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**HOUSE BILL 2681**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Springer, Buys, Blake, and Chandler; by request of Department of Agriculture

AN ACT Relating to implementing the federal produce safety rule; amending RCW 42.56.380; and adding a new chapter to Title 15 RCW.

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

NEW SECTION. **Sec.**  INTENT. The purpose of this chapter is to assist Washington produce farmers in implementation of the produce safety rule adopted by the United States food and drug administration pursuant to the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 301 et seq., as amended by the federal food safety modernization act (P.L. 111-353).

NEW SECTION. **Sec.**  FEDERAL LAW REFERENCE. A reference to a federal statute in this chapter means the statute and its implementing regulations existing on the effective date of this section or as updated by the department by rule.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Farm" means the same as "farm" in 21 C.F.R. Sec. 112.

(2) "Produce" means the same as "produce" in 21 C.F.R. Sec. 112.

(3) "Produce safety rule" means the standards for the growing, harvesting, packing, and holding of produce for human consumption adopted by the United States food and drug administration as a final rule on November 27, 2015 (80 Federal Register 74353 et seq.) and codified in 21 C.F.R. Parts 11, 16, and 112.

NEW SECTION. **Sec.**  FEDERAL COOPERATION PROGRAM. The department may take actions necessary to cooperate in implementation of the produce safety rule including, but not limited to, entering into cooperative agreements with the United States food and drug administration, conducting the compliance verification activities under section 6 of this act, enforcing regulatory compliance, and accepting federal funding to carry out such activities. The department may cooperate with the United States food and drug administration in implementation of the produce safety rule only to the extent that the department receives federal funding for such activities.

NEW SECTION. **Sec.**  VOLUNTARY COMPLIANCE PROGRAM. (1) The department may establish a voluntary program for farms exempt or partially exempt from the produce safety rule to verify that such farms comply with the rule. This includes, but is not limited to, conducting the compliance verification activities under section 6 of this act.

(2) Farms participating in the voluntary compliance program must bear the cost of the program. The director must periodically adopt, by rule, fees of no more than is necessary to defray costs of compliance verification activities and program administration.

NEW SECTION. **Sec.**  COMPLIANCE VERIFICATION ACTIVITIES. The department may take the following actions to verify produce farm compliance with the produce safety rule.

(1) Maintain a database of produce farms that are covered by the produce safety rule, exempt from the rule, or eligible for a qualified exemption;

(2) In compliance with law and at reasonable times, enter produce farms solely for the purpose of this chapter to:

(a) Sample and test water for microbial water quality criteria;

(b) Inspect and sample biological soil amendments, storage areas, and fields for compliance with microbial criteria;

(c) Inspect application of biological soil amendments to evaluate contact or potential contact with produce;

(d) Inspect for the presence and management of domesticated and wild animals; and

(e) Inspect equipment, tools, and buildings for adequate sanitation; and

(3) Require and receive records and data submitted by produce farms to verify compliance with the produce safety rule.

NEW SECTION. **Sec.**  DEPARTMENT'S EXISTING AUTHORITY. This chapter does not alter or impair the department's authority for regulating food in intrastate commerce under chapter . . . RCW (chapter 69.04 RCW as recodified by chapter . . ., Laws of 2018) (House Bill No. . . . or Senate Bill No. . . .). The department may use its authority for regulating food in intrastate commerce under chapter . . . RCW (chapter 69.04 RCW as recodified by chapter . . ., Laws of 2018) (House Bill No. . . . or Senate Bill No. . . .) to carry out and enforce the provisions of this chapter. For the purposes of this chapter, farms subject to the produce safety rule are engaged in intrastate commerce of food.

NEW SECTION. **Sec.**  RULE MAKING. (1) The department must adopt rules as necessary to implement the purpose and provisions of this chapter.

(2) By rule, the director may adopt a subsequent version of a federal statute or regulation referenced in this chapter.

NEW SECTION. **Sec.**  DISPOSITION OF FUNDS. A produce safety account is hereby established in the agricultural local fund established in RCW 43.23.230. All moneys received under this chapter must be paid into the produce safety account and used solely to carry out the produce safety programs.

NEW SECTION. **Sec.**  CERTAIN RECORDS NOT SUBJECT TO PUBLIC DISCLOSURE. (1) Any information or record obtained directly from the federal government or from others under a contract with the federal government is exempt from public inspection and copying under chapter 42.56 RCW if the information or record is exempt from disclosure under federal law including, but not limited to, the federal freedom of information act.

(2) Any portion of a record obtained by the department pursuant to this chapter is exempt from public inspection and copying under chapter 42.56 RCW if it is personal financial information, proprietary data, or trade secrets and the person submitting the record to the department has designated the information as personal financial information, proprietary data, or trade secrets.

**Sec.**  RCW 42.56.380 and 2012 c 168 s 1 are each amended to read as follows:

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service under RCW 15.19.080;

(7) Information collected regarding packers and shippers of fruits and vegetables for the issuance of certificates of compliance under RCW 15.17.140(2) and 15.17.143;

(8) Financial statements obtained under RCW 16.65.030(1)(d) for the purposes of determining whether or not the applicant meets the minimum net worth requirements to construct or operate a public livestock market;

(9) Information submitted by an individual or business to the department of agriculture under the requirements of chapters 16.36, 16.57, and 43.23 RCW for the purpose of herd inventory management for animal disease traceability. This information includes animal ownership, numbers of animals, locations, contact information, movements of livestock, financial information, the purchase and sale of livestock, account numbers or unique identifiers issued by government to private entities, and information related to livestock disease or injury that would identify an animal, a person, or location. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete;

(10) Results of testing for animal diseases from samples submitted by or at the direction of the animal owner or his or her designee that can be identified to a particular business or individual;

(11) Records of international livestock importation that can be identified to a particular animal, business, or individual received from the United States department of homeland security or the United States department of agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552; ((~~and~~))

(12) Records related to the entry of prohibited agricultural products imported into Washington state or that had Washington state as a final destination received from the United States department of homeland security or the United States department of agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552; and

(13) Information obtained from the federal government or others under contract with the federal government or records obtained by the department of agriculture, in accordance with section 10 of this act.

NEW SECTION. **Sec.**  This chapter may be known and cited as the produce safety rule implementation act.

NEW SECTION. **Sec.**  Sections 1 through 10 and 12 of this act constitute a new chapter in Title 15 RCW.

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