
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.

17 "Chairperson" means the chairperson of the board of
18 agriculture.



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

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

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

17 (1) Fruits and vegetables such as almonds, apples,
18 apricots, apriums, artichokes-globe-type, Asian pears,
19 avocados, babacos, bananas, Belgian endive,
20 blackberries, blueberries, boysenberries, brazil nuts,
21 broad beans, broccoli, brussels sprouts, burdock,



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



1 summer squash (such as patty pan, yellow, and
2 zucchini), sweetsop, Swiss chard, taro, tomatoes,
3 turmeric, turnips (roots and tops), walnuts,
4 watercress, watermelons, and yams; and
5 (2) A mix of intact fruits and vegetables, such as a fruit
6 basket.

7 "Covered produce" does not include:

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



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

2 "Farm" means:

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

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

17 The term "farm" includes operations that, in addition to these
18 activities:

19 (1) Pack or hold raw agricultural commodities;

20 (2) Pack or hold processed food; provided that all
21 processed food used in such activities is either



1 consumed on that farm or another farm under the same
2 management, or is processed food; and

3 (3) Manufacture or process food; provided that:

4 (A) All food used in such activities is consumed on
5 that farm or another farm under the same
6 management; or

7 (B) Any manufacturing or processing of food that is
8 not consumed on that farm or another farm under
9 the same management consists only of:

10 (i) Drying or dehydrating raw agricultural
11 commodities to create a distinct commodity
12 such as drying or dehydrating grapes to
13 produce raisins, and packaging and labeling
14 such commodities, without additional
15 manufacturing or processing such as slicing;

16 (ii) Treatment to manipulate the ripening of raw
17 agricultural commodities, such as by
18 treating produce with ethylene gas, and
19 packaging and labeling treated raw
20 agricultural commodities, without additional
21 manufacturing or processing; or



1 (iii) Packaging and labeling raw agricultural
2 commodities, when these activities do not
3 involve additional manufacturing or
4 processing such as irradiation.

5 "Food" means articles used for food or drink for humans or
6 other animals, chewing gum, and articles used for components of
7 any such article, and includes seeds and beans used to grow
8 sprouts.

9 "Fruit" means the edible reproductive body of a seed plant
10 or tree nut such as apple, orange, and almond such that fruit
11 means the harvestable or harvested part of a plant developed
12 from a flower.

13 "Harvesting" means activities that are traditionally
14 performed on farms for the purpose of removing raw agricultural
15 commodities from the place they were grown or raised and
16 preparing them for use as food. Harvesting is limited to
17 activities performed on raw agricultural commodities, or on
18 processed foods created by drying or dehydrating a raw
19 agricultural commodity without additional manufacturing or
20 processing, on a farm. "Harvesting" does not include activities
21 that transform a raw agricultural commodity into a processed



1 food. Examples of harvesting include cutting or otherwise
2 separating the edible portion of the raw agricultural commodity
3 from the crop plant and removing or trimming part of the raw
4 agricultural commodity such as foliage, husks, roots or stems.
5 Examples of harvesting also include cooling, field coring,
6 filtering, gathering, hulling, shelling, sifting, threshing,
7 trimming of outer leaves of, and washing raw agricultural
8 commodities grown on a farm.

9 "Holding" means storage of food and also includes
10 activities performed incidental to storage of a food such as
11 activities performed for the safe or effective storage of that
12 food, such as fumigating food during storage, and drying or
13 dehydrating raw agricultural commodities when the drying or
14 dehydrating does not create a distinct commodity such as drying
15 or dehydrating hay or alfalfa. "Holding" also includes
16 activities performed as a practical necessity for the
17 distribution of that food such as blending of the same raw
18 agricultural commodity and breaking down pallets, but does not
19 include activities that transform a raw agricultural commodity
20 into a processed food.



1 "Holding facilities" include warehouses, cold storage
2 facilities, storage silos, grain elevators, and liquid storage
3 tanks.

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

19 "Packing" means placing food into a container other than
20 packaging the food and also includes re-packing and activities
21 performed incidental to packing or re-packing a food such as



1 activities performed for the safe or effective packing or re-
2 packing of that food such as sorting, culling, grading, and
3 weighing or conveying incidental to packing or re-packing, but
4 does not include activities that transform a raw agricultural
5 commodity into a processed food.

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

10 "Produce" means any fruit or vegetable including mixes of
11 intact fruits and vegetables and includes mushrooms, sprouts
12 irrespective of seed source, peanuts, tree nuts, and herbs.
13 "Produce" does not include food grains meaning the small, hard
14 fruits or seeds of arable crops, or the crops bearing these
15 fruits or seeds, that are primarily grown and processed for use
16 as meal, flour, baked goods, cereals, and oils rather than for
17 direct consumption as small, hard fruits or seeds including
18 cereal grains, pseudo cereals, oilseeds, and other plants used
19 in the same fashion. Examples of food grains include barley,
20 dent- or flint-corn, sorghum, oats, rice, rye, wheat, amaranth,



1 quinoa, buckwheat, and oilseeds such as cotton seed, flax seed,
2 rapeseed, soybean, and sunflower seed.

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

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

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

18 **§145-B Covered farm; covered produce; exemptions. (a)**

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



- 1 (1) The covered produce receives commercial processing
2 that adequately reduces the presence of microorganisms
3 of public health significance;
- 4 (2) The covered farm discloses in documents accompanying
5 the covered produce, that in accordance with the
6 practice of the trade, the food is "not processed to
7 adequately reduce the presence of microorganisms of
8 public health significance";
- 9 (3) The covered farm complies with the written assurance
10 requirements of title 21 C.F.R. section 112.2(b) (3);
- 11 (4) The covered farm complies with the documentation
12 requirements of title 21 C.F.R. section 112.2(b) (4);
- 13 (5) The requirements of title 21 C.F.R. part 112 subpart A
14 (general provisions) and title 21 C.F.R. part 112
15 subpart Q (compliance and enforcement) apply to the
16 covered produce; and
- 17 (6) An entity that provides a written assurance under
18 title 21 C.F.R. section 112.2(b) (3) acts consistently
19 with the assurance and documents its actions taken to
20 satisfy the written assurance.



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

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

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

17 (2) The average annual monetary value of all food the farm
18 sold during the three-year period preceding the
19 applicable calendar year was less than \$500,000,
20 adjusted for inflation, using 2016 as the baseline
21 year for calculating the adjustment for inflation.



1 If a farm is eligible for a qualified exemption in accordance
2 with title 21 C.F.R. section 112.5, the farm shall be subject to
3 the requirements of title 21 C.F.R. part 112 subparts A, O, Q,
4 and R. If a farm is eligible for a qualified exemption in
5 accordance with title 21 C.F.R. section 112.5, the farm shall be
6 subject to the modified requirements established in title 21
7 C.F.R. section 112.6(b).

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

12 **§145-C Chairperson to have access to certain farms.** The
13 department shall have access only at reasonable hours to any
14 covered farm or any farm eligible for a qualified exemption in
15 accordance with title 21 C.F.R. section 112.5 for the purposes
16 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 case 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 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 145-I
16 shall be subject to a civil penalty in an amount not to exceed
17 \$1,000 per violation. In determining the amount of any civil
18 penalty, the board of agriculture shall give due consideration
19 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 may
9 adopt rules pursuant to chapter 91 necessary to carry out the
10 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 be repealed upon the effective date of
18 the repeal of title 21 Code of Federal Regulations
19 part 112 or on July 1, 2022, whichever occurs sooner;
20 and



1 (2) This Act shall expire if the federal government
2 declines to award funds to the State to implement the
3 provisions of federal law embodied in this Act or the
4 federal funds awarded are exhausted, whichever is
5 later.



S.B. NO. 754
S.D. 1
H.D. 1
C.D. 1

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. (CD1)

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