



Written by [Michael Tennant](#) on February 7, 2019

Hawaii, West Virginia Considering Further Moo-ves Toward Raw Milk Freedom

Lawmakers in two states are considering legislation that would permit or expand the distribution of raw milk — milk that has not been pasteurized — within their borders, defying the Food and Drug Administration’s (FDA) attempt to impose an unconstitutional ban on raw milk within the United States.



In Hawaii, where raw-milk sales are currently outlawed, four Democratic senators are sponsoring a [bill](#) to allow the distribution of raw milk to consumers through herd-sharing programs. In such programs, consumers pay farmers a fee for a share of either an individual animal or a herd, which in turn entitles them to receive the animals’ raw milk.

Meanwhile, four Republicans and an independent in West Virginia’s House of Delegates have introduced [legislation](#) that would expand the availability of raw milk in their state. Under a 2016 law, herd-sharing agreements are legal in West Virginia; the new bill would permit the direct sale of raw milk and raw-milk products to consumers. The bill requires raw-milk producers to be licensed and to abide by certain safety regulations. It also mandates specific information that producers must provide to consumers and grants producers immunity from lawsuits when consumers become ill from improper handling of raw milk.

For decades, most states prohibited the sale of raw milk under the mistaken assumption that it was inherently unsafe because it could contain harmful bacteria. In recent years, however, a [growing body of research](#) has shown that raw milk is at least as safe as pasteurized milk and safer than many other legal foods. What’s more, raw milk has benefits that pasteurized milk lacks, including more vitamins, enzymes, and probiotic bacteria that can strengthen the human immune system.

“I have seen so many of my patients recover their health with raw milk that I perceive this as one of the most profoundly healthy foods you can consume,” alternative-medicine expert Dr. Joseph Mercola told *Time*.

This knowledge, combined with Americans’ increased interest in unprocessed and local foods, has led many states to relax their restrictions on raw milk sales. In their bill, the Hawaii senators note that “at least thirty-five states permit some form of sale or distribution of unpasteurized cow, sheep, or goat milk for human consumption, twelve of which permit the sale of unpasteurized milk in retail stores.”

While states have moved in the direction of greater raw-milk freedom, the federal government, specifically the FDA, has moved in the opposite direction, enforcing bureaucrats’ decreed ban on interstate raw-milk sales with [sting operations and pre-dawn raids](#) on farms and cooperatives engaged



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in the production and distribution of raw milk. The agency has also argued that it has the authority to prohibit intrastate raw-milk sales, too. As the Tenth Amendment Center's Mike Maharrey [put it](#), "The FDA clearly wants complete prohibition of raw milk and some insiders say it's only a matter of time before the feds try to institute an absolute ban."

The FDA's position on raw milk is "an unconstitutional misapplication of the commerce clause for legislative ends," then-Congressman Ron Paul [said](#) in 2011. Thus, as James Madison wrote in the Virginia Resolution of 1798, "the states ... have the right, and are in duty bound, to interpose" on behalf of their citizens, nullifying this unconstitutional policy.

When it comes to raw milk, the more states that legalize its sale, the less enforceable the federal prohibition becomes, observed Maharrey. "We've seen this demonstrated dramatically in states that have legalized industrial hemp. When they authorized production, farmers began growing industrial hemp, even in the face of a federal ban. Despite facing the possibility of federal prosecution, some growers were still willing to step into the void and begin cultivating the plant once the state removed its barriers."

Moreover, he argued, "If all 50 states allow raw milk, markets within the states could easily grow to the point that local sales would render the federal ban on interstate commerce pointless. And history indicates the feds do not have the resources to stop people from transporting raw milk across state lines — especially if multiple states start legalizing it."

The Hawaii and West Virginia bills still have a long way to go before they become law. Those who value freedom and federalism should wish them well.



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