



## FDA & NMPF Meddling Again in State Raw Milk Bills

Pete Kennedy, Esq. – May 5, 2011

While there is a federal ban on raw milk for human consumption in interstate commerce, the states are left to decide for themselves whether to legalize the intrastate sale or distribution of raw milk. The Food and Drug Administration (FDA) has no jurisdiction over the sale of raw milk in intrastate commerce; nevertheless, the agency has put pressure on states to restrict or ban the sale of raw milk and is at it again. In spite of FDA's best efforts, over half the states have legalized the sale or distribution of raw milk; in the 2011 legislative session, bills to legalize or expand the sale of raw milk have been introduced in at least ten different states. FDA has already intervened in several of them attempting to persuade legislators not to support the bills.

In Tennessee and Maine, FDA submitted written testimony from Dairy and Plant Food Safety Division Director John Sheehan; the testimony from Sheehan has changed little from what he has been sending legislatures since 2007 and still contains his infamous statement, "Raw milk should not be consumed by anyone at any time for any reason." What's interesting is that the raw milk bills in both states were primarily introduced just to clarify existing law.

Tennessee's cowshare law allows those who have a partial or complete ownership interest in a dairy animal to consume raw milk produced by that animal. The proposed bill would have only codified the right of those having a partial or complete interest in a dairy animal to consume raw dairy products processed from milk produced by that animal—the bill passed out of the General Assembly but died in the Senate. The Maine bill would have allowed for the on-farm sale and delivery of raw milk by unlicensed producers; until the past couple of years, the Maine Department of Agriculture had interpreted existing law to allow for the on-farm sale of raw milk by unlicensed dairies. FDA's involvement is interesting in that neither state is considered to be a significant dairy state; Maine has fewer than 300 dairies left. The Maine bill died in committee.

In addition to Tennessee and Maine, FDA has sent a press release entitled, "Raw Milk May Pose Health Risk" to the Public Health Committee of the Texas legislature. The bill before the legislature would allow the sale of raw milk through delivery and at venues such as farmers markets; the current law only permits on-farm sales. Not coincidentally, on the day a public hearing on the bill was held before the Public Health Committee, the public was notified about four cases of salmonella poisoning allegedly caused by the consumption of raw milk produced by a Dallas area dairy. The press release was issued by the Texas Medical Association with the Texas Department of State Health Services (DSHS) providing the Association with the information about the foodborne illness outbreak.

Aside from FDA, the National Milk Producer Federation (NMPF) is another national opponent of raw milk that has meddled in state raw milk legislation this current session. According to the organization's website, NMPF "develops and carries out policies that advance the wellbeing of dairy producers and the cooperatives....the policy positions expressed by NMPF are the only nationwide expression of dairy farmers and their cooperatives on national public policy." It has been under NMPF's watch that the number of dairies in this country has declined by over ninety percent (90%) since 1970.

The legislation NMPF has opposed is a New Jersey bill that would allow the licensed on-farm sale of raw milk and other raw dairy products; the bill recently passed the New Jersey General Assembly and is now in the state Senate. NMPF along with the International Dairy Foods Association (IDFA) sent a letter on April 4 to Governor Chris Christie and state Senate Majority Leader Steve Sweeney urging them to oppose the bill.

New Jersey has eighty-seven (87) Grade A dairies left in the state. With the sale of raw milk being illegal, state dairy farmers has have lost millions of dollars in business to raw milk producers in neighboring



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Pennsylvania where the sale of raw milk is legal. The bill is an attempt to save what remains of New Jersey dairies; the commodity milk business has almost completely wiped out state dairy farmers.

The strategy of FDA and NMPF has been to prevent raw milk distribution from either getting any foothold or increasing its presence in any state no matter how insignificant a dairy industry there is in that state. The strategy is tired and both should drop their opposition to raw milk. With there likely being over ten million drinking raw milk in this country, these consumers will obtain raw milk whatever way they can, prohibition or no prohibition.

The FDA would be better off concentrating on removing health-harming additives like aspartame, MSG and melamine from the food supply rather than trying to keep a nutritious product like raw milk out of the marketplace. The NMPF would do better by its members supporting legislation that could actually keep them in business rather than continuing to pursue policies that will only shut down thousands more of the dairy farms still remaining.

*This article was originally written by Pete Kennedy for the February 2011 edition of Graze Magazine under the title, "Morningland Dairy Trial", and has been edited for posting by the Farm-to-Consumer Legal Defense Fund. Those interested in learning more about Graze may go to [www.grazeonline.com](http://www.grazeonline.com) or call 608-455-3311. Reprinted by permission.*

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### Hyperlinks for the PDF

**introduced** - Kennedy, "State Raw Milk Legislation", 10 March 2011 =  
<http://www.farmtoconsumer.org/raw-milk-bills-031011.htm>

**written testimony** - "Testimony of John F. Sheehan, B.Sc. (Dy.), J.D., Director, Division of Plant and Dairy Food Safety, Office of Food Safety, Center for Food and Safety and Applied Nutrition, U.S. Food and Drug Administration Before the House Agriculture Subcommittee, Tennessee House of Representatives", 5 April 2011=  
<http://farmtoconsumer.org/docs/Sheehan-TN-HB0898-040511.pdf>

**Raw Milk May Pose Health Risk** - FDA website, version March 2011 =  
<http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm232980.htm>

**letter on April 4** – "NMPF and IDFA Criticize New Jersey Raw Milk Bill, Urge Governor to Oppose It" =  
<http://www.nmpf.org/latest-news/press-releases/apr-2011/nmpf-and-idfa-criticize-new-jersey-raw-milk-bill-urge-governor-t>

**Graze Magazine** – website page for "Some dairy articles from past issues" =  
<http://www.grazeonline.com/dairy.html>