

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2132

54th Legislature
1996 Regular Session

Passed by the House March 4, 1996
Yeas 94 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 1, 1996
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2132** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2132

AS AMENDED BY THE SENATE

Passed Legislature - 1996 Regular Session

State of Washington 54th Legislature 1996 Regular Session

By Representatives Chandler, Chappell, Grant, Mastin, Regala and Johnson; by request of Department of Agriculture

Read first time 01/08/96. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to the department of agriculture grants of rule-
2 making authority; amending RCW 15.17.020, 15.36.021, 15.58.040, and
3 16.70.040; adding a new section to chapter 15.17 RCW; and adding a new
4 section to chapter 42.17 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 15.17.020 and 1963 c 122 s 2 are each amended to read
7 as follows:

8 For the purpose of this chapter:

9 (1) "Department" means the department of agriculture of the state
10 of Washington.

11 (2) "Director" means the director of the department or his duly
12 authorized representative.

13 (3) "Person" means a natural person, individual, or firm,
14 partnership, corporation, company, society, and association, and every
15 officer, agent, or employee thereof. This term shall import either the
16 singular or plural, as the case may be.

17 (4) "Horticultural plant or product" includes, but is not limited
18 to, any horticultural, floricultural, viticultural, and olericultural

1 plant, growing or otherwise, and their products whether grown above or
2 below the ground's surface.

3 (5) "Horticultural facilities" means, but is not limited to, the
4 premises where horticultural plants and products are grown, stored,
5 handled, or delivered for sale or transportation, records required by
6 rule under this chapter, and all vehicles and equipment, whether aerial
7 or surface, used to transport such horticultural plants or products.

8 (6) "Deceptive pack" means the pack of any container which has in
9 the outer layer or any exposed surface, horticultural plants or
10 products which are in quality, size, condition, or any other respect so
11 superior to those in the interior of the container in the unexposed
12 portion as to materially misrepresent the contents. Such pack is
13 deceptive when the outer or exposed surface is composed of
14 horticultural plants or products whose size is not an accurate
15 representation of the variation of the size of such horticultural
16 plants or products in the entire container, even though such
17 horticultural plants or products in the container are virtually uniform
18 in size or comply with the specific horticultural plant or product for
19 which the director in prescribing standards for grading and classifying
20 has prescribed size variations or if such size variations are
21 prescribed by law.

22 (7) "Deceptive arrangement or display" of any horticultural plants
23 or products, means any bulk lot or load, arrangement or display of such
24 horticultural plants or products which has in the exposed surface,
25 horticultural plants or products which are so superior in quality,
26 size, condition, or any other respect to those which are concealed, or
27 the unexposed portion, as to materially misrepresent any part of such
28 bulk lot or load, arrangement, or display.

29 (8) "Mislabel" means the placing or presence of any false or
30 misleading statement, design, or device upon any container, or upon the
31 label or lining of any such container, or upon the wrapper of any
32 horticultural plants or products, or upon any such horticultural plants
33 or products, or any placard used in connection therewith and having
34 reference to such horticultural plants or products. A statement,
35 design, or device is false or misleading when the horticultural plant
36 or product or container to which it refers does not conform to such
37 statement.

38 (9) "Container" means any container, subcontainer used within a
39 container, or any type of a container used to prepackage any

1 horticultural plants or products: PROVIDED, That this does not include
2 containers used by a retailer to package such horticultural plants or
3 products sold from a bulk display to a consumer.

4 (10) "Agent" means broker, commission merchant, auctioneer,
5 solicitor, seller, or consignor, and any other person acting upon the
6 actual or implied authority of another.

7 (11) "Inspection and certification" means, but is not limited to,
8 the inspection of any horticultural plant or product at any time prior
9 to, during, or subsequent to harvest, by the director, and the issuance
10 by him of a written permit to move or sell or a written certificate
11 stating the grade, classification, and if such horticultural plants or
12 products are free of plant pests and/or other defects.

13 (12) "Plant pests" means, but is not limited to, any living stage
14 of any insects, mites, nematodes, slugs, snails, protozoa, or other
15 invertebrate animals, bacteria, fungi, other parasitic plants or
16 reproductive parts thereof, viruses, or any organisms similar to or
17 allied with any of the foregoing, or any infectious substance, which
18 can directly or indirectly injure or cause disease or damage in any
19 plant or parts thereof, or any processed, manufactured, or other
20 products of plants.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 15.17 RCW
22 to read as follows:

23 The director shall, by rule, establish either grades or
24 classifications, or both, for American ginseng (*Panax quinquefolius*
25 L.). In establishing grades or classifications, the director shall
26 take into account the factors of place of origin, whether the ginseng
27 is wild or cultivated, weight, and date of harvest.

28 The director shall, by rule, require the registration of ginseng
29 dealers who purchase and/or sell American ginseng for the purpose of
30 foreign export. After determining that an applicant or registered
31 ginseng dealer has violated this chapter and complying with the notice
32 and hearing requirements and all other provisions of chapter 34.05 RCW
33 concerning adjudicative proceedings, the director may deny, suspend, or
34 revoke any dealer registration or application for registration issued
35 under this chapter.

36 The director shall adopt rules requiring that records be maintained
37 by dealers who purchase or sell American ginseng for the purpose of
38 foreign export.

1 The director may adopt any other rules necessary to comply with the
2 requirements of the Convention on International Trade in Endangered
3 Species of Wild Fauna and Flora, (27 U.S.T. 108); the Endangered
4 Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); and 50
5 C.F.R., Part 23 (1995), as they existed on the effective date of this
6 act, or such subsequent date as may be provided by rule, consistent
7 with the purposes of this section.

8 It is unlawful for a person to sell, offer for sale, hold for sale,
9 or ship or transport American ginseng for foreign export in violation
10 of this chapter or rules adopted under this chapter.

11 The department shall not disclose information obtained under this
12 section regarding the purchases, sales, or production of an individual
13 American ginseng dealer, except for providing reports to the United
14 States fish and wildlife service. This information is exempt from
15 public disclosure required by chapter 42.17 RCW.

16 **Sec. 3.** RCW 15.36.021 and 1994 c 143 s 103 are each amended to
17 read as follows:

18 The director of agriculture (~~may~~) is authorized to:

19 (1) Adopt rules necessary to carry out the purposes of chapters
20 15.36 and 15.38 RCW, which includes rules governing the farm storage
21 tank and bulk milk tanker requirements, however the rules may not
22 restrict the display or promotion of products covered under this
23 section.

24 (2) By rule, establish, amend, or both, definitions and standards
25 for milk and milk products. Such definitions and standards established
26 by the director shall conform, insofar as practicable, with the
27 definitions and standards for milk and milk products adopted by the
28 federal food and drug administration. The director of agriculture, by
29 rule, may likewise establish, amend, or both, definitions and standards
30 for products whether fluid, powdered or frozen, compounded or
31 manufactured to resemble or in semblance or imitation of genuine dairy
32 products as defined under the provisions of this chapter. Such
33 products made to resemble or in semblance or imitation of genuine dairy
34 products shall conform with all the provisions of chapter 15.38 RCW and
35 be made wholly of nondairy products.

36 All such products compounded or manufactured to resemble or in
37 semblance or imitation of a genuine dairy product shall set forth on

1 the container or labels the specific generic name of each ingredient
2 used.

3 In the event any product compounded or manufactured to resemble or
4 in semblance or imitation of a genuine dairy product contains vegetable
5 fat or oil, the generic name of such fat or oil shall be set forth on
6 the label. If a blend or variety of oils is used, the ingredient
7 statement shall contain the term "vegetable oil" in the appropriate
8 place in the ingredient statement, with the qualifying phrase following
9 the ingredient statement, such as "vegetable oils are soybean,
10 cottonseed and coconut oils" or "vegetable oil, may be cottonseed,
11 coconut or soybean oil."

12 The labels or containers of such products compounded or
13 manufactured to resemble or in semblance or imitation of genuine dairy
14 products shall not use dairy terms or words or designs commonly
15 associated with dairying or genuine dairy products, except as to the
16 extent that such words or terms are necessary to meet legal
17 requirements for labeling. The term "nondairy" may be used as an
18 informative statement.

19 (3) By rule adopt the PMO, DMO, and supplemental documents by
20 reference to establish requirements for grade A pasteurized and grade
21 A raw milk.

22 (4) Adopt rules establishing standards for grade A pasteurized and
23 grade A raw milk that are more stringent than the PMO based upon
24 current industry or public health information for the enforcement of
25 this chapter whenever he or she determines that any such rules are
26 necessary to carry out the purposes of this section and RCW 15.36.481.
27 The adoption of rules under this chapter, or the holding of a hearing
28 in regard to a license issued or that may be issued under this chapter
29 are subject to the applicable provisions of chapter 34.05 RCW, the
30 administrative procedure act.

31 (5) By rule, certify an officially designated laboratory to analyze
32 milk for standard of quality, adulteration, contamination, and
33 unwholesomeness.

34 **Sec. 4.** RCW 15.58.040 and 1991 c 264 s 2 are each amended to read
35 as follows:

36 (1) The director shall administer and enforce the provisions of
37 this chapter and rules adopted under this chapter. All the authority
38 and requirements provided for in chapter 34.05 RCW (Administrative

1 Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the
2 adoption of rules including those requiring due notice and a hearing
3 for the adoption of permanent rules.

4 (2) The director is authorized to adopt appropriate rules for
5 carrying out the purpose and provisions of this chapter, including but
6 not limited to rules providing for:

7 (a) Declaring as a pest any form of plant or animal life or virus
8 which is injurious to plants, people, animals (domestic or otherwise),
9 land, articles, or substances;

10 (b) Determining that certain pesticides are highly toxic to people.
11 For the purpose of this chapter, highly toxic pesticide means any
12 pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for
13 toxicity category I due to oral inhalation or dermal toxicity. The
14 director shall publish a list of all pesticides, determined to be
15 highly toxic, by their common or generic name and their trade or brand
16 name if practical. Such list shall be kept current and shall, upon
17 request, be made available to any interested party;

18 (c) Determining standards for denaturing pesticides by color,
19 taste, odor, or form;

20 (d) The collection and examination of samples of pesticides or
21 devices;

22 (e) The safe handling, transportation, storage, display,
23 distribution, and disposal of pesticides and their containers;

24 (f) Restricting or prohibiting the use of certain types of
25 containers or packages for specific pesticides. These restrictions may
26 apply to type of construction, strength, and/or size to alleviate
27 danger of spillage, breakage, misuse, or any other hazard to the
28 public. The director shall be guided by federal regulations concerning
29 pesticide containers;

30 (g) Procedures in making of pesticide recommendations;

31 (h) Adopting a list of restricted use pesticides for the state or
32 for designated areas within the state if the director determines that
33 such pesticides may require rules restricting or prohibiting their
34 distribution or use. The director may include in the rule the time and
35 conditions of distribution or use of such restricted use pesticides and
36 may, if it is found necessary to carry out the purpose and provisions
37 of this chapter, require that any or all restricted use pesticides
38 shall be purchased, possessed, or used only under permit of the
39 director and under the director's direct supervision in certain areas

1 and/or under certain conditions or in certain quantities or
2 concentrations. The director may require all persons issued such
3 permits to maintain records as to the use of all the restricted use
4 pesticides;

5 (i) Label requirements of all pesticides required to be registered
6 under provisions of this chapter;

7 (j) Regulating the labeling of devices; (~~and~~)

8 (k) The establishment of criteria governing the conduct of a
9 structural pest control inspection; and

10 (l) Declaring crops, when grown to produce seed specifically for
11 crop reproduction purposes, to be nonfood and/or nonfeed sites of
12 pesticide application. The director may include in the rule any
13 restrictions or conditions regarding: (i) The application of
14 pesticides to the designated crops; and (ii) the disposition of any
15 portion of the treated crop.

16 (3) For the purpose of uniformity and to avoid confusion
17 endangering the public health and welfare the director may adopt rules
18 in conformity with the primary pesticide standards, particularly as to
19 labeling, established by the United States environmental protection
20 agency or any other federal agency.

21 **Sec. 5.** RCW 16.70.040 and 1971 c 72 s 4 are each amended to read
22 as follows:

23 (1) The secretary, with the advice and concurrence of the director
24 of the department of agriculture, shall be authorized to develop rules
25 (~~and regulations~~) for proposed adoption by the board relating to the
26 importation, movement, sale, transfer, or possession of pet animals as
27 defined (~~herein~~) in RCW 16.70.020 which are reasonably necessary for
28 the protection and welfare of the people of this state.

29 (2) The director of the department of agriculture shall also be
30 authorized to adopt rules to allow administration of permits for those
31 pet animals under subsection (1) of this section by the state
32 veterinarian.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 42.17 RCW
34 to read as follows:

1 Except under section 3 of this act, information obtained regarding
2 the purchases, sales, or production of an individual American ginseng
3 dealer is exempt from disclosure under this chapter.

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