

JAN 18 2019

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. The legislature finds that the federal Food and
2 Drug Administration Standards for the Growing, Harvesting,
3 Packing, and Holding of Produce for Human Consumption (21 C.F.R.
4 Part 112) establishes produce safety rules to allow for
5 inspection and regulation of farms producing food for consumers.

6 The purpose of this Act is to enact produce safety rules to
7 authorize state department of agriculture inspectors to inspect
8 and regulate farms producing food in the State to increase food
9 safety.

10 SECTION 2. Chapter 145, Hawaii Revised Statutes, is
11 amended by adding a new part to be appropriately designated and
12 to read as follows:

13 **"PART . PRODUCE SAFETY**

14 **§145-A Definitions.** For purposes of this part, unless
15 otherwise required by the context:

16 "C.F.R." means the Code of Federal Regulations.



1 "Chairperson" means the chairperson of the board of
2 agriculture.

3 "Covered activity" means growing, harvesting, packing, or
4 holding covered produce on a farm. Covered activity includes
5 manufacturing or processing of covered produce on a farm, but
6 only to the extent that such activities are performed on raw
7 agricultural commodities.

8 "Covered farm" means a farm with an average annual monetary
9 value of produce sold during the previous three-year period
10 equal to more than \$25,000 on a two of three rolling basis,
11 adjusted for inflation using 2016 as the baseline year for
12 calculating the adjustment.

13 "Covered produce" means food that is produced within the
14 meaning of the federal Food and Drug Administration Standards
15 for the Growing, Harvesting, Packing, and Holding of Produce for
16 Human Consumption (21 C.F.R. Part 112) and that is a raw
17 agricultural commodity. "Covered produce" includes all of the
18 following:

19 (1) Fruits and vegetables such as almonds, apples,
20 apricots, apriums, artichokes-globe-type, Asian pears,
21 avocados, babacos, bananas, Belgian endive,



1 blackberries, blueberries, boysenberries, brazil nuts,
2 broad beans, broccoli, brussels sprouts, burdock,
3 cabbages, Chinese cabbages (bok choy, mustard, and
4 Napa), cantaloupes, carambolas, carrots, cauliflower,
5 celeriac, celery, chayote fruit, cherries (sweet),
6 chestnuts, chicory (roots and tops), citrus (such as
7 clementine, grapefruit, lemons, limes, mandarin,
8 oranges, tangerines, tangors, and unique fruit),
9 cowpea beans, cress-garden, cucumbers, curly endive,
10 currants, dandelion leaves, fennel-Florence, garlic,
11 genip, gooseberries, grapes, green beans, guavas,
12 herbs (such as basil, chives, cilantro, oregano, and
13 parsley), honeydew, huckleberries, Jerusalem
14 artichokes, kale, kiwifruit, kohlrabi, kumquats, leek,
15 lettuce, lychees, macadamia nuts, mangos, other melons
16 (such as Canary, Crenshaw, and Persian), mulberries,
17 mushrooms, mustard greens, nectarines, onions,
18 papayas, parsnips, passion fruit, peaches, pears,
19 peas, peas-pigeon, peppers (such as bell and hot),
20 pine nuts, pineapples, plantains, plums, plumcots,
21 quince, radishes, raspberries, rhubarb, rutabagas,



S.B. NO. 754

1 scallions, shallots, snow peas, soursop, spinach,
2 sprouts (such as alfalfa and mung bean), strawberries,
3 summer squash (such as patty pan, yellow, and
4 zucchini), sweetsop, Swiss chard, taro, tomatoes,
5 turmeric, turnips (roots and tops), walnuts,
6 watercress, watermelons, and yams; and

7 (2) A mix of intact fruits and vegetables, such as a fruit
8 basket.

9 "Covered produce" does not include:

10 (1) Produce that is rarely consumed raw, specifically the
11 produce on the following exhaustive list: asparagus;
12 beans, black; beans, great Northern; beans, kidney;
13 beans, lima; beans, navy; beans, pinto; beets, garden
14 (roots and tops); beets, sugar; cashews; cherries,
15 sour; chickpeas; cocoa beans; coffee beans; collards;
16 corn, sweet; cranberries; dates; dill (seeds and
17 weed); eggplants; figs; ginger; hazelnuts;
18 horseradish; lentils; okra; peanuts; pecans;
19 peppermint; potatoes; pumpkins; squash, winter; sweet
20 potatoes; and water chestnuts;



S.B. NO. 754

1 (2) Produce that is produced by an individual for personal
2 consumption or produced for consumption on the farm or
3 another farm under the same management; or

4 (3) Produce that is not a raw agricultural commodity.

5 "Farm" means:

6 (1) A primary production operation under one management in
7 one general (but not necessarily contiguous) physical
8 location devoted to the growing of crops, the
9 harvesting of crops, the raising of animals (including
10 seafood), or any combination of these activities; or

11 (2) A secondary activities operation, not located on a
12 primary production farm, devoted to harvesting (such
13 as hulling or shelling), packing, or holding of raw
14 agricultural commodities, provided that the primary
15 production farm that grows, harvests, or raises the
16 majority of the raw agricultural commodities
17 harvested, packed, or held by the secondary activities
18 farm owns, or jointly owns, a majority interest in the
19 secondary activities farm.

20 The term "farm" includes operations that, in addition to these
21 activities:



S.B. NO. 754

- 1 (1) Pack or hold raw agricultural commodities;
- 2 (2) Pack or hold processed food; provided that all
- 3 processed food used in such activities is either
- 4 consumed on that farm or another farm under the same
- 5 management, or is processed food; and
- 6 (3) Manufacture or process food; provided that:
- 7 (A) All food used in such activities is consumed on
- 8 that farm or another farm under the same
- 9 management; or
- 10 (B) Any manufacturing or processing of food that is
- 11 not consumed on that farm or another farm under
- 12 the same management consists only of:
- 13 (i) Drying or dehydrating raw agricultural
- 14 commodities to create a distinct commodity
- 15 (such as drying or dehydrating grapes to
- 16 produce raisins), and packaging and labeling
- 17 such commodities, without additional
- 18 manufacturing or processing (such as
- 19 slicing);
- 20 (ii) Treatment to manipulate the ripening of raw
- 21 agricultural commodities (such as by



S.B. NO. 754

1 treating produce with ethylene gas), and
2 packaging and labeling treated raw
3 agricultural commodities, without additional
4 manufacturing or processing; or
5 (iii) Packaging and labeling raw agricultural
6 commodities, when these activities do not
7 involve additional manufacturing or
8 processing (such as irradiation).

9 "Food" means articles used for food or drink for humans or
10 other animals, chewing gum, and articles used for components of
11 any such article, and includes seeds and beans used to grow
12 sprouts.

13 "Fruit" means the edible reproductive body of a seed plant
14 or tree nut (such as apple, orange, and almond) such that fruit
15 means the harvestable or harvested part of a plant developed
16 from a flower.

17 "Harvesting" means activities that are traditionally
18 performed on farms for the purpose of removing raw agricultural
19 commodities from the place they were grown or raised and
20 preparing them for use as food. Harvesting is limited to
21 activities performed on raw agricultural commodities, or on



1 processed foods created by drying or dehydrating a raw
2 agricultural commodity without additional manufacturing or
3 processing, on a farm. "Harvesting" does not include activities
4 that transform a raw agricultural commodity into a processed
5 food. Examples of harvesting include cutting (or otherwise
6 separating) the edible portion of the raw agricultural commodity
7 from the crop plant and removing or trimming part of the raw
8 agricultural commodity (e.g., foliage, husks, roots or stems).
9 Examples of harvesting also include cooling, field coring,
10 filtering, gathering, hulling, shelling, sifting, threshing,
11 trimming of outer leaves of, and washing raw agricultural
12 commodities grown on a farm.

13 "Holding" means storage of food and also includes
14 activities performed incidental to storage of a food (e.g.,
15 activities performed for the safe or effective storage of that
16 food, such as fumigating food during storage, and drying or
17 dehydrating raw agricultural commodities when the drying or
18 dehydrating does not create a distinct commodity (such as drying
19 or dehydrating hay or alfalfa)). "Holding" also includes
20 activities performed as a practical necessity for the
21 distribution of that food (such as blending of the same raw



1 agricultural commodity and breaking down pallets), but does not
2 include activities that transform a raw agricultural commodity
3 into a processed food.

4 "Holding facilities" include warehouses, cold storage
5 facilities, storage silos, grain elevators, and liquid storage
6 tanks.

7 "Manufacturing or processing" means making food from one or
8 more ingredients, or synthesizing, preparing, treating,
9 modifying or manipulating food, including food crops or
10 ingredients. Examples include: Baking, boiling, bottling,
11 canning, cooking, cooling, cutting, distilling, drying or
12 dehydrating raw agricultural commodities to create a distinct
13 commodity (such as drying or dehydrating grapes to produce
14 raisins), evaporating, eviscerating, extracting juice,
15 formulating, freezing, grinding, homogenizing, labeling,
16 milling, mixing, packaging (including modified atmosphere
17 packaging), pasteurizing, peeling, rendering, treating to
18 manipulate ripening, trimming, washing, or waxing. For farms
19 and farm mixed-type facilities, manufacturing or processing does
20 not include activities that are part of harvesting, packing, or
21 holding.



1 "Packing" means placing food into a container other than
2 packaging the food and also includes re-packing and activities
3 performed incidental to packing or re-packing a food (e.g.,
4 activities performed for the safe or effective packing or re-
5 packing of that food (such as sorting, culling, grading, and
6 weighing or conveying incidental to packing or re-packing)), but
7 does not include activities that transform a raw agricultural
8 commodity into a processed food.

9 "Processed food" means any food other than a raw
10 agricultural commodity and includes any raw agricultural
11 commodity that has been subject to processing, such as canning,
12 cooking, freezing, dehydration, or milling.

13 "Produce" means any fruit or vegetable (including mixes of
14 intact fruits and vegetables) and includes mushrooms, sprouts
15 (irrespective of seed source), peanuts, tree nuts, and herbs.

16 "Produce" does not include food grains meaning the small, hard
17 fruits or seeds of arable crops, or the crops bearing these
18 fruits or seeds, that are primarily grown and processed for use
19 as meal, flour, baked goods, cereals, and oils rather than for
20 direct consumption as small, hard fruits or seeds (including
21 cereal grains, pseudo cereals, oilseeds, and other plants used



1 in the same fashion). Examples of food grains include barley,
2 dent- or flint-corn, sorghum, oats, rice, rye, wheat, amaranth,
3 quinoa, buckwheat, and oilseeds (e.g., cotton seed, flax seed,
4 rapeseed, soybean, and sunflower seed).

5 "Qualified end-user" means, with respect to a food, the
6 consumer of the food or a restaurant or retail food
7 establishment that is located in the State.

8 "Raw agricultural commodity" means any food in its raw or
9 natural state, including all fruits that are washed, colored, or
10 otherwise treated in their unpeeled natural form prior to
11 marketing.

12 "Vegetable" means the edible part of an herbaceous plant
13 (such as cabbage or potato) or fleshy fruiting body of a fungus
14 (such as white button or shiitake) grown for an edible part such
15 that vegetable means the harvestable or harvested part of any
16 plant or fungus whose fruit, fleshy fruiting bodies, seeds,
17 roots, tubers, bulbs, stems, leaves, or flower parts are used as
18 food and includes mushrooms, sprouts, and herbs (such as basil
19 or cilantro).



1 §145-B Covered farm; covered produce; exemptions. (a)

2 Covered produce is eligible for exemption from the requirements
3 of this part under the following conditions:

4 (1) The covered produce receives commercial processing
5 that adequately reduces the presence of microorganisms
6 of public health significance;

7 (2) The covered farm discloses in documents accompanying
8 the covered produce, that in accordance with the
9 practice of the trade, the food is "not processed to
10 adequately reduce the presence of microorganisms of
11 public health significance";

12 (3) The covered farm complies with the written assurance
13 requirements of 21 C.F.R. 112.2(b)(3);

14 (4) The covered farm complies with the documentation
15 requirements of 21 C.F.R. 112.2(b)(4);

16 (5) The requirements of 21 C.F.R. 112 Subpart A (general
17 provisions) and 21 C.F.R. 112 Subpart Q (compliance
18 and enforcement) apply to the covered produce; and

19 (6) An entity that provides a written assurance under 21
20 C.F.R. 112.2(b)(3) acts consistently with the



S.B. NO. 754

1 assurance and documents its actions taken to satisfy
2 the written assurance.

3 (b) A covered farm shall comply with all applicable
4 requirements of this part, rules adopted pursuant to section
5 145-I, and 21 C.F.R Part 112 when conducting a covered activity
6 on covered produce. A farm is not subject to this part if it
7 satisfies the requirements in 21 C.F.R. 112.5 and the U.S. Food
8 and Drug Administration has not withdrawn the farm's exemption
9 in accordance with the requirements of 21 C.F.R. 112 Subpart R.

10 (c) A farm is eligible for a qualified exemption and
11 associated modified requirements in a calendar year if:

12 (1) The average annual monetary value of the food the farm
13 sold directly to qualified end-users during the
14 previous three-year period preceding the applicable
15 calendar year exceeded the average annual monetary
16 value of the food the farm sold to all other buyers
17 during that period; and

18 (2) The average annual monetary value of all food the farm
19 sold during the three-year period preceding the
20 applicable calendar year was less than \$500,000,



1 adjusted for inflation, using 2016 as the baseline
2 year for calculating the adjustment for inflation.
3 If a farm is eligible for a qualified exemption in accordance
4 with 21 C.F.R. 112.5, the farm shall be subject to the
5 requirements of 21 C.F.R. 112 Subparts A, O, Q, and R. If a
6 farm is eligible for a qualified exemption in accordance with 21
7 C.F.R. 112.5, the farm shall be subject to the modified
8 requirements established in 21 C.F.R. 112.6(b).

9 (d) No covered farm or farm eligible for a qualified
10 exemption in accordance with 21 C.F.R. 112.5 shall violate any
11 provision of this part, rules adopted pursuant to section 145-I,
12 or 21 C.F.R. Part 112.

13 **§145-C Chairperson to have access to certain farms.** The
14 department shall have access only at reasonable hours to any
15 covered farm or any farm eligible for a qualified exemption in
16 accordance with 21 C.F.R. 112.5 for the purposes of:

- 17 (1) Inspecting the farm to determine if any provision of
18 this part is being violated; and
19 (2) Securing and examining samples or specimens to
20 determine if any provision of this part is being
21 violated.



1 **§145-D Authority to seize, condemn, or destroy covered**
2 **produce.** (a) If the department believes any covered produce on
3 a covered farm that is being grown, kept, or exposed for sale or
4 held in possession or under the control of any person to be in
5 violation of this part or rules adopted pursuant to section
6 145-I, the department may seize or take possession of or
7 condemn, destroy, or require the destruction of the covered
8 produce.

9 (b) Prior to condemning, destroying, or requiring the
10 destruction of covered produce pursuant to subsection (a), the
11 department shall seize the covered produce and either:

12 (1) Secure written agreement to the condemnation or
13 destruction, on a form to be provided by the
14 chairperson, from the person from whom the covered
15 produce was seized; or

16 (2) Make complaint before a district judge pursuant to
17 section 145-E.

18 **§145-E Proceeding for condemnation or destruction of**
19 **covered produce.** If unable to secure the written agreement to
20 the condemnation or destruction as required by section
21 145-D(b) (1) the department shall make complaint before a



1 district judge in whose circuit the covered produce was seized.
2 The district judge shall issue a summons to the person from whom
3 the covered produce was seized, directing the person to appear
4 before the circuit court within twelve days from the date of
5 issuing the summons and show cause as to why the covered produce
6 should not be condemned or destroyed. If the person from whom
7 the covered produce was seized cannot be found, then the summons
8 shall be served upon the person then in possession of the
9 covered produce. The summons shall be served at least six days
10 before the time of appearance mentioned therein. If the person
11 from whom the covered produce was seized cannot be found, and no
12 one can be found in possession of the covered produce, and the
13 defendant does not appear on the return day, then an appropriate
14 court shall proceed in the cause in the same manner as where a
15 writ of attachment is returned not personally served upon any of
16 the defendants and none of the defendants appears upon the
17 return day.

18 **§145-F Judgment; appeal; proceeds.** (a) Unless otherwise
19 shown or if the covered produce to be condemned or destroyed
20 pursuant to section 145-D is found to be in violation of any
21 provision of this part or rules adopted pursuant to section



1 145-I, it shall be the duty of the district court to render
2 judgment that the covered produce be forfeited to the State and
3 that the goods be destroyed or sold by the department for any
4 purpose other than to be used for food. Either party aggrieved
5 by the district court may appeal to the intermediate appellate
6 court.

7 (b) The proceeds arising from any sale ordered pursuant to
8 subsection (a) shall be disposed of in a manner determined by
9 the court.

10 **§145-G Impeding the department prohibited.** No person
11 shall impede, obstruct, hinder, or otherwise prevent or attempt
12 to prevent the department, an inspector, or any other person in
13 the performance of their duty in connection with this part.

14 **§145-H Civil penalty.** Any person who violates any
15 provision of this part or rule adopted pursuant to section
16 145-I, shall be subject to a civil penalty in an amount not to
17 exceed \$1,000 per violation. In determining the amount of any
18 civil penalty, the board of agriculture shall give due
19 consideration to:

20 (1) The history of the person's previous violations;

21 (2) The seriousness of the violation; and



1 (3) The demonstrated good faith of the person charged in
2 attempting to achieve compliance with this part after
3 being notified of the violation.

4 The penalty shall be collected by the department and the
5 proceeds shall be deposited into the agricultural development
6 and food security special fund established pursuant to section
7 141-10.

8 **§145-I Rulemaking authority.** The board of agriculture
9 shall adopt rules pursuant to chapter 91 necessary to carry out
10 the purposes of this part."

11 SECTION 3. In codifying the new sections added by section
12 2 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

15 SECTION 4. This Act shall take effect upon its approval;
16 provided that:

17 (1) This Act shall repeal upon the effective date of the
18 repeal of title 21 Code of Federal Regulations Part
19 112 or on July 1, 2022, whichever occurs sooner; and

20 (2) This Act shall expire if the federal government
21 declines to award funds to the State to implement the



S.B. NO. 754

1 provisions of federal law embodied in this Act or the
2 federal funds awarded are exhausted, whichever is
3 later.

4

INTRODUCED BY:

Mike Hubbard

Ed Riviere

James Overcast

Mark

Ronald L. Bell



S.B. NO. 754

Report Title:

Agriculture; Produce Safety Rule; Food Safety

Description:

Enacts produce safety rules in accordance with the federal Food and Drug Administration Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

