

RAW MILK REGULATIONS

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I. Intro

Food safety issues are frequently in the news for negative reasons.¹ Currently, peanut processing problems are perhaps the most notorious; however, each week new issues seem to raise new concerns in different industries.² Along with concerns over contamination in our food supply, there is rising concern among consumers about buying the most healthy and beneficial products.³ As a result, organic and natural food products are growing immensely in popularity in the United States.⁴

While the organic products industry has progressed from an obscure sector of health conscious consumers to mainstream availability, raw milk is currently in the obscurity phase.⁵ Raw milk gets its name because it has not been pasteurized or homogenized.⁶ Currently, raw milk advocates are a minor faction of this larger movement of the consuming public towards a

¹ U.S. Food and Drug Administration, *Peanut Product Recalls*, <http://www.fda.gov/oc/opacom/hottopics/salmonellatyph.html> (last visited Apr. 23, 2009); Jane Byrne, Dairyreporter.com, *Nut so good- tainted US food system needs revamping*, <http://www.dairyreporter.com/Safety-Hygiene/Nut-so-good-tainted-US-food-system-needs-revamping> (last visited Apr. 23, 2009); E.J. Schultz, *Proposed legislation would overturn state's new raw milk regulations*, SACRAMENTO BEE, June 2, 2008.

² *Id.*

³ E.J. Schultz, *Proposed legislation would overturn state's new raw milk regulations*, SACRAMENTO BEE, June 2, 2008; Renee Johnson, *Organic Agriculture in the United States: Program and Policy Issues*, CRS Report for Congress, RL31595, at 4, (Nov. 25, 2008), available at <http://www.nationalaglawcenter.org/assets/crs/RL31595.pdf>.

⁴ Renee Johnson, *Organic Agriculture in the United States: Program and Policy Issues*, CRS Report for Congress, RL31595, at 4, (Nov. 25, 2008), available at <http://www.nationalaglawcenter.org/assets/crs/RL31595.pdf>.

⁵ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁶ Chris Ryder, *Agriculture Department Says Lancaster County Raw Milk Dairy Tests Positive for Salmonella*, PRNewswire, Jan. 20, 2009, available at <http://news.prnewswire.com/DisplayReleaseContent.aspx?ACCT=104&STORY=/www/story/01-20-2009/0004957462&EDATE=>. See also Bread and Money, *The Milk Wars, Part II*, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009).

healthier lifestyle.⁷ However, most observers of the raw milk industry believe it will continue to grow in popularity with health conscious consumers to eventually hold a prominent position in the food industry, like organics.⁸ In fact, even now large food companies like Kraft and Dannon are aligning their products with the health trend by offering probiotic yogurts and cheeses that aid in digestion.⁹

Raw milk proponents see raw milk as the healthy, unadulterated, locally-grown food choice over pasteurized milk.¹⁰ Raw milk is seen by many health conscious consumers as the preferable way to ingest milk products.¹¹ In addition to the health conscious consumer, there are cultural considerations for why some people consume raw milk products in the United States.¹² For example, Mennonite and Amish people have a long history of producing and selling raw milk products in the communities where they live across the United States.¹³ Also, Mexicans have a history of consuming a raw milk product called queso fresco.¹⁴ Despite these deep

⁷ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁸ *Id.*

⁹ E.J. Schultz, *Proposed legislation would overturn state's new raw milk regulations*, SACRAMENTO BEE, June 2, 2008.

¹⁰ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Valerie Taylor, *Raw Milk: How To Set Up a Herdshare, and How To Evaluate a Dairy Farmer's Herdshare Program*, Aug. 2, 2008, <http://eatdrinkbetter.com/2008/08/02/raw-milk-how-to-set-up-a-herdshare-and-how-to-evaluate-your-dairy-farmers-herdshare-program/>.

¹¹ Valerie Taylor, *Raw Milk: How To Set Up a Herdshare, and How To Evaluate a Dairy Farmer's Herdshare Program*, Aug. 2, 2008, <http://eatdrinkbetter.com/2008/08/02/raw-milk-how-to-set-up-a-herdshare-and-how-to-evaluate-your-dairy-farmers-herdshare-program/>.

¹² Guide to Mexican Cheeses, Fresh Cheeses, <http://www.gourmetsleuth.com/mexicancheeses.htm> (last visited Apr. 23, 2009); Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

¹³ Weston A. Price Foundation, Information Alert: Socialite Fundraises for Mennonite Raw Milk Farmer, <http://www.westonaprice.org/federalupdate/aa2008/10jun08.html> (last visited Apr. 23, 2009).

¹⁴ Interestingly, a section of the population largely affected by the dangers of raw milk is the Mexican population in the United States. Mexicans frequently eat a raw milk cheese called queso fresco. Subsequently and perhaps related to Mexican cultural demands, California has the largest raw milk production in the United States. Guide to Mexican

cultural roots and beneficial health claims, there are undeniable dangers involved with consuming raw, unpasteurized milk products.¹⁵

To help combat these dangers, milk pasteurization was adopted in the United States in the early 1900s and is used around the world as an effective way to ensure milk is safe for consumption.¹⁶ Pasteurization is an easy process which destroys pathogens¹⁷ that may occur in milk and also extends milk's shelf life.¹⁸ The pasteurization process has been lauded for minimizing milk related illnesses and death.¹⁹ Pasteurization utilizes heat to destroy pathogens and, by most scientific accounts, does not change milk's nutritional value.²⁰ The typical process involves heating milk to 161 degrees Fahrenheit for over fifteen seconds and then cooling it down quickly.²¹

Cheeses, Fresh Cheeses, <http://www.gourmetsleuth.com/mexicancheeses.htm> (last visited Apr. 23, 2009); Press Release, FDA, Listeria Contamination in Queso Fresco, Fresh Cheese (Dec. 6, 2007), *available at* http://www.fda.gov/oc/po/firmrecalls/listeria12_07.html; Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, *available at* http://www.fda.gov/fdac/features/2004/504_milk.html; Joe Milicia, *Amish man defends raw milk sale*, Assoc. Press, June 28, 2006, *available at* <http://www.raw-milk-facts.com/inthenews.html>.

¹⁵ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slide 3, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

¹⁶ Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, *available at* http://www.fda.gov/fdac/features/2004/504_milk.html; Raw Milk Fact Sheet, <http://www.nebmilk.org/familyhealth/handouts/RawMilkFactSheet.pdf> (last visited Apr. 23, 2009).

¹⁷ Pathogens are "disease-causing organisms." Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, *available at* http://www.fda.gov/fdac/features/2004/504_milk.html.

¹⁸ Raw Milk Fact Sheet, <http://www.nebmilk.org/familyhealth/handouts/RawMilkFactSheet.pdf> (last visited Apr. 23, 2009); Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, *available at* http://www.fda.gov/fdac/features/2004/504_milk.html.

¹⁹ Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, *available at* http://www.fda.gov/fdac/features/2004/504_milk.html.

²⁰ *Id.*

²¹ Raw Milk Fact Sheet, <http://www.nebmilk.org/familyhealth/handouts/RawMilkFactSheet.pdf> (last visited Apr. 23, 2009).

There is no doubt that raw milk contains more naturally occurring bacterium than pasteurized milk.²² Interestingly, the rates of naturally occurring pathogens found in raw milk vary among countries and even within regions of countries.²³ Naturally occurring pathogen rates also vary among the three main types of milks consumed by people: cow, sheep, and goat.²⁴ In addition, cows, sheep, and goats carry a naturally occurring bacteria which does not affect the animals, but makes people sick.²⁵ Subsequently, there are many other ways which milk may become contaminated by dangerous pathogens.²⁶ Bacteria may shed into the milk directly from the skin of the animal during the milking process.²⁷ Milk may also be contaminated by other external factors like farm equipment or containers.²⁸

Even so, the health and safety warnings about the dangers of drinking raw milk have neither hindered the growth of the raw milk industry, nor have they tempered proponents' enthusiasm for the product over the past several years.²⁹ It is estimated that 500,000 people

²² Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>; See Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Raw milk advocates argue raw milk contains "good bacteria" not found in pasteurized milk. Bread and Money, *The Milk Wars, Part II*, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009).

²³ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slide 4, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

²⁴ *Id.*

²⁵ Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Valerie Taylor, *Raw Milk: How To Set Up a Herdshare, and How To Evaluate a Dairy Farmer's Herdshare Program*, Aug. 2, 2008, <http://eatdrinkbetter.com/2008/08/02/raw-milk-how-to-set-up-a-herdshare-and-how-to-evaluate-your-dairy-farmers-herdshare-program/>; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Joe Drape, *Should This Milk Be Legal?*, N.Y. TIMES, Aug. 8, 2007.

consume raw milk products across the United States, and that number is on the rise.³⁰ As a result of ever growing popularity and the attendant health risks, raw milk regulations are controversial issues for state and even federal legislators across the United States.³¹ Currently, the United States government, through the Food and Drug Administration (hereinafter FDA), outlaws interstate raw milk sales.³² The federal regulation enacted in 1987 says, “no person shall cause to be delivered into interstate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption unless the product has been pasteurized....”³³

However, on January 28, 2009, a Republican Congressman from Texas and former candidate for President, Ron Paul, introduced House of Representatives Bill 778 to end the Federal ban on the interstate commerce of raw milk.³⁴ The bill authorizes interstate trafficking of unpasteurized milk and milk products that are packaged for human consumption.³⁵ The United States government would be precluded from interfering, prohibiting, regulating, or

³⁰ The FDA believes raw milk drinkers constitute three percent of milk drinkers in the United States. It should be noted that Sally Fallon, President of Weston A. Price Foundation, a staunch raw milk advocacy group provided this estimate. She believes the actual number may be closer to one million. Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Ann Monroe, Farm-to-Consumer Legal Defense Fund®, *Trafficking in Raw Milk*, <http://www.farmtoconsumer.org/news/news-28mar2009.htm> (last visited Mar. 20, 2009).

³¹ Bread and Money, *The Milk Wars*, Part II, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009); Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

³² Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

³³ Farm-to-Consumer Legal Defense Fund®, *Ron Paul Introduces Bill to End Interstate Raw Milk Ban*, http://www.farmtoconsumer.org/federal_bills-HR778.htm (quoting 21 CFR 1240.61)(last visited Mar. 30, 2009); Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

³⁴ Farm-to-Consumer Legal Defense Fund®, *Ron Paul Introduces Bill to End Interstate Raw Milk Ban*, http://www.farmtoconsumer.org/federal_bills-HR778.htm (last visited Mar. 30, 2009).

³⁵ *Id.*

restricting the interstate travel of any raw milk products if the bill passes.³⁶ Also if the bill passes, states will still retain authority to promulgate their own raw milk regulations.³⁷ However, under the new bill, consumers could legally purchase milk from other states.³⁸ Concerning the bill, Congressman Paul stated, “Americans have the right to consume these products without having the Federal Government second-guess their judgment about what products best promote health. If there are legitimate concerns about the safety of unpasteurized milk, those concerns should be addressed at the state and local level.”³⁹

Consequently, there are varying degrees of state regulations of the raw milk industry across the United States.⁴⁰ All states allow the legal **consumption** of raw milk.⁴¹ In addition, almost thirty states allow the legal **sale** of raw milk.⁴² The rest of the states outlaw raw milk sales.⁴³ State legislators are tasked with the difficult job of striking the proper balance between raw milk proponents and opponents.⁴⁴ Difficulty arises because raw milk is a growing industry with high demand from consumers and which also can be very dangerous to consumers.⁴⁵ This

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Raw Milk Fact Sheet, <http://www.nebmilk.org/familyhealth/handouts/RawMilkFactSheet.pdf> (last visited Apr. 23, 2009); Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

⁴¹ Farm-to-Consumer Legal Defense Fund®, *Ron Paul Introduces Bill to End Interstate Raw Milk Ban*, http://www.farmtoconsumer.org/federal_bills-HR778.htm (last visited Mar. 30, 2009)(emphasis added).

⁴² Jan Ellen Spiegel, *Bill Proposes Restrictions on Raw Milk Sales*, N.Y. TIMES, Mar. 12, 2009 (emphasis added); Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁴³ See Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁴⁴ See Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>.

⁴⁵ *Id.*

paper will examine various state regulations with an eye towards whether Pennsylvania should expand its raw milk program as proposed by State Senator Mike Brubaker (R-36) and State Representative Bryan Cutler (R-100).⁴⁶

a. Raw Milk Opponent Claims

Raw milk opponents⁴⁷ vehemently argue that raw milk is not worth the attendant health risks involved in its consumption.⁴⁸ Opponents argue the health benefits are fictional because “raw and pasteurized milk are nutritionally the same.”⁴⁹ The opponents to raw milk claim raw milk is dangerous and “unsafe for human consumption.”⁵⁰ In fact, raw milk has been implicated in numerous serious disease outbreaks nationwide over the past several years.⁵¹ These outbreaks resulted in hundreds of illnesses and hospitalizations, including deaths.⁵² For example, an E. coli outbreak in California caused five children bloody diarrhea and kidney failure.⁵³

⁴⁶ Pennsylvania Senate Republican News, Local Legislators Introduce Raw Milk Legislation, <http://www.pasenategop.com/news/archived/2008/0608/brubaker-062708-rawmilk.htm> (last visited Apr. 19, 2009).

⁴⁷ Raw milk opponents are generally government officials and public health experts charged with protecting citizens from health hazards. Opponents include, among others: the Food and Drug Administration, Centers for Disease Control and Prevention, American Medical Association, and the World Health Organization, local farm bureaus. Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009. See John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

⁴⁸ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slide 3, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>.

⁴⁹ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁵⁰ *Id.*

⁵¹ Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>.

⁵² *Id.*

⁵³ This outbreak occurred in 2006 and was linked to Organic Pastures’, a dairy in Fresno, CA, raw milk. Again in 2007, public health officials say five people were sickened by raw milk from the dairy. *Id.*

The FDA Division of Dairy and Egg Safety released a PowerPoint presentation in 2005 concerning the safety of raw milk.⁵⁴ The FDA's stance is that arguments against pasteurization are not supported by any scientific facts.⁵⁵ The presentation begins by asserting that "[r]aw milk is *inherently* dangerous."⁵⁶ Numerous sources indicate that raw milk may contain menacing pathogens including: E.coli, salmonella species, listeria monocytogenes, mycobacterium tuberculosis, enterotoxigenic staphylococcus aureus, brucella species and yersinia enterocolitica, among many others.⁵⁷

Specifically, the Centers for Disease Control and Prevention (hereinafter CDCP) cited raw milk and raw milk cheese as the causes for 45 cases of food-borne diseases between 1998 and 2005.⁵⁸ Also according to the CDCP, over 1,000 people were sickened, 104 were hospitalized, and two people died as a result of contaminated raw milk products during the same time period.⁵⁹ Moreover, each year brings new cases of people getting sick from raw milk.⁶⁰ Furthermore, in 2007 the U.S. Department of Agriculture tested raw milk from 861 farms in 21

⁵⁴ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

⁵⁵ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slides 43-65, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁵⁶ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slide 3, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf> (emphasis in original).

⁵⁷ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slide 3, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Mary Klaus, *Bacteria found in farm's raw milk*, PATRIOT NEWS, Feb. 18, 2009; Press Release, FDA, Listeria Contamination in Queso Fresco, Fresh Cheese (Dec. 6, 2007), *available at* http://www.fda.gov/oc/po/firmrecalls/listeria12_07.html.

⁵⁸ Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁵⁹ *Id.*

⁶⁰ Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, *available at* http://www.fda.gov/fdac/features/2004/504_milk.html.

states.⁶¹ Almost a quarter of the raw milk samples were infected with bacteria including listeria, salmonella and E. coli.⁶² Scientists who performed the study believed contamination levels may actually be higher than what the tests revealed.⁶³

What may be most alarming is that babies, young children, pregnant women, and those with weakened immune systems are frequently fed, or consume voluntarily, raw milk products at higher rates because of the proclaimed health benefits.⁶⁴ However, those same types of people are more susceptible to the pathogens contained in raw milk because of weakened immune systems.⁶⁵ Specifically, listeria can cause pregnant women to experience miscarriages or harm to a newborn baby.⁶⁶ Consequently, the quantity of raw milk products consumed is believed to be proportional to the occurrence and severity of illnesses which result in people if pathogens are present.⁶⁷ Even more frightening is the fact that children who have never consumed raw milk

⁶¹ Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slides 13, 18, 26, 31, 39, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁶⁵ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slides 13, 18, 26, 31, 39, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Press Release, FDA, *Listeria Contamination in Queso Fresco, Fresh Cheese* (Dec. 6, 2007), available at http://www.fda.gov/oc/po/firmrecalls/listeria12_07.html; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

⁶⁶ Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

⁶⁷ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slide 36, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

products may nonetheless contract E. coli from other children who have consumed contaminated raw milk products.⁶⁸

Opponents of raw milk also argue pasteurization has only positive effects on milk, and there are no real benefits from consuming raw milk products that have not been pasteurized.⁶⁹ In fact, the FDA says pasteurization provides safety to milk without lowering its nutritional value.”⁷⁰ Opponents argue that pasteurization does not kill the “good enzymes” that naturally occur in milk.⁷¹ It is also noted that stomach acids kill enzymes anyway.⁷² Pasteurization does not change the amount or concentration of lactose in milk.⁷³ Another argument is that pasteurized milk does not cause allergic reactions.⁷⁴ The same milk proteins that produce allergic reactions are found in both raw and pasteurized milk.⁷⁵

⁶⁸ Jan Ellen Spiegel, *Bill Proposes Restrictions on Raw Milk Sales*, N.Y. TIMES, Mar. 12, 2009.

⁶⁹ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slides 42, 45, 47, 53, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁷⁰ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slides 42, 45, 47, 53, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

⁷¹ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slide 47, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁷² Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

⁷³ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slide 52, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

⁷⁴ John Sheehan, *On the Safety of Raw Milk*, USFDA/CFSAN (2005), Slides 54, 55, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

⁷⁵ *Id.*

Opponents also argue that there is no scientific evidence to support the assertion that pasteurized milk contributes to arthritis, autism, and other ailments.⁷⁶ Also, they assert pasteurized milk does not cause lactose intolerance or other diseases.⁷⁷ Those opposed to raw milk consumption, including Pennsylvania State University professor emeritus of dairy science, Stuart Patton, also claim that pasteurization does not destroy Vitamin C or other water-soluble vitamins by very much, and in any event, milk is not normally consumed for its Vitamin C content.⁷⁸ In addition, calcium and iodine content is not altered or depleted in pasteurized milk.⁷⁹ Therefore, there are no distinguishable nutritional differences between raw and pasteurized milk.⁸⁰

b. Raw Milk Proponent Claims

Advocates for raw milk cite numerous considerations for their position on the highly contested topic.⁸¹ They do not think properly handled raw milk and grass-fed cows present a

⁷⁶ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slides 56, 57, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

⁷⁷ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slide 53, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

⁷⁸ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slide 58, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁷⁹ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slides 60, 62, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>.

⁸⁰ John Sheehan, On the Safety of Raw Milk, USFDA/CFSAN (2005), Slide 66, <http://www.cfsan.fda.gov/~acrobat/milksafe.pdf>; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁸¹ See Valerie Taylor, *Raw Milk: How To Set Up a Herdshare, and How To Evaluate a Dairy Farmer's Herdshare Program*, Aug. 2, 2008, <http://eatdrinkbetter.com/2008/08/02/raw-milk-how-to-set-up-a-herdshare-and-how-to-evaluate-your-dairy-farmers-herdshare-program/>; Bread and Money, *The Milk Wars, Part II*, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009).

danger to consumers.⁸² These proponents also claim raw milk is healthier and tastier than pasteurized milk.⁸³ In addition, they proffer other environmental, freedom of choice, and economic arguments.⁸⁴

Most advocates for raw milk consume it because they believe it is more nutritious than pasteurized milk.⁸⁵ Proponents of raw milk argue that pasteurization kills natural proteins, good bacteria⁸⁶, and enzymes found naturally in milk due to the extreme heat used in the process of pasteurizing.⁸⁷ Also, raw milk has a higher fat content than pasteurized milk which proponents argue makes it more nutritious and much creamier than processed milk.⁸⁸ Some proponents also

⁸² Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>; Valerie Taylor, *Raw Milk: How To Set Up a Herdshare, and How To Evaluate a Dairy Farmer's Herdshare Program*, Aug. 2, 2008, <http://eatdrinkbetter.com/2008/08/02/raw-milk-how-to-set-up-a-herdshare-and-how-to-evaluate-your-dairy-farmers-herdshare-program/>; Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html> Bread and Money, *The Milk Wars, Part II*, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009); Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁸³ Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>; Bread and Money, *The Milk Wars, Part II*, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009); Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

⁸⁴ Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>; Bread and Money, *The Milk Wars, Part II*, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009).

⁸⁵ Ideas For Change In America, *Legalize Milk*, http://www.change.org/ideas/view_idea/legalize_milk (last visited Apr. 23, 2009); Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁸⁶ Good bacteria means probiotics. Probiotics are bacteria which are beneficial to the human body. Merriam-Webster Online Dictionary, *Probiotics Definition*, <http://www.merriam-webster.com/dictionary/probiotics>; Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>.

⁸⁷ Mary Klaus, *Bacteria found in farm's raw milk*, PATRIOT NEWS, Feb. 18, 2009; Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁸⁸ Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

argue that raw milk improves behavior in children.⁸⁹ In addition, some argue raw milk helps treat osteoporosis, cancer, asthma, and allergies like eczema and hay fever.⁹⁰ They proclaim raw milk's ability to cure lactose intolerance and digestive disorders.⁹¹ Advocates allege raw milk will aid the development of fetuses and babies.⁹² Also, advocates who enjoy raw milk claim it has a superior taste to pasteurized milk.⁹³

Advocates for raw milk argue that the health risks espoused by opponents of raw milk are the result of improperly handled dairy cows from large, factory-like farms.⁹⁴ These advocates claim that if cows are fed and treated properly, their milk will be contaminant free and safe for everyone to drink.⁹⁵ There is a view that modern, large farm businesses do not feed or treat the animals in a healthy manner.⁹⁶ Milk from cows handled in a factory farm setting needs to be

⁸⁹ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁹⁰ Some proponents argue that pasteurized milk actually *causes* lactose intolerance and osteoporosis. See Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>.

⁹¹ Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>.

⁹² Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁹³ Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>.

⁹⁴ Barbara Feder Ostrov, *State clamps down on raw milk industry*, SAN JOSE MERCURY NEWS, Mar. 5, 2008, available at <http://www.raw-milk-facts.com/inthenews.html>; Valerie Taylor, *Raw Milk: How To Set Up a Herdshare, and How To Evaluate a Dairy Farmer's Herdshare Program*, Aug. 2, 2008, <http://eatdrinkbetter.com/2008/08/02/raw-milk-how-to-set-up-a-herdshare-and-how-to-evaluate-your-dairy-farmers-herdshare-program/>; Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

⁹⁵ *Id.*

⁹⁶ *Id.*

pasteurized because that milk does in fact contain dangerous pathogens, but milk from healthy, well-treated, grass-fed cows on small farms will be healthy and nutritious.⁹⁷

In addition to the health benefits realized from consuming raw milk products, proponents argue raw milk is better for the environment.⁹⁸ If consumers are legally allowed to purchase raw milk in their state, milk does not travel very far from farm to table.⁹⁹ Raw milk uses a minimum of transportation and fuel, thereby conserving energy and expenses.¹⁰⁰ In addition, proponents want the freedom to choose for themselves if they consume raw milk or not.¹⁰¹ They say farmers and consumers should have the right to decide for themselves if they want to take the risks to sell and buy raw milk.¹⁰²

Proponents also argue outlawing raw milk will not resolve the health concerns associated with consuming raw milk.¹⁰³ Health risks will persist because consumers will find ways to obtain raw milk even if it is banned in their states.¹⁰⁴ Raw milk consumers who reside in states where raw milk is banned developed black markets to purchase raw milk.¹⁰⁵ Some consumers illegally purchase raw milk from farmers in other states where raw milk sales are legal at secret,

⁹⁷ *Id.*

⁹⁸ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

⁹⁹ *Id.*

¹⁰⁰ *Md. Bill Would Permit Cow Ownership Agreements*, LANCASTER FARMING, Feb. 20, 2009.

¹⁰¹ Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>.

¹⁰² *Md. Bill Would Permit Cow Ownership Agreements*, LANCASTER FARMING, Feb. 20, 2009; Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>.

¹⁰³ See Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

¹⁰⁴ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

¹⁰⁵ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Ann Monroe, Farm-to-Consumer Legal Defense Fund®, *Trafficking in Raw Milk*, <http://www.farmtoconsumer.org/news/news-28mar2009.htm> (last visited Mar. 20, 2009).

designated drop-off points.¹⁰⁶ Or some consumers buy illegally from dairy farmers in their own states.¹⁰⁷ As a result of state bans on raw milk, proponents allege that after illegal drugs, raw milk may be the most widely traded illicit substance in the United States.¹⁰⁸ In turn, underground production and sales go completely unrestricted or monitored by states.¹⁰⁹ The lack of oversight poses an even greater health risk to consumers.¹¹⁰

Also, proponents of raw milk note that consumers get sick from all sorts of foods which are legal, and yet those foods are not banned.¹¹¹ For instance, consumers can get sick from milk even if it is pasteurized.¹¹² Pasteurized milk products were associated with 47 cases of food-borne illnesses between 1973 and 2005.¹¹³ In fact, a Seattle woman recently experienced a miscarriage after consuming listeria contaminated pasteurized cheese.¹¹⁴ Also, in opposition to

¹⁰⁶ *Id.*

¹⁰⁷ Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Ann Monroe, Farm-to-Consumer Legal Defense Fund®, *Trafficking in Raw Milk*, <http://www.farmtoconsumer.org/news/news-28mar2009.htm> (last visited Mar. 20, 2009).

¹⁰⁸ Ann Monroe, Farm-to-Consumer Legal Defense Fund®, *Trafficking in Raw Milk*, <http://www.farmtoconsumer.org/news/news-28mar2009.htm> (last visited Mar. 20, 2009).

¹⁰⁹ *See generally* Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>; Joe Drape, *Should This Milk Be Legal?*, N.Y. TIMES, Aug. 8, 2007.

¹¹⁰ *Id.*

¹¹¹ Take spinach, peanuts, and pistachios for example. *See generally* Marler Clark, Attorneys At Law, Case News, http://www.marlerclark.com/case_news/C88 (last visited Apr. 23, 2009); Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Bread and Money, *The Milk Wars, Part II*, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009).

¹¹² E.J. Schultz, *Proposed legislation would overturn state's new raw milk regulations*, SACRAMENTO BEE, June 2, 2008.

¹¹³ *Id.*

¹¹⁴ Glenn Bohn, *Woman who lost her baby to sue over bad cheese*, VANCOUVER SUN, Apr. 6, 2008.

FDA claims, proponents argue the health benefits from raw milk are demonstrated by scientific facts.¹¹⁵

In addition, proponents make numerous economic arguments concerning raw milk product sales.¹¹⁶ One argument is that dairy farmers favor being able to legally sell their raw milk products.¹¹⁷ Farmers individually should be able to take advantage of the economic opportunity to sell raw milk.¹¹⁸ Dairy farmers stand to make much more selling raw milk to consumers because raw milk commands much more money than regular milk to be sent for processing.¹¹⁹ For instance, a gallon of raw milk in most states where it is legal sells for about eight dollars.¹²⁰ Also, proponents say allowing raw milk sales is good for the state and local economies.¹²¹ Milk money stays local versus going to farmers in another state where raw milk is legal.¹²² And because of the high prices for raw milk, farmers have more to spend in the economy.¹²³

¹¹⁵ A few studies from the 70s and 80s are referenced throughout the presentation. Although, they even admit there is little scientific support for their health claims. Weston A. Price Foundation, Response To The FDA, <http://www.realmilk.com/documents/SheehanPowerPointResponse.pdf> (last visited Apr. 23, 2009).

¹¹⁶ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Bread and Money, The Milk Wars, Part II, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009).

¹¹⁷ See Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Ideas For Change In America, Legalize Milk, http://www.change.org/ideas/view_idea/legalize_milk (last visited Apr. 23, 2009).

¹¹⁸ *Md. Bill Would Permit Cow Ownership Agreements*, LANCASTER FARMING, Feb. 20, 2009.

¹¹⁹ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

¹²⁰ *Id.*

¹²¹ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; See also *Md. Bill Would Permit Cow Ownership Agreements*, LANCASTER FARMING, Feb. 20, 2009; Bread and Money, The Milk Wars, Part II, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009).

¹²² *Id.*

¹²³ *Id.*

Most proponents of raw milk would like to see the legal, unrestricted production and sale of raw milk products in every state.¹²⁴ Even in states that allow raw milk sales subject to state inspections, some proponents claim the inspections do not increase the safety of raw milk.¹²⁵ Some proponents see the inspections simply as harassment devices employed by states.¹²⁶ However, some proponents believe that some regulation and oversight is necessary.¹²⁷

II. State Raw Milk Laws

- a. Should Pennsylvania expand its raw milk permit program to allow the legal sale of soft raw milk products¹²⁸?

Regulation of raw milk products varies across the United States and has been an extremely contentious issue in the last few years.¹²⁹ Some state laws allow the production and sale of raw milk while others prohibit raw milk sales altogether.¹³⁰ However, all fifty states allow the sale of raw milk cheeses aged over sixty days.¹³¹ In addition, some states allow the

¹²⁴ Ideas For Change In America, *Legalize Milk*, http://www.change.org/ideas/view_idea/legalize_milk (last visited Apr. 23, 2009); Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>.

¹²⁵ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

¹²⁶ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Weston A. Price Foundation, Information Alert: Socialite Fundraises for Mennonite Raw Milk Farmer, <http://www.westonaprice.org/federalupdate/aa2008/10jun08.html> (last visited Apr. 23, 2009).

¹²⁷ Pat Hagan, *Untreated milk cuts children's allergies*, DAILY MAIL, Aug. 7, 2006, available at <http://www.raw-milk-facts.com/inthenews.html>.

¹²⁸ Soft raw milk products include: soft cheeses, ice cream, cheese spreads, yogurt, butter, creams, etc. See generally Texas Regulatory Licensing Unit, Retail Raw, Permit Application, available at <http://www.dshs.state.tx.us/fdlicense/PDF/PDFMilkDairy/M&DRetailRawInitialRenewal.pdf>.

¹²⁹ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>.

¹³⁰ See Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

¹³¹ Raw Milk USA, *In the United States*, <http://www.rawmilkusa.com/unitedstates.html> (last visited Apr. 18, 2009).

sale of raw milk for pet food products.¹³² The states that do allow the production and sale of raw milk products generally allow either a cow share program or engage in a permit and licensing program.¹³³

Cow share, or herd share, programs entail purchasing an interest in a farmer's cow thereby complying with certain states' laws which allow cow owners to consume raw milk from cows they own.¹³⁴ Cow share programs are contractual agreements between a farmer and citizen called agistments.¹³⁵ Agistments have existed for centuries.¹³⁶ They are arrangements where farmers manage animals for someone else.¹³⁷ Dairy agistments occur where a farmer pastures, feeds, and milks a cow for the owner of the animal who does not have the ability or desire to care for cows themselves.¹³⁸

Cow share programs may be the most unregulated form of legal raw milk production and sales.¹³⁹ This is because the state does not perform farm inspections for cleanliness and

¹³² Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Diana DeCola, *Local Farmers Confused by State Orders*, MARIETTA TIMES, Jul. 31, 2006, available at <http://www.raw-milk-facts.com/inthenews.html>; E.J. Schultz, *Proposed legislation would overturn state's new raw milk regulations*, SACRAMENTO BEE, June 2, 2008.

¹³³ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

¹³⁴ *Md. Bill Would Permit Cow Ownership Agreements*, LANCASTER FARMING, Feb. 20, 2009; Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>. See also Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

¹³⁵ Another example of an agricultural agistment is horse boarding. *Md. Bill Would Permit Cow Ownership Agreements*, LANCASTER FARMING, Feb. 20, 2009; Valerie Taylor, *Raw Milk: How To Set Up a Herdshare, and How To Evaluate a Dairy Farmer's Herdshare Program*, Aug. 2, 2008, <http://eatdrinkbetter.com/2008/08/02/raw-milk-how-to-set-up-a-herdshare-and-how-to-evaluate-your-dairy-farmers-herdshare-program/>; See also Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>.

compliance, nor do they test samples of raw milk to detect menacing pathogens.¹⁴⁰ Cow share programs are generally viewed as a method to get around state laws which ban raw milk sales.¹⁴¹ Indiana, Michigan, and Ohio are among the states which allow cow share programs to operate even though raw milk sales for human consumption are otherwise illegal in those states.¹⁴²

Another difference among state laws is that some allow raw milk sales in retail outlets while others only allow raw milk sales directly from the farm that produced the raw milk.¹⁴³ Approximately 28 states allow direct from the farm sales.¹⁴⁴ California, Connecticut, Maine, Pennsylvania, South Carolina, and New Mexico are among the states which allow retail sales from stores.¹⁴⁵ Obviously, retail outlet sales are more convenient for consumers because consumers do not have to make special trips to farms which may be farther from their homes than a retail outlet.¹⁴⁶ As a result, most proponents of raw milk generally see retail sales as positive and direct from farm sales as too restrictive.¹⁴⁷

¹⁴⁰ *Id.*

¹⁴¹ Wisconsin outlawed cow sharing in 2001 after 75 people got sick from *Campylobacter jejuni* bacteria from raw milk obtained through a cow share scheme. Linda Bren, *Got Milk? Make Sure It's Pasteurized*, FDA Consumer Magazine, Sept.-Oct. 2004, available at http://www.fda.gov/fdac/features/2004/504_milk.html.

¹⁴² Raw Milk USA, *In the United States*, <http://www.rawmilkusa.com/unitedstates.html> (last visited Apr. 18, 2009).

¹⁴³ See generally Raw Milk In The News, <http://www.raw-milk-facts.com/inthenews.html> (last visited Mar. 28, 2009); Raw Milk USA, *In the United States*, <http://www.rawmilkusa.com/unitedstates.html> (last visited Apr. 18, 2009).

¹⁴⁴ Raw Milk USA, *In the United States*, <http://www.rawmilkusa.com/unitedstates.html> (last visited Apr. 18, 2009).

¹⁴⁵ *Id.*

¹⁴⁶ Ann Monroe, Farm-to-Consumer Legal Defense Fund®, *Trafficking in Raw Milk*, <http://www.farmtoconsumer.org/news/news-28mar2009.htm> (last visited Mar. 20, 2009).

¹⁴⁷ See generally *id.*

However, some proponents of raw milk have different thoughts on direct farm sales.¹⁴⁸ Some like the laws because they force consumers to actually go to the farm and see the conditions.¹⁴⁹ They feel that this helps consumers make more educated and informed decisions about their purchases.¹⁵⁰ If a farm is dirty and the animals are not treated well, a consumer might think twice about purchasing raw milk products from that seller.¹⁵¹

Moreover, a bill recently proposed in Maryland would allow cow share programs in the state.¹⁵² House Bill 1080, to legalize raw milk sales, was proposed for the state of Maryland in February of 2009.¹⁵³ This bill marks the third time in three years Maryland legislators tried to legalize raw milk sales.¹⁵⁴ Delegate J.B. Jennings, a Republican who represents Baltimore and Hartford counties, introduced the legislation this year.¹⁵⁵ He believes the bill is not likely to pass but will receive increased support this year from his colleagues.¹⁵⁶

In addition, the Maryland bill allows consumers to buy a share in a cow from a farmer in order to legally drink raw milk from the farm.¹⁵⁷ Currently, it is legal in Maryland for cow owners to drink raw milk produced from their own cows.¹⁵⁸ However, in 2007 Maryland

¹⁴⁸ Raw Milk In The News, <http://www.raw-milk-facts.com/inthenews.html> (last visited Mar. 28, 2009).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

¹⁵³ *Md. Bill Would Permit Cow Ownership Agreements*, LANCASTER FARMING, Feb. 20, 2009.

¹⁵⁴ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

¹⁵⁵ *Md. Bill Would Permit Cow Ownership Agreements*, LANCASTER FARMING, Feb. 20, 2009.

¹⁵⁶ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

officials adopted emergency regulations to ban cow sharing because they considered it an illegal circumvention of the law.¹⁵⁹ Consequently, the Maryland General Assembly recently passed a trial program to legalize hard cheeses made from raw milk.¹⁶⁰ Limited amounts of raw milk cheeses are currently available in Maryland specialty retail stores.¹⁶¹

In addition, Virginia presently allows raw milk sales through cow share programs.¹⁶² Although John Beers, a Virginia State Office of Dairy and Foods program supervisor, said that Virginia cow sharing is watched closely to ensure it “involves true ownership and not a scheme to sell raw milk.”¹⁶³ Moreover, Vermont has a fairly liberal policy concerning raw milk sales.¹⁶⁴ There is a big push in the state to increase raw milk sales.¹⁶⁵ The state currently allows raw milk sales directly from the farm.¹⁶⁶ Sales of less than fifty quarts a day exempt the dairy farmer from licensing requirements.¹⁶⁷ The state is currently considering allowing retail sales.¹⁶⁸

¹⁵⁹ Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

¹⁶⁰ Hard cheeses are usually aged from sixty to ninety days. The process of making hard cheeses resembles pasteurization and thereby ensures the product is safer than unprocessed raw milk products. Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; http://www.fda.gov/fdac/features/2004/504_milk.html

¹⁶¹ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Farm-to-Consumer Legal Defense Fund®, State Legislation- Maryland, http://www.ftcldf.org/state_bills-MD.htm (last visited Apr. 23, 2009).

¹⁶² Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Joe Drape, *Should This Milk Be Legal?*, N.Y. TIMES, Aug. 8, 2007.

¹⁶³ Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01.

¹⁶⁴ See generally Vermont Raw Milk Regulations, NEDLT Meeting (Jan. 17, 18, 2008), http://www.agriculture.state.pa.us/cde/lib/cde/Vermont_Raw_Milk_Regulations_for_Jan_17_and_18_2008.pdf.

¹⁶⁵ Vermont Raw Milk Regulations, NEDLT Meeting (Jan. 17, 18, 2008), http://www.agriculture.state.pa.us/cde/lib/cde/Vermont_Raw_Milk_Regulations_for_Jan_17_and_18_2008.pdf.

¹⁶⁶ Vermont Agency of Agriculture, Rules for Selling Raw Milk From the Farm, <http://www.vermontagriculture.com/fscp/dairy/rawMilk.html> (last visited Apr. 23, 2009).

¹⁶⁷ *Id.*

¹⁶⁸ Vermont Raw Milk Regulations, NEDLT Meeting (Jan. 17, 18, 2008), http://www.agriculture.state.pa.us/cde/lib/cde/Vermont_Raw_Milk_Regulations_for_Jan_17_and_18_2008.pdf.

Consequently, state officials there are watching other progressive states for guidance on raw milk issues.¹⁶⁹

Like many other states' raw milk laws, California raw milk laws have experienced uncertainty over the past several years.¹⁷⁰ Currently, California law allows state dairies with permits to sell raw milk to around 300 retail stores in California.¹⁷¹ In 2008 there were about 40,000 raw milk consumers in California.¹⁷² The state enacted stringent requirements in 2008 on bacteria levels which were immediately met with strong opposition by raw milk enthusiasts and dairies.¹⁷³ The strict new laws are still a point of contention in the state.¹⁷⁴

Next, the State of New York allows raw milk sales through a permit system.¹⁷⁵ The sales are limited to raw milk and cheese aged over sixty days.¹⁷⁶ Additionally, New York restricts raw milk sales to direct farm purchases from one of the 23 dairy farms the state approved to sell raw milk.¹⁷⁷ The number of dairy farms with raw milk permits in the state doubled from ten in 2005 to 23 in 2008.¹⁷⁸ However, a New York farm, Meadowsweet Farm, had an increased demand for

¹⁶⁹ *Id.*

¹⁷⁰ E.J. Schultz, *Proposed legislation would overturn state's new raw milk regulations*, SACRAMENTO BEE, June 2, 2008.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ E.J. Schultz, *Proposed legislation would overturn state's new raw milk regulations*, SACRAMENTO BEE, June 2, 2008; Loren Muldowney, *Lactose intolerance*, Rodale Institute, <http://www.rodaleinstitute.org/20080612/nf1>.

¹⁷⁴ California Raw Milk Assoc., *Legislation*, http://www.californiarawmilk.org/site/index.php/resources_c/C6/ (last visited Apr. 23, 2009).

¹⁷⁵ David Gumpert, *Milk Wars*, THE NATION, Mar. 5, 2008.

¹⁷⁶ The sale of other raw dairy products is not allowed. *Id.*

¹⁷⁷ Joe Drape, *Should This Milk Be Legal?*, N.Y. TIMES, Aug. 8, 2007.

¹⁷⁸ Stephen Williams, *Joining the Herd*, DAILY GAZETTE, Apr. 27, 2008.

more raw milk products such as cream and butter.¹⁷⁹ So in order to increase profits, they turned in their raw milk permits and formed a New York Limited Liability Company (hereinafter LLC).¹⁸⁰ The LLC was used as a formal cow share program.¹⁸¹ Unhappy with this clever arrangement, New York officials stopped the LLC from distributing raw milk, assessed fines, destroyed raw milk, and sought to hold the farmer in contempt of court.¹⁸² The farmer retaliated by suing the state alleging the state did not have the authority to undertake the farm raid, and the laws relied on for the raid do not apply to private activity.¹⁸³ Ultimately, the farmer lost the case and was required to renew his permits.¹⁸⁴

Texas has perhaps the most liberal raw milk policy in the United States.¹⁸⁵ The state allows the sale of raw milk and **all raw milk products** directly from the dairy farm.¹⁸⁶ Dairy farms are also subject to inspections and tests as a result of holding a state raw milk permit.¹⁸⁷

¹⁷⁹ David Gumpert, *Milk Wars*, THE NATION, Mar. 5, 2008.

¹⁸⁰ Loren Muldowney, *Lactose intolerance*, Rodale Institute, <http://www.rodaleinstitute.org/20080612/nf1>; David Gumpert, *Milk Wars*, THE NATION, Mar. 5, 2008.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Farm-to-Consumer Legal Defense Fund®, Newsletter Archive, 2008 Year in Review, <http://www.ftcldf.org/FTCLDF2008REVIEW-Meadowsweet%20Dairy.htm> (last visited Apr. 23, 2009).

¹⁸⁵ *See generally* Strykly Texas Cheese, Fresh Raw Milk, <http://www.texascheese.com/milk.htm> (last visited Apr. 19, 2009); Texas Administrative Code, Title 25, *available at* [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=217&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=217&sch=B&rl=Y).

¹⁸⁶ Texas Administrative Code, Title 25, *available at* [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=217&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=217&sch=B&rl=Y); Retail Raw Initial/Renewal Permit Application The application has boxes for yogurt, kephir,

¹⁸⁷ Texas Administrative Code, Title 25, *available at* [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=217&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=217&sch=B&rl=Y); Texas Regulatory Licensing Unit, Retail Raw, Permit Application, *available at* <http://www.dshs.state.tx.us/fdlicense/PDF/PDFMilkDairy/M&DRetailRawInitialRenewal.pdf>.

Furthermore, Connecticut has one of the most liberal policies concerning raw milk in the United States; however, an E. coli outbreak seriously harmed residents last year.¹⁸⁸ As a result, the Agriculture Department's officials have proposed stricter regulations.¹⁸⁹ The proposed legislation would prohibit raw milk sales in retail stores and restrict raw milk sales to the originating farm and farmer's markets.¹⁹⁰ The legislation would also require warning labels to advise of the dangers posed to children and the elderly.¹⁹¹ This scheme is similar to most states that allow raw milk sales.¹⁹²

In addition, Massachusetts laws governing raw milk production and consumption are highly involved and complicated.¹⁹³ Each city or town boards of health within the state have the authority from Massachusetts to decide whether to allow the sale of raw milk products.¹⁹⁴ If the local board decides to allow the sale of raw milk, farmers must comply with state regulations governing the production and sale of raw milk.¹⁹⁵ Currently, Massachusetts forbids the production and sale of raw milk products except for the sale of cheeses aged over sixty days.¹⁹⁶

¹⁸⁸ The injured includes two toddlers who needed to go on kidney dialysis. Ellen Spiegel, *Bill Proposes Restrictions on Raw Milk Sales*, N.Y. TIMES, Mar. 12, 2009.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ NOFA Massachusetts, *Massachusetts Raw Milk Laws and Regulations*, <http://www.nofamass.org/programs/organicdairy/regulations.php> (last visited April 18, 2009).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ E-mail from Winton Pitcoff, Dairy Technical Advisor, NOFA Mass (Apr. 14, 2009)(on file with author); NOFA Massachusetts, *Massachusetts Raw Milk Laws and Regulations*, <http://www.nofamass.org/programs/organicdairy/regulations.php> (last visited April 18, 2009).

Additionally, Pennsylvania allows the sale of raw milk and hard raw milk cheeses with a permit.¹⁹⁷ Pennsylvania legislators have been working towards expanding the current program to allow the sale of any dairy product made from raw milk.¹⁹⁸ Proponents of House Bills 2596 and 2597, and Senate Bills 1500 and 1501 acknowledge the expansion would be good for the state economy.¹⁹⁹ Currently, the state requires labels on raw milk containers that notify the consumer it is raw milk, the net weight, and name and address of the dairy farmer.²⁰⁰ The farmer must also include a statement to notify consumers about the risks of raw milk.²⁰¹ Labels must first be approved by state officials before the farmer sells the product.²⁰² Also, farmers must apply to the state for a permit and be subject to inspections and testing.²⁰³ The state inspects

¹⁹⁷ Chris Ryder, *Agriculture Secretary Says Raw Milk Sales Legal In Pennsylvania With Permit*, (2008), <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=473644>. The process for obtaining a permit in Pennsylvania begins with a farmer filling out and submitting an application to the state. A state milk inspector from the Pennsylvania Department of Agriculture then evaluates the farm “to assess farm cleanliness, animal health, and potential food safety.” Next, milk samples are “tested for hygiene, animal health, and presence of disease-causing bacteria...” A dairy farmer must also provide documentation that the farms’ cows are free of brucellosis and tuberculosis. In addition, the farmer must submit to the state a written report from a licensed veterinarian that the farmer’s herd is generally healthy and free from contagious diseases. A dairy farmer must also submit to the state proof that the farm uses water with safe bacteria levels. If the process determines a farmer’s raw milk is safe, a permit is issued for one year. A current permit holder can opt to renew their permit for year-long intervals. The renewal process demands another application and the farmer’s tuberculosis and brucellosis tests are up to date and have satisfactory results. In addition, another report from a licensed veterinarian concerning herd health is required. Water test results are also required to prove its safety and necessary any time a change occurs to the water supply system. However, a permit renewal does not require another on site inspection from a state milk inspector. Milk Safety PA Regs. for Sale of Unpasteurized Milk, Penn State handout, at 2, *available at* <http://www.das.psu.edu/pdf/rawmilkpcode62008.pdf>.

¹⁹⁸ Pennsylvania Senate Republican News, *Local Legislators Introduce Raw Milk Legislation*, <http://www.pasenate.gov.com/news/archived/2008/0608/brubaker-062708-rawmilk.htm> (last visited Apr. 19, 2009).

¹⁹⁹ *Id.*

²⁰⁰ Milk Safety PA Regs. for Sale of Unpasteurized Milk, Penn State handout, at 5, *available at* <http://www.das.psu.edu/pdf/rawmilkpcode62008.pdf>.

²⁰¹ *Id.*

²⁰² *Id.* at 4.

²⁰³ Permits are free to farmers after they pass inspections and tests to meet standards of the law. Chris Ryder, *Agriculture Secretary Says Raw Milk Sales Legal In Pennsylvania With Permit*, (2008), <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=473644>.

“farms for cleanliness and sanitation.”²⁰⁴ In addition, both cows and milk are tested for pathogens.²⁰⁵ Approximately 112 Pennsylvania dairies currently hold raw milk permits.²⁰⁶

Violation of the raw milk permit occurs when two of four raw milk samples do not meet state standards.²⁰⁷ The permit holder will be notified of the violation with a written notice.²⁰⁸ The raw milk permit will be suspended or terminated by the state if three of five samples do not meet state requirements.²⁰⁹ However, a farmer is allowed the opportunity to correct the problem causing the inadequate samples and regain their raw milk permit.²¹⁰ Farmers are also required to immediately cease selling raw milk products if dangerous pathogens are detected.²¹¹ Issues need to be corrected before the state will allow resumed sales.²¹²

In response to health concerns, Pennsylvania is proactive about recognizing health concerns and alerting the public before problems get out of hand.²¹³ For example, in January 2009, a Lancaster County, Pennsylvania farm tested positive for Salmonella during a routine

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Mary Klaus, *Bacteria found in farm's raw milk*, PATRIOT NEWS, Feb. 18, 2009.

²⁰⁷ Milk Safety PA Regs. for Sale of Unpasteurized Milk, Penn State handout, at 4, *available at* <http://www.das.psu.edu/pdf/rawmilkpacode62008.pdf>.

²⁰⁸ *Id.* at 3.

²⁰⁹ *Id.* at 4.

²¹⁰ *Id.*

²¹¹ *Id.* at 5.

²¹² *Id.*

²¹³ *See generally* Chris Ryder, *Agriculture Department Says Lancaster County Raw Milk Dairy Tests Positive for Salmonella*, PRNewswire, Jan. 20, 2009, *available at* <http://news.prnewswire.com/DisplayReleaseContent.aspx?ACCT=104&STORY=/www/story/01-20-2009/0004957462&EDATE=>. *See also*, Recall, State Press Release PA Ag Dept. warns consumers of tainted raw milk sold by clarion, Crawford County Dairies

test.²¹⁴ Samples taken at the Ephrata farm tested positive eight days later in a laboratory.²¹⁵ The Department of Agriculture recommended people discard raw milk from this farm immediately and avoid drinking raw milk from this farm until multiple laboratory tests come back negative.²¹⁶ Furthermore, no sicknesses were reported related to the Salmonella contamination at this farm.²¹⁷ The owner of the farm agreed to stop selling raw milk until the contamination source was identified and corrected.²¹⁸ The farmers also agreed to work with state officials to find a solution to the contamination.²¹⁹

- b. Pennsylvania should expand its raw milk program to allow the legal sale of soft raw milk products.

Pennsylvania legislators are faced with difficult decisions concerning raw milk regulations.²²⁰ The recent national trend in state regulations is towards more liberal raw milk programs.²²¹ Along with the rise of public knowledge and consumption of raw milk products

²¹⁴ Chris Ryder, *Agriculture Department Says Lancaster County Raw Milk Dairy Tests Positive for Salmonella*, PRNewswire, Jan. 20, 2009, available at <http://news.prnewswire.com/DisplayReleaseContent.aspx?ACCT=104&STORY=/www/story/01-20-2009/0004957462&EDATE=>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Sandy Costello, *Raw milk: Science, Economics, Emotions, and Regulations are involved*, Penn State College of Agricultural Sciences, available at <http://www.das.psu.edu/capitalregion/news/raw-milk-science-economics-emotions-and>.

²²¹ See generally Vermont Raw Milk Regulations, NEDLT Meeting (Jan. 17, 18, 2008), http://www.agriculture.state.pa.us/cde/lib/cde/Vermont_Raw_Milk_Regulations_for_Jan_17_and_18_2008.pdf.

across the country, is an expansion of the industry.²²² Along with the increase of farms selling and consumers buying raw milk, are numerous state legislative pushes to allow the legal sales and production of raw milk products.²²³ As a result, state officials and legislators across the United States monitor other states as benchmarks for their raw milk programs.²²⁴ After all, the mission of every state's agricultural department is to expand local farming.²²⁵ The demand for raw milk certainly would allow many small dairies to expand and make a profit because of the high prices raw milk can demand.²²⁶

Subsequently, there are many state programs across the United States that indicate allowing more raw milk sales is the national trend.²²⁷ For instance, the Maryland legislators' several attempts to adopt a cow share program arguably show a tendency towards more liberal raw milk programs.²²⁸ In fact, there are many states which already allow the sale of raw milk products beyond just milk and hard cheese.²²⁹ For example, Arizona allows the sale of soft raw

²²² *Id.*

²²³ Vermont Raw Milk Regulations, NEDLT Meeting (Jan. 17, 18, 2008), http://www.agriculture.state.pa.us/cde/lib/cde/Vermont_Raw_Milk_Regulations_for_Jan_17_and_18_2008.pdf; Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>; Pennsylvania Senate Republican News, Local Legislators Introduce Raw Milk Legislation, <http://www.pasenategop.com/news/archived/2008/0608/brubaker-062708-rawmilk.htm> (last visited Apr. 19, 2009).

²²⁴ Vermont Raw Milk Regulations, NEDLT Meeting (Jan. 17, 18, 2008), http://www.agriculture.state.pa.us/cde/lib/cde/Vermont_Raw_Milk_Regulations_for_Jan_17_and_18_2008.pdf.

²²⁵ David Gumpert, *Milk Wars*, THE NATION, Mar. 5, 2008.

²²⁶ *Id.*

²²⁷ Pennsylvania Senate Republican News, Local Legislators Introduce Raw Milk Legislation, <http://www.pasenategop.com/news/archived/2008/0608/brubaker-062708-rawmilk.htm> (last visited Apr. 19, 2009); Vermont Raw Milk Regulations, NEDLT Meeting (Jan. 17, 18, 2008), http://www.agriculture.state.pa.us/cde/lib/cde/Vermont_Raw_Milk_Regulations_for_Jan_17_and_18_2008.pdf.

²²⁸ Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>.

²²⁹ Pete Kennedy, Real Milk Articles, *Summary of Raw Milk Statutes and Administrative Codes*, (2004), <http://www.realmilk.com/milk-laws-1.html>.

dairy products with the proper licenses.²³⁰ California allows the sale of soft raw milk products with a permit from the state.²³¹

Interestingly, despite regulations limiting sales to raw milk and aged cheese, Pennsylvanian consumers were able to purchase soft raw milk cheeses and spreads at the 2009 Pennsylvania Farm Show in Harrisburg, Pennsylvania. A local retailer had a stand at the Farm Show selling numerous raw milk cheese products. An informative brochure from the retailer details that, “None of our cheese product recipes require heating temperatures above 102 degrees.”²³² Along with the Farm Show stand, this retailer sells these soft raw milk products at a local farmer’s market. Also, local health food retailers sells soft raw milk products to consumers.

These illegal sales seem to support the aforementioned black market argument made by proponents of raw milk.²³³ If Pennsylvania retailers and farmers are selling soft raw milk products already, those products should be included in state inspections to ensure their safety. Most Pennsylvanian raw milk retailers and farmers are most likely unaware that sales of soft raw milk products are not allowed. Some might think that by way of having a permit through the state they can sell any raw milk product. It seems to follow that if raw milk is tested and legal to sell, and hard cheeses are as well, then all raw milk products are legal. A reasonable person could easily miss the fine distinction among raw milk, hard cheeses, and soft cheese products, and assume they are all allowed.

²³⁰ *Id.*

²³¹ *Id.*

²³² Brochure on file with author.

²³³ Meredith Cohn, *Raw Milk Debate*, BALTIMORE SUN, Feb. 16, 2009; Sally Squires, *Raw Milk: Udderly Foolish?*, WASH. POST, Aug. 7, 2007, at HE01; Ann Monroe, Farm-to-Consumer Legal Defense Fund®, *Trafficking in Raw Milk*, <http://www.farmtoconsumer.org/news/news-28mar2009.htm> (last visited Mar. 20, 2009).

Furthermore, the majority of raw milk consumers are mainly health conscious people who, in spite of the attendant risks, want to drink raw milk.²³⁴ Or they grew up consuming soft cheese as a part of their culture and do not even consider it dangerous.²³⁵ For some sections of the United States population, raw milk cheese is a cultural given, not a health decision or a legal choice.²³⁶ For example, Mennonites and the Amish produce their own cheeses from their own animals without considering the current debates, and queso fresco is simply a part of everyday life that goes unquestioned.²³⁷

Pennsylvania should pass House Bill 2596 and 2597, and Senate Bill 1500 and 1501. Increased raw milk sales will have positive effects on the state economy. Also, including all raw milk products will actually ensure more safety because items will be tested that might have been sold on the black market without any sort of oversight previously. In addition, citizens will be happy to decide for themselves whether they want to consume raw milk products. They are already allowed to decide if they want to smoke cigarettes or drink alcohol which may be detrimental to their health. An expansive raw milk program like Texas has would be good for Pennsylvania.

However, Pennsylvania taxpayers who are not raw milk consumers should not be left to shoulder the increased costs to the state for implementation of more raw milk regulations and other burdens raw milk puts on state officials. Instead, a fee schedule should be implemented to pay for the added costs of inspection and testing for an increased range of raw cheese products.

²³⁴ See Joe Drape, *Should This Milk Be Legal?*, N.Y. TIMES, Aug. 8, 2007.

²³⁵ See Weston A. Price Foundation, Information Alert: Socialite Fundraises for Mennonite Raw Milk Farmer, <http://www.westonaprice.org/federalupdate/aa2008/10jun08.html> (last visited Apr. 23, 2009); Guide to Mexican Cheeses, Fresh Cheeses, <http://www.gourmetsleuth.com/mexicancheeses.htm> (last visited Apr. 23, 2009).

²³⁶ *Id.*

²³⁷ *Id.*

Fees should be generated from permits and inspection charges. In addition, taxes on raw milk purchases should be implemented to generate revenue for the state. The evidence shows raw milk proponents are clearly willing to pay a premium for raw milk products.²³⁸

Farmers and retailers should pay for raw milk sales permits and inspections instead of the state issuing permits free of charge. Raw milk sellers can pass along the costs to consumers.²³⁹ It is estimated that the number of Pennsylvania raw milk permits issued have tripled in number in the past few years.²⁴⁰ These permits and subsequent inspections could generate revenue for Pennsylvania. For example, New York State charges at least \$100 for a raw milk license.²⁴¹ Connecticut charges “\$10 per each approved business activity” for raw milk and raw milk cheese permits.²⁴² Finally, Texas charges \$800 for an initial permit, \$5 monthly inspection fees, and an \$824 renewal fee, with a \$100 possible late fee.²⁴³

Pennsylvania should also tax raw milk products at a higher rate than pasteurized milk. They could use cigarettes and alcohol as a tax example and create a “Raw Milk Tax.”²⁴⁴ Also, if dairy farmers generate more legal income, the state thereby generates more income tax revenues. And if farmers make more money, they will most likely put more money back into the economy.

²³⁸ E.g., Joe Drape, *Should This Milk Be Legal?*, N.Y. TIMES, Aug. 8, 2007.

²³⁹ Lisa Rathke, *New law permits farmers to sell more raw milk*, Assoc. Press, June 29, 2008.

²⁴⁰ Weston A. Price Foundation, Information Alert: Socialite Fundraises for Mennonite Raw Milk Farmer, <http://www.westonprice.org/federalupdate/aa2008/10jun08.html> (last visited Apr. 23, 2009).

²⁴¹ New York State Department of Agriculture & Markets, FAQ, <http://www.agmkt.state.ny.us/DI/DIFAQ.html> (last visited Apr. 23, 2009).

²⁴² Connecticut Licensing Info Center; Milk, Producer, Retail Raw Milk, Raw Milk Cheese Mfg; Initial License and Renewal, <http://www.ct-clic.com/TradeLicenses/agencyLicense.asp?agID=16&view=&pageNum=3> (last visited Apr. 23, 2009).

²⁴³ Texas Regulatory Licensing Unit, Retail Raw, Permit Application, *available at* <http://www.dshs.state.tx.us/fdlicense/PDF/PDFMilkDairy/M&DRetailRawInitialRenewal.pdf>.

²⁴⁴ PA Dept. of Revenue, Cigarette Tax, <http://www.revenue.state.pa.us/revenue/cwp/view.asp?a=13&q=270763> (last visited Apr. 23, 2009).

Pennsylvania has a large tax interest in the raw milk industry along with the health and safety interest.

Whether raw milk is really healthier or not, it certainly has a placebo effect on consumers. Hundreds of thousands of loyal consumers drink raw milk and proclaim its benefits. Some go to great lengths to obtain it, literally, by driving far out of their way to farms, and also by violating the law.²⁴⁵ Raw milk consumers also are willing to pay a premium to drink raw milk.²⁴⁶ Pennsylvania should, in turn, take advantage of this booming market by collecting the added revenues it could produce and the consumer good will that would result from expanding the raw milk program.²⁴⁷

III. Conclusion

Raw milk is posing many struggles to state legislatures across the United States.²⁴⁸ Balancing the competing interests of raw milk opponents and proponents is a difficult task.²⁴⁹ Both groups have legitimate arguments that are hard to reject. Given the extreme risks associated with raw milk consumption, outlawing or restricting its production and sale seems reasonable at first glance. However, consumers in the United States are allowed the opportunity

²⁴⁵ See generally Lisa Rathke, *New law permits farmers to sell more raw milk*, Assoc. Press, June 29, 2008.

²⁴⁶ *Id.*

²⁴⁷ See generally *id.*

²⁴⁸ See generally Margaret Dayton, *Raw Milk*, (2007), <http://senatesite.com/blog/2007/02/raw-milk-regulations.html>.

²⁴⁹ Sandy Costello, *Raw milk: Science, Economics, Emotions, and Regulations are involved*, Penn State College of Agricultural Sciences, available at <http://www.das.psu.edu/capitalregion/news/raw-milk-science-economics-emotions-and>.

to decide to consume many dangerous and potentially life threatening products.²⁵⁰ Citizens inherently feel an entitlement to decide for themselves whether or not to take a risk in return for health benefits they perceive will follow consumption.²⁵¹

In conclusion, there is no doubt that raw milk can present health risks to consumers. Even still, a consumer should be allowed to weigh those risks for themselves and decide whether they are willing to take serious health risks for raw milk. Pennsylvania's current raw milk regulations are reasonable and successfully balance opponents' and proponents' interests. However, these regulations should be expanded to cover all raw milk products. Increased raw milk product production will have positive state and local economic effects. Also, legalizing all raw milk products will legitimize sales that are already occurring in the state despite the ban.

²⁵⁰ For example, tobacco products, alcohol, certain food and fast-food products, and certain prescription drugs. *See generally* Marler Clark, Attorneys At Law, Case News, http://www.marlerclark.com/case_news/C88 (last visited Apr. 23, 2009); Bread and Money, The Milk Paradox, <http://www.breadandmoney.com/docs/paradox.html> (last visited Mar. 28, 2009).

²⁵¹ *See* Bread and Money, The Milk Wars, Part II, <http://www.breadandmoney.com/docs/milkwars2005.html> (last visited Apr. 18, 2009).