
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
7 that authorize state department of agriculture inspectors to
8 inspect and regulate farms producing food in the State to
9 increase food 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,



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;



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;

11 (2) A secondary activities operation, not located on a
12 primary production farm, devoted to harvesting such as
13 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 (3) An operation defined in paragraph (1) or (2) that
21 packs or holds raw agricultural commodities;



- 1 (4) An operation defined in paragraph (1) or (2) that
2 packs or holds 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 (5) An operation defined in paragraph (1) or (2) that
7 manufactures or processes food; provided that:
- 8 (A) All food used in such activities is consumed on
9 that farm or another farm under the same
10 management; or
- 11 (B) Any manufacturing or processing of food that is
12 not consumed on that farm or another farm under
13 the same management consists only of:
- 14 (i) Drying or dehydrating raw agricultural
15 commodities to create a distinct commodity
16 such as drying or dehydrating grapes to
17 produce raisins, and packaging and labeling
18 such distinct commodities, without
19 additional manufacturing or processing such
20 as by slicing;



1 (ii) Treatment to manipulate the ripening of raw
2 agricultural commodities such as by treating
3 produce with ethylene gas and packaging and
4 labeling treated raw agricultural
5 commodities without additional manufacturing
6 or processing; or

7 (iii) Packaging and labeling raw agricultural
8 commodities when these activities do not
9 involve additional manufacturing or
10 processing such as irradiation.

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

15 "Fruit" means the edible reproductive body of a seed plant
16 or tree nut consisting of the harvestable or harvested part of
17 the plant developed from a flower.

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



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

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



1 same raw agricultural commodity and breaking down pallets.
2 Holding does not include activities that transform a stored raw
3 agricultural commodity 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, food crops, or ingredients.
10 Manufacturing or processing includes but is not limited to
11 baking, boiling, bottling, canning, cooking, cooling, cutting,
12 distilling, drying or dehydrating raw agricultural commodities
13 to create a distinct commodity, evaporating, eviscerating,
14 extracting juice, formulating, freezing, grinding, homogenizing,
15 labeling, milling, mixing, packaging including modified
16 atmosphere packaging, pasteurizing, peeling, rendering, treating
17 to manipulate ripening, trimming, washing, or waxing. For farms
18 and farm mixed-type facilities, manufacturing or processing does
19 not include activities that are part of harvesting, packing, or
20 holding.



1 "Packing" means placing food into a container other than
2 packaging the food and includes re-packing and activities
3 performed incidental to packing or re-packing a food; activities
4 performed for the safe or effective packing or re-packing of
5 food such as sorting, culling, grading, and weighing or
6 conveying incidental to packing or re-packing. Packing does not
7 include activities that transform a raw agricultural commodity
8 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 or mixes of intact
14 fruits and vegetables and mushrooms, sprouts irrespective of
15 seed source, peanuts, tree nuts, and herbs. "Produce" does not
16 include food grains which are the small, hard fruits or seeds of
17 arable crops, the crops bearing food grain, fruits or seeds that
18 are primarily grown and processed for use as meal, flour, baked
19 goods, cereals, and oils rather than for direct consumption as
20 small, hard fruits or seeds including cereal grains, pseudo
21 cereals, oilseeds, and other plants used in the same fashion.



1 Food grains examples include barley, dent- or flint-corn,
2 sorghum, oats, rice, rye, wheat, amaranth, quinoa, buckwheat,
3 and oilseeds such as cotton seed, flax seed, rapeseed, soybean,
4 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 or
13 fleshy fruiting body of a fungus grown for an edible part
14 consisting of the harvestable or harvested part of any plant or
15 fungus whose fruit, fleshy fruiting bodies, seeds, roots,
16 tubers, bulbs, stems, leaves, or flower parts are used as food
17 and including mushrooms, sprouts, and herbs.

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 21 C.F.R. 112.2(b)(3);
- 11 (4) The covered farm complies with the documentation
12 requirements of 21 C.F.R. 112.2(b)(4);
- 13 (5) The requirements of 21 C.F.R. 112 Subpart A (general
14 provisions) and 21 C.F.R. 112 Subpart Q (compliance
15 and enforcement) are satisfied for apply to the
16 covered produce; and
- 17 (6) An entity that provides a written assurance under 21
18 C.F.R. 112.2(b)(3) acts consistently with the
19 assurance and documents its actions taken to satisfy
20 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 21 C.F.R Part 112 when conducting a covered activity
4 on covered produce. A farm is not subject to this part if it
5 satisfies the requirements of 21 C.F.R. 112.5 and the federal
6 Food and Drug Administration has not withdrawn the farm's
7 exemption in accordance with the requirements of 21 C.F.R. 112
8 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
2 accordance with 21 C.F.R. 112.5, the farm shall be subject to
3 the requirements of 21 C.F.R. 112 Subparts A, O, Q, and R, and
4 shall be subject to the modified requirements established in 21
5 C.F.R. 112.6(b).

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

10 **§145-C Chairperson to have access to certain farms.** The
11 department shall have access only at reasonable hours to any
12 covered farm or any farm eligible for a qualified exemption in
13 accordance with 21 C.F.R. 112.5 for the purposes of:

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

19 **§145-D Authority to seize, condemn, or destroy covered**
20 **produce.** (a) If the department believes any covered produce on
21 a covered farm that is being grown, kept, or exposed for sale or



1 held in possession or under the control of any person to be in
2 violation of this part or rules adopted pursuant to section
3 145-I, the department may seize or take possession of or
4 condemn, destroy, or require the destruction of the covered
5 produce.

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

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

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

15 **§145-E Proceeding for condemnation or destruction of**
16 **covered produce.** If unable to secure the written agreement to
17 the condemnation or destruction of covered produce as required
18 by section 145-D(b)(1), the department shall make complaint
19 before a district judge in the circuit in which the covered
20 produce was seized. The district judge shall issue a summons to
21 the person from whom the covered produce was seized, directing



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

15 **§145-F Judgment; appeal; proceeds.** (a) Unless otherwise
16 shown or if the covered produce to be condemned or destroyed
17 pursuant to section 145-D is found to be in violation of any
18 provision of this part or rules adopted pursuant to section
19 145-I, it shall be the duty of the district court to render
20 judgment that the covered produce be forfeited to the State and
21 either destroyed or sold by the department for any purpose other



1 than to be used for food. Any party aggrieved by the district
2 court may appeal to the intermediate appellate court.

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

6 **§145-G Impeding the department prohibited.** No person
7 shall impede, obstruct, hinder, or otherwise prevent or attempt
8 to prevent the department, an inspector, or any other person in
9 the performance of the person's duty in connection with this
10 part.

11 **§145-H Civil penalty.** Any person who violates any
12 provision of this part or rule adopted pursuant to section
13 145-I, shall be subject to a civil penalty in an amount not to
14 exceed \$1,000 per violation. In determining the amount of any
15 civil penalty, the board of agriculture shall give due
16 consideration to:

- 17 (1) The history of the person's previous violations;
18 (2) The seriousness of the violation; and
19 (3) The demonstrated good faith of the person charged in
20 attempting to achieve compliance with this part after
21 being notified of the violation.



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

5 §145-I Rulemaking authority. The board of agriculture may
6 adopt rules pursuant to chapter 91 necessary to carry out the
7 purposes of this part."

8 SECTION 3. In codifying the new sections added by section
9 2 of this Act, the revisor of statutes shall substitute
10 appropriate section numbers for the letters used in designating
11 the new sections in this Act.

12 SECTION 4. This Act shall take effect on July 1, 2150;
13 provided that:

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



1 (2) This Act shall be repealed 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.



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. (HB869 HD1)

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