiescent freezing that
120 develops in the finished confection mix any physical expansion
121 in excess of 10 percent may not be used.

122 (22) "Quiescently frozen dairy confection" means a clean
123 and wholesome frozen product made from water, milk products, and
124 sugar, with added harmless pure or imitation flavoring, with or
125 without added harmless coloring, with or without added
126 stabilizer, or with or without added emulsifier, that, while
127 being frozen, was not stirred or agitated (generally known as
128 quiescent freezing). The confection must not contain less than
129 13 percent by weight of total milk solids, less than 33 percent



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130 by weight of total food solids, more than 0.5 percent by weight
131 of stabilizer, or more than 0.2 percent of weight by emulsifier.
132 Stabilizer and emulsifier must be composed of wholesome, edible
133 material. In the production of a quiescently frozen dairy
134 confection, processing or mixing before quiescently freezing
135 that develops in the finished confection mix any physical
136 expansion in excess of 10 percent may not be used.

137 (23)~~(16)~~ "Raw milk" means unprocessed milk.

138 (24)~~(17)~~ "Receiving station" means any place, premises, or
139 establishment where raw milk is received, collected, handled,
140 stored, or cooled and is prepared for further transporting.

141 (25)~~(18)~~ "Substitute milk and substitute milk products"
142 means those foods that have the physical characteristics, such
143 as taste, flavor, body, texture, or appearance, of milk or milk
144 products as defined in this chapter and the Grade "A"
145 pasteurized milk ordinance but do not come within the definition
146 of "milk" or "milk products" and are nutritionally equivalent to
147 the product for which they are substitutes.

148 (26)~~(19)~~ "Transfer station" means any place, premises, or
149 establishment where milk or milk products are transferred
150 directly from one milk tank truck to another.

151 (27)~~(20)~~ "Washing station" means any place, premises, or
152 establishment where milk tank trucks are cleaned and sanitized.

153 Section 18. Section 502.013, Florida Statutes, is amended
154 to read:

155 502.013 Purpose; intent.—

156 (1) PURPOSE.—The purpose of this chapter is to:

157 (a) Ensure, without undue burden on either the regulatory
158 agency or the dairy industry, that milk, ~~and~~ milk products,



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159 frozen desserts, and frozen dessert mix sold or offered for sale
160 in this state are produced under sanitary conditions, are
161 wholesome and fit for human consumption, and are correctly
162 labeled as to grade, quality, and source of production.

163 (b) Encourage uniformity and a high level of sanitation in
164 milk and frozen dessert production practices in this state.

165 (c) Facilitate the shipment and acceptance of milk and milk
166 products of high sanitary quality in interstate and intrastate
167 commerce.

168 (d) Ensure the normal flow of fresh wholesome milk and milk
169 products from the farmer to the consumer by uniform regulation
170 of the shelf life of milk and milk products in this state.

171 (2) INTENT.—

172 (a) It is the intent of the Legislature to:

173 1. Eliminate, to the extent practicable, overlapping and
174 unnecessary inspections of dairy farms, and milk plants, and
175 frozen dessert plants which may be performed by any agency of
176 state or local government.

177 2. Pay for the regulation of milk and milk products, except
178 as otherwise provided in s. 502.053 ~~502.032~~, through the General
179 Revenue Fund.

180 (b) It is not the intent of the Legislature to limit the
181 authority of any agency of state or local government to take
182 immediate action incident to the production, processing, or
183 distribution of milk, and milk products, and frozen desserts
184 when such action is necessary to protect the public health.

185 Section 19. Subsections (1), (2), (6), and (7) of section
186 502.014, Florida Statutes, are amended to read:

187 502.014 Powers and duties.—



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188 (1) The department shall administer and enforce all
189 regulatory laws currently in effect governing:

190 (a) The production, processing, and distribution of milk,
191 ~~and~~ milk products, frozen desserts, and frozen dessert mix.

192 (b) The sanitation and sanitary practices of establishments
193 where food and drink, including milk and milk products, are sold
194 for consumption on the premises, except food service
195 establishments regulated under chapters 381 and 509.

196 (c) The sanitary and healthful condition of the food and
197 drink sold or offered for sale by establishments under the
198 department's jurisdiction pursuant to paragraph (b).

199 (d) The laboratory work of testing and analyzing milk, ~~and~~
200 milk products, frozen desserts, and frozen dessert mix.

201 (2) (a) The department shall conduct onsite inspections of
202 dairy farms, ~~and~~ milk plants, and frozen dessert plants and
203 collect test samples of milk, ~~and~~ milk products, and frozen
204 desserts as required by this chapter.

205 (b) The department shall designate employees who shall be
206 certified by the United States Food and Drug Administration as
207 state milk sanitation rating officers, sampling surveillance
208 officers, and laboratory evaluation officers in accordance with
209 the requirements published in "Methods of Making Sanitation
210 Ratings of Milk Shippers ~~Supplies~~," "Evaluation of Milk
211 Laboratories," and "Procedures Governing the Cooperative State-
212 Public Health Service/Food and Drug Administration Program for
213 Certification of Interstate Milk Shippers," respectively, as
214 adopted by department rule. These officers shall conduct routine
215 sanitation compliance survey ratings of milk producers, milk
216 plants, laboratories, receiving stations, transfer stations, and



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217 manufacturers of single-service containers for milk and milk
218 products. These ratings shall be made in accordance with the
219 recommendations of the United States Food and Drug
220 Administration published in "Methods of Making Sanitation
221 Ratings of Milk Shippers." ~~Standard Methods for the Examination~~
222 ~~of Dairy Products.~~

223 (6) The department has authority to adopt rules pursuant to
224 ss. 120.536(1) and 120.54 to implement and enforce the
225 provisions of this chapter. In adopting these rules, the
226 department shall be guided by and may conform to the definitions
227 and standards of the administrative procedures and provisions of
228 the Grade "A" pasteurized milk ordinance and other applicable
229 federal requirements. The rules shall include, but are not
230 limited to:

231 (a) Standards for milk, ~~and~~ milk products, and frozen
232 desserts.

233 (b) Provisions for the production, transportation,
234 processing, handling, sampling, examination, grading, labeling,
235 and sale of all milk, ~~and~~ milk products, frozen desserts, and
236 imitation and substitute milk and milk products sold for public
237 consumption in this state.

238 (c) Provisions for the inspection of dairy herds, dairy
239 farms, frozen dessert plants, and milk plants.

240 (d) Provisions for the issuance and revocation of permits
241 issued by the department pursuant to this chapter.

242 (7) The department shall not conduct routine tests or
243 inspections on raw milk that is shipped from outside the state.
244 Nothing in this subsection shall be construed to limit the
245 authority of the department to review industry records or sample



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246 milk or frozen desserts at any stage of production, processing,
247 or distribution in cases of suspected hazard to public health.

248 Section 20. Section 502.032, Florida Statutes, is repealed.

249 Section 21. Section 502.053, Florida Statutes, is amended
250 to read:

251 502.053 Permits and licenses; fees; requirements;
252 exemptions; temporary permits.-

253 (1) PERMITS AND LICENSES.-

254 (a) Each Grade "A" milk plant, whether located in the state
255 or outside the state, and each manufacturing milk plant, milk
256 producer, milk hauler, milk hauling service, washing station
257 operator, milk plant operator, milk distributor, single-service-
258 container manufacturer, receiving station, and transfer station
259 in the state shall apply to the department for a permit to
260 operate. The application shall be on forms developed by the
261 department.

262 (b) Each frozen dessert plant, whether located in the state
263 or outside the state, that manufactures frozen desserts or other
264 products defined in this chapter and offers these products for
265 sale in this state must apply to the department for a permit to
266 operate. The application must be submitted on forms prescribed
267 by the department. All frozen dessert permits expire on June 30
268 of each year.

269 (c) Any person who tests milk or milk products for milkfat
270 content by weight, volume, chemical, electronic, or other method
271 when the result of such test is used as a basis for payment for
272 the milk or milk products must apply to the department for a
273 license. To qualify for a license, the applicant must
274 demonstrate a sufficiency of knowledge, ability, and equipment



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275 to adequately perform milkfat tests. The license shall be issued
276 for a period of 2 years after the date of first issuance upon
277 application to the department on forms prescribed by the
278 department.

279 (d) ~~(b)~~ Permits and licenses are nontransferable between
280 persons or locations and are subject to suspension or revocation
281 as provided in this chapter.

282 (2) FEES.—

283 (a) The initial application for a frozen dessert plant
284 permit must be accompanied by a permit fee of \$200. The annual
285 permit renewal fee is \$100.

286 (b) The department shall charge each applicant for a
287 milkfat tester's license a fee not to exceed \$125.

288 (3) ~~(2)~~ REQUIREMENTS.—

289 (a) To obtain a frozen dessert plant permit or milkfat
290 tester's license, an applicant must satisfy all requirements
291 that are defined by the department in rule and must agree to
292 comply with the applicable provisions of this chapter and rules
293 adopted under this chapter. The department shall mail a copy of
294 the permit or license to the applicant to signify that
295 administrative requirements have been met.

296 (b) All permitholders must maintain records of transactions
297 concerning the procurement, production, and processing of milk
298 and milk products as required in the Grade "A" pasteurized milk
299 ordinance and grant department inspectors access to such records
300 during all reasonable hours.

301 (c) In addition to the testing required in the Grade "A"
302 pasteurized milk ordinance and its appendices, each milk plant
303 operator in the state shall be responsible for routine testing



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304 and inspection of raw milk shipped from outside the state prior
305 to processing and shall notify the department when such testing
306 and inspection indicate a violation of the standards contained
307 in the Grade "A" pasteurized milk ordinance.

308 (d) Each frozen dessert plant permitholder must report
309 monthly, quarterly, semiannually, or annually, as required by
310 the department, the number of gallons of frozen dessert or
311 frozen dessert mix sold or manufactured by the permitholder in
312 this state.

313 (e) Each licensed milkfat tester shall keep records of
314 milkfat tests conducted by him or her for a period of 1 year,
315 and such records must be available for inspection by the
316 department at all reasonable hours.

317 (4)-(3) EXEMPTIONS.-

318 (a) The following persons shall be exempt from milk hauler
319 permit requirements:

320 1. Milk producers who transport milk or milk products only
321 from their own dairy farms.

322 2. Employees of a milk distributor or milk plant operator
323 who possesses a valid permit.

324 3. Drivers of bulk milk tank trucks between locations who
325 do not collect milk from farms.

326 (b) Grocery stores, restaurants, soda fountains, and
327 similar establishments where milk or milk products are served or
328 sold, but not processed, may be exempted from permit
329 requirements.

330 (c) Frozen desserts retail establishments as defined in s.
331 502.012 are exempt from this chapter.

332 (5)-(4) TEMPORARY PERMITS.-



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333 (a) The department may issue a temporary permit for a
334 period not exceeding 90 days to milk producers who have
335 submitted an application to the department and passed a
336 preliminary inspection as required in the Grade "A" pasteurized
337 milk ordinance.

338 (b) During this 90-day period, the department shall act
339 expeditiously to determine compliance with all relevant laws
340 and, upon finding compliance, shall issue a permit pursuant to
341 subsection (1).

342 Section 22. Section 502.054, Florida Statutes, is amended
343 to read:

344 502.054 Inspection and reinspection.—

345 (1) The department shall establish a schedule for
346 inspections which shall require routine inspections in
347 accordance with the minimum requirements contained in the Grade
348 "A" pasteurized milk ordinance and more frequent inspections or
349 reinspections for permitholders with serious or repeated
350 violations.

351 (2) The department shall inspect frozen desserts and frozen
352 dessert plants that handle and process mix and manufacture
353 frozen desserts for wholesale. Inspections must be based on the
354 frequency and severity of a violation. However, the department
355 must comply with all federal requirements governing inspections.

356 Section 23. Subsection (1) of section 502.091, Florida
357 Statutes, is amended to read:

358 502.091 Milk and milk products which may be sold.—

359 (1) Only Grade "A" pasteurized milk and milk products,
360 pasteurized manufactured milk products, ice cream, and frozen
361 desserts, and cheese made from pasteurized milk shall be sold at



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362 retail to the final consumer or to food service establishments
363 as defined in chapter 381, food establishments as defined in
364 chapter 500, or public food service establishments as defined in
365 chapter 509. Cheese made from raw milk may also be sold at
366 retail to the final consumer or to food service establishments
367 as defined in chapter 381, food establishments as defined in
368 chapter 500, or public food service establishments as defined in
369 chapter 509 if the cheese is aged more than 60 days at a
370 temperature above 35° F.

371 (a) In an emergency, however, the department may authorize
372 the sale of reconstituted pasteurized milk products, or
373 pasteurized milk and milk products that have not been graded or
374 the grade of which is unknown, in which case such milk and milk
375 products shall be appropriately labeled, as determined by the
376 department.

377 (b) If the department determines that milk is fit for human
378 consumption even though it is less than Grade "A" because the
379 producer failed to comply with the sanitation or bacterial
380 standards defined in this chapter, or if any specific shipment
381 of milk fails to comply with standards of the Grade "A"
382 pasteurized milk ordinance, the department may issue a permit
383 allowing the milk to be used in ungraded products, such as
384 frozen desserts, which are being processed by such milk plant.
385 During processing of such milk, it shall be pasteurized at a
386 temperature of at least 175° F. for at least 15 seconds or at
387 least 160° F. for at least 30 minutes.

388 Section 24. Subsections (1) and (2) of section 502.121,
389 Florida Statutes, are amended to read:

390 502.121 Future dairy farms and milk and frozen dessert



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391 plants.-

392 (1) All future construction or extensive alteration of milk
393 houses, milking barns, stables, parlors, transfer stations, and
394 milk and frozen dessert plants regulated under this chapter must
395 meet certain minimum specifications and requirements which the
396 department shall establish by rule.

397 (2) Anyone who plans to construct a new milk house, milking
398 barn, stable, parlor, transfer station, or milk or frozen
399 dessert plant, or extensively alter any such existing facility,
400 shall notify the department in writing of the intention to
401 construct or alter, the date construction or alteration is to
402 begin, and the legal description of the property for which the
403 construction is planned.

404 Section 25. Subsection (1) of section 502.181, Florida
405 Statutes, is amended to read:

406 502.181 Prohibited acts.—It is unlawful for any person in
407 this state to:

408 (1) Engage in the business of producing, hauling,
409 transferring, receiving, processing, packaging, or distributing
410 milk, ~~or~~ milk products, or frozen desserts or operating a
411 washing station, manufacturing single-service containers,
412 manufacturing imitation or substitute milk or milk products, or
413 testing for milkfat content, without first obtaining a permit or
414 license from the department.

415 Section 26. Subsection (1) of section 502.231, Florida
416 Statutes, is amended to read:

417 502.231 Penalty and injunction.—

418 (1) The department may enter an order imposing one or more
419 of the following penalties against any person who violates any



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420 provision of ~~the provisions~~ of this chapter:

421 (a) Issuance of a warning letter that relates to the class
422 of the violation.

423 (b) Imposition of an administrative fine not to exceed:

424 1. Ten thousand dollars per violation in the case of a
425 frozen dessert licensee;

426 2. Ten percent of the license fee or \$100, whichever is
427 greater, for failure to report the information described in s.
428 502.053(3) (d); or

429 3. One thousand dollars of not more than \$1,000 per
430 occurrence for any other violation.

431
432 ~~(e)~~ When imposing a fine under this paragraph section, the
433 department must consider the degree and extent of harm caused by
434 the violation, the cost of rectifying the damage, the benefit to
435 the violator, whether the violation was committed willfully, and
436 the violator's compliance record.

437 ~~(c)~~ ~~(d)~~ Revocation or suspension of any permit issued by the
438 department under this chapter.

439 Section 27. Section 502.232, Florida Statutes, is amended
440 to read:

441 502.232 Local regulations superseded.—All special or local
442 acts, general laws of limited application, county ordinances or
443 resolutions, municipal ordinances or resolutions, and municipal
444 charter provisions that authorize the regulation of milk or milk
445 products, or frozen desserts for wholesale, are superseded by
446 this chapter and the rules adopted pursuant to this chapter.

447 Section 28. Chapter 503, Florida Statutes, consisting of
448 sections 503.011, 503.021, 503.031, 503.041, 503.0415, 503.051,



449 503.071, 503.081, and 503.091, is repealed.

450

451 ===== T I T L E A M E N D M E N T =====

452 And the title is amended as follows:

453 Delete line 70

454 and insert:

455 deposited into the General Inspection Trust Fund;
456 amending s. 381.0014, F.S., to conform to changes made
457 by the act; revising the title of chapter 502, F.S.;
458 amending s. 502.012, F.S.; defining terms related to
459 the department's regulation of frozen desserts;
460 amending s. 502.013, F.S.; revising legislative
461 purpose and intent, to conform; amending s. 502.014,
462 F.S.; revising the department's powers and duties;
463 authorizing the department to administer and enforce
464 regulations of frozen desserts and frozen dessert mix;
465 revising the federal publication upon which certain
466 milk sanitation ratings are based; authorizing the
467 department to adopt rules; repealing s. 502.032, F.S.,
468 relating to milkfat tester's permits and permit fees;
469 amending s. 502.053, F.S.; providing permitting and
470 licensing requirements and imposing permit and license
471 fees for frozen dessert plants and milkfat testers;
472 providing certain reporting requirements for frozen
473 dessert plant permitholders; providing certain
474 recordkeeping requirements for licensed milkfat
475 testers; providing an exemption; amending s. 502.054,
476 F.S.; requiring the department to inspect certain
477 frozen desserts and frozen dessert plants; amending s.



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478 502.091, F.S.; authorizing sales of certain ice cream
479 and frozen desserts; amending s. 502.121, F.S.;
480 restricting the construction or extensive alteration
481 of frozen dessert plants; amending ss. 502.181 and
482 502.231, F.S.; prohibiting certain acts related to the
483 regulation of frozen desserts; providing penalties;
484 amending s. 502.232, F.S.; preempting to the state the
485 local regulation of frozen desserts at wholesale;
486 repealing ch. 503, F.S., relating to the state's
487 regulation of frozen desserts, enforcement and
488 penalties for violations of such regulations,
489 licensure of frozen dessert plants, and preemption of
490 municipal and county regulations of frozen desserts;