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SENATE BILL 6319

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State of Washington

65th Legislature

2018 Regular Session

By Senators Honeyford and Van De Wege; by request of Department of Agriculture

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

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

4 NEW SECTION. **Sec. 1.** INTENT. The purpose of this chapter is to  
5 assist Washington produce farmers in implementation of the produce  
6 safety rule adopted by the United States food and drug administration  
7 pursuant to the federal food, drug, and cosmetic act, 21 U.S.C. Sec.  
8 301 et seq., as amended by the federal food safety modernization act  
9 (P.L. 111-353).

10 NEW SECTION. **Sec. 2.** FEDERAL LAW REFERENCE. A reference to a  
11 federal statute in this chapter means the statute and its  
12 implementing regulations existing on the effective date of this  
13 section or as updated by the department by rule.

14 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this  
15 section apply throughout this chapter unless the context clearly  
16 requires otherwise.

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

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

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

6 NEW SECTION. **Sec. 4.** FEDERAL COOPERATION PROGRAM. The  
7 department may take actions necessary to cooperate in implementation  
8 of the produce safety rule including, but not limited to, entering  
9 into cooperative agreements with the United States food and drug  
10 administration, conducting the compliance verification activities  
11 under section 6 of this act, enforcing regulatory compliance, and  
12 accepting federal funding to carry out such activities. The  
13 department may cooperate with the United States food and drug  
14 administration in implementation of the produce safety rule only to  
15 the extent that the department receives federal funding for such  
16 activities.

17 NEW SECTION. **Sec. 5.** VOLUNTARY COMPLIANCE PROGRAM. (1) The  
18 department may establish a voluntary program for farms exempt or  
19 partially exempt from the produce safety rule to verify that such  
20 farms comply with the rule. This includes, but is not limited to,  
21 conducting the compliance verification activities under section 6 of  
22 this act.

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

27 NEW SECTION. **Sec. 6.** COMPLIANCE VERIFICATION ACTIVITIES. The  
28 department may take the following actions to verify produce farm  
29 compliance with the produce safety rule.

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

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

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

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

- 1 (c) Inspect application of biological soil amendments to evaluate
- 2 contact or potential contact with produce;
- 3 (d) Inspect for the presence and management of domesticated and
- 4 wild animals; and
- 5 (e) Inspect equipment, tools, and buildings for adequate
- 6 sanitation; and
- 7 (3) Require and receive records and data submitted by produce
- 8 farms to verify compliance with the produce safety rule.

9 NEW SECTION. **Sec. 7.** DEPARTMENT'S EXISTING AUTHORITY. This  
10 chapter does not alter or impair the department's authority for  
11 regulating food in intrastate commerce under chapter . . . RCW  
12 (chapter 69.04 RCW as recodified by chapter . . . , Laws of 2018)  
13 (House Bill No. . . . or Senate Bill No. . . .). The department may  
14 use its authority for regulating food in intrastate commerce under  
15 chapter . . . RCW (chapter 69.04 RCW as recodified by chapter . . . ,  
16 Laws of 2018) (House Bill No. . . . or Senate Bill No. . . .) to  
17 carry out and enforce the provisions of this chapter. For the  
18 purposes of this chapter, farms subject to the produce safety rule  
19 are engaged in intrastate commerce of food.

20 NEW SECTION. **Sec. 8.** RULE MAKING. (1) The department must adopt  
21 rules as necessary to implement the purpose and provisions of this  
22 chapter.

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

25 NEW SECTION. **Sec. 9.** DISPOSITION OF FUNDS. A produce safety  
26 account is hereby established in the agricultural local fund  
27 established in RCW 43.23.230. All moneys received under this chapter  
28 must be paid into the produce safety account and used solely to carry  
29 out the produce safety programs.

30 NEW SECTION. **Sec. 10.** CERTAIN RECORDS NOT SUBJECT TO PUBLIC  
31 DISCLOSURE. (1) Any information or record obtained directly from the  
32 federal government or from others under a contract with the federal  
33 government is exempt from public inspection and copying under chapter  
34 42.56 RCW if the information or record is exempt from disclosure  
35 under federal law including, but not limited to, the federal freedom  
36 of information act.

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

7 **Sec. 11.** RCW 42.56.380 and 2012 c 168 s 1 are each amended to  
8 read as follows:

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

11 (1) Business-related information under RCW 15.86.110;

12 (2) Information provided under RCW 15.54.362;

13 (3) Production or sales records required to determine assessment  
14 levels and actual assessment payments to commodity boards and  
15 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,  
16 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required  
17 by the department of agriculture to administer these chapters or the  
18 department's programs;

19 (4) Consignment information contained on phytosanitary  
20 certificates issued by the department of agriculture under chapters  
21 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates  
22 issued under 7 C.F.R. 353 through cooperative agreements with the  
23 animal and plant health inspection service, United States department  
24 of agriculture, or on applications for phytosanitary certification  
25 required by the department of agriculture;

26 (5) Financial and commercial information and records supplied by  
27 persons (a) to the department of agriculture for the purpose of  
28 conducting a referendum for the potential establishment of a  
29 commodity board or commission; or (b) to the department of  
30 agriculture or commodity boards or commissions formed under chapter  
31 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100,  
32 15.89, or 16.67 RCW with respect to domestic or export marketing  
33 activities or individual producer's production information;

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

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

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

8 (9) Information submitted by an individual or business to the  
9 department of agriculture under the requirements of chapters 16.36,  
10 16.57, and 43.23 RCW for the purpose of herd inventory management for  
11 animal disease traceability. This information includes animal  
12 ownership, numbers of animals, locations, contact information,  
13 movements of livestock, financial information, the purchase and sale  
14 of livestock, account numbers or unique identifiers issued by  
15 government to private entities, and information related to livestock  
16 disease or injury that would identify an animal, a person, or  
17 location. Disclosure to local, state, and federal officials is not  
18 public disclosure. This exemption does not affect the disclosure of  
19 information used in reportable animal health investigations under  
20 chapter 16.36 RCW once they are complete;

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

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

30 (12) Records related to the entry of prohibited agricultural  
31 products imported into Washington state or that had Washington state  
32 as a final destination received from the United States department of  
33 homeland security or the United States department of agriculture that  
34 are not disclosable by the federal agency under federal law including  
35 5 U.S.C. Sec. 552; and

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

1        NEW SECTION.    **Sec. 12.**    This chapter may be known and cited as  
2 the produce safety rule implementation act.

3        NEW SECTION.    **Sec. 13.**    Sections 1 through 10 and 12 of this act  
4 constitute a new chapter in Title 15 RCW.

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