

ACT 103

S.B. NO. 754

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

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

“PART . PRODUCE SAFETY

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

“C.F.R.” means the Code of Federal Regulations.

“Chairperson” means the chairperson of the board of agriculture.

“Covered activity” means growing, harvesting, packing, or holding covered produce on a farm. “Covered activity” includes manufacturing or process-

ing of covered produce on a farm, but only to the extent that such activities are performed on raw agricultural commodities.

“Covered farm” means a farm with an average annual monetary value of produce sold during the previous three-year period equal to more than \$25,000 on a two of three-year rolling basis, adjusted for inflation using 2016 as the base-line year for calculating the adjustment.

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

- (1) Fruits and vegetables such as almonds, apples, apricots, apriums, artichokes-globe-type, Asian pears, avocados, babacos, bananas, Belgian endive, blackberries, blueberries, boysenberries, brazil nuts, broad beans, broccoli, brussels sprouts, burdock, cabbages, Chinese cabbages (bok choy, mustard, and Napa), cantaloupes, carambolas, carrots, cauliflower, celeriac, celery, chayote fruit, cherries (sweet), chestnuts, chicory (roots and tops), citrus (such as clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and unique fruit), cowpea beans, cress-garden, cucumbers, curly endive, currants, dandelion leaves, fennel-Florence, garlic, genip, gooseberries, grapes, green beans, guavas, herbs (such as basil, chives, cilantro, oregano, and parsley), honeydew, huckleberries, Jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leek, lettuce, lychees, macadamia nuts, mangos, other melons (such as Canary, Crenshaw, and Persian), mulberries, mushrooms, mustard greens, nectarines, onions, papayas, parsnips, passion fruit, peaches, pears, peas, peas-pigeon, peppers (such as bell and hot), pine nuts, pineapples, plantains, plums, plumcots, quince, radishes, raspberries, rhubarb, rutabagas, scallions, shallots, snow peas, soursop, spinach, sprouts (such as alfalfa and mung bean), strawberries, summer squash (such as patty pan, yellow, and zucchini), sweetsop, Swiss chard, taro, tomatoes, turmeric, turnips (roots and tops), walnuts, watercress, watermelons, and yams; and
- (2) A mix of intact fruits and vegetables, such as a fruit basket.

“Covered produce” does not include:

- (1) Produce that is rarely consumed raw, specifically the produce on the following exhaustive list: asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries, sour; chickpeas; cocoa beans; coffee beans; collards; corn, sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts;
- (2) Produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management; or
- (3) Produce that is not a raw agricultural commodity.

“Farm” means:

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

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

The term “farm” includes operations that, in addition to these activities:

- (1) Pack or hold raw agricultural commodities;
- (2) Pack or hold processed food; provided that all processed food used in such activities is either consumed on that farm or another farm under the same management, or is processed food; and
- (3) Manufacture or process food; provided that:
 - (A) All food used in such activities is consumed on that farm or another farm under the same management; or
 - (B) Any manufacturing or processing of food that is not consumed on that farm or another farm under the same management consists only of:
 - (i) Drying or dehydrating raw agricultural commodities to create a distinct commodity such as drying or dehydrating grapes to produce raisins, and packaging and labeling such commodities, without additional manufacturing or processing such as slicing;
 - (ii) Treatment to manipulate the ripening of raw agricultural commodities, such as by treating produce with ethylene gas, and packaging and labeling treated raw agricultural commodities, without additional manufacturing or processing; or
 - (iii) Packaging and labeling raw agricultural commodities, when these activities do not involve additional manufacturing or processing such as irradiation.

“Food” means articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article, and includes seeds and beans used to grow sprouts.

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

“Harvesting” means activities that are traditionally performed on farms for the purpose of removing raw agricultural commodities from the place they were grown or raised and preparing them for use as food. Harvesting is limited to activities performed on raw agricultural commodities, or on processed foods created by drying or dehydrating a raw agricultural commodity without additional manufacturing or processing, on a farm. “Harvesting” does not include activities that transform a raw agricultural commodity into a processed food. Examples of harvesting include cutting or otherwise separating the edible portion of the raw agricultural commodity from the crop plant and removing or trimming part of the raw agricultural commodity such as foliage, husks, roots or stems. Examples of harvesting also include cooling, field coring, filtering, gathering, hulling, shelling, sifting, threshing, trimming of outer leaves of, and washing raw agricultural commodities grown on a farm.

“Holding” means storage of food and also includes activities performed incidental to storage of a food such as activities performed for the safe or effective storage of that food, such as fumigating food during storage, and drying or dehydrating raw agricultural commodities when the drying or dehydrating does

not create a distinct commodity such as drying or dehydrating hay or alfalfa. “Holding” also includes activities performed as a practical necessity for the distribution of that food such as blending of the same raw agricultural commodity and breaking down pallets, but does not include activities that transform a raw agricultural commodity into a processed food.

“Holding facilities” include warehouses, cold storage facilities, storage silos, grain elevators, and liquid storage tanks.

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

“Packing” means placing food into a container other than packaging the food and also includes re-packing and activities performed incidental to packing or re-packing a food such as activities performed for the safe or effective packing or re-packing of that food such as sorting, culling, grading, and weighing or conveying incidental to packing or re-packing, but does not include activities that transform a raw agricultural commodity into a processed food.

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

“Produce” means any fruit or vegetable including mixes of intact fruits and vegetables and includes mushrooms, sprouts irrespective of seed source, peanuts, tree nuts, and herbs. “Produce” does not include food grains meaning the small, hard fruits or seeds of arable crops, or the crops bearing these fruits or seeds, that are primarily grown and processed for use as meal, flour, baked goods, cereals, and oils rather than for direct consumption as small, hard fruits or seeds including cereal grains, pseudo cereals, oilseeds, and other plants used in the same fashion. Examples of food grains include barley, dent- or flint-corn, sorghum, oats, rice, rye, wheat, amaranth, quinoa, buckwheat, and oilseeds such as cotton seed, flax seed, rapeseed, soybean, and sunflower seed.

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

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

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

§145-B Covered farm; covered produce; exemptions. (a) Covered produce is eligible for exemption from the requirements of this part under the following conditions:

- (1) The covered produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance;
 - (2) The covered farm discloses in documents accompanying the covered produce, that in accordance with the practice of the trade, the food is “not processed to adequately reduce the presence of microorganisms of public health significance”;
 - (3) The covered farm complies with the written assurance requirements of title 21 C.F.R. section 112.2(b)(3);
 - (4) The covered farm complies with the documentation requirements of title 21 C.F.R. section 112.2(b)(4);
 - (5) The requirements of title 21 C.F.R. part 112 subpart A (general provisions) and title 21 C.F.R. part 112 subpart Q (compliance and enforcement) apply to the covered produce; and
 - (6) An entity that provides a written assurance under title 21 C.F.R. section 112.2(b)(3) acts consistently with the assurance and documents its actions taken to satisfy the written assurance.
- (b) A covered farm shall comply with all applicable requirements of this part, rules adopted pursuant to section 145-I, and title 21 C.F.R. part 112 when conducting a covered activity on covered produce. A farm is not subject to this part if it satisfies the requirements in title 21 C.F.R. section 112.5 and the United States Food and Drug Administration has not withdrawn the farm’s exemption in accordance with the requirements of title 21 C.F.R. part 112 subpart R.
- (c) A farm is eligible for a qualified exemption and associated modified requirements in a calendar year if:
- (1) The average annual monetary value of the food the farm sold directly to qualified end-users during the previous three-year period preceding the applicable calendar year exceeded the average annual monetary value of the food the farm sold to all other buyers during that period; and
 - (2) The average annual monetary value of all food the farm sold during the three-year period preceding the applicable calendar year was less than \$500,000, adjusted for inflation, using 2016 as the baseline year for calculating the adjustment for inflation.
- If a farm is eligible for a qualified exemption in accordance with title 21 C.F.R. section 112.5, the farm shall be subject to the requirements of title 21 C.F.R. part 112 subparts A, O, Q, and R. If a farm is eligible for a qualified exemption in accordance with title 21 C.F.R. section 112.5, the farm shall be subject to the modified requirements established in title 21 C.F.R. section 112.6(b).
- (d) No covered farm or farm eligible for a qualified exemption in accordance with title 21 C.F.R. section 112.5 shall violate any provision of this part, rules adopted pursuant to section 145-I, or title 21 C.F.R. part 112.

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

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

§145-D Authority to seize, condemn, or destroy covered produce. (a) If the department believes any covered produce on a covered farm that is being

grown, kept, or exposed for sale or held in possession or under the control of any person to be in violation of this part or rules adopted pursuant to section 145-I, the department may seize or take possession of or condemn, destroy, or require the destruction of the covered produce.

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

- (1) Secure written agreement to the condemnation or destruction, on a form to be provided by the chairperson, from the person from whom the covered produce was seized; or
- (2) Make complaint before a district judge pursuant to section 145-E.

§145-E Proceeding for condemnation or destruction of covered produce.

If unable to secure the written agreement to the condemnation or destruction as required by section 145-D(b)(1), the department shall make complaint before a district judge in whose circuit the covered produce was seized. The district judge shall issue a summons to the person from whom the covered produce was seized, directing the person to appear before the circuit court within twelve days from the date of issuing the summons and show cause as to why the covered produce should not be condemned or destroyed. If the person from whom the covered produce was seized cannot be found, then the summons shall be served upon the person then in possession of the covered produce. The summons shall be served at least six days before the time of appearance mentioned therein. If the person from whom the covered produce was seized cannot be found, and no one can be found in possession of the covered produce, and the defendant does not appear on the return day, then an appropriate court shall proceed in the case in the same manner as where a writ of attachment is returned not personally served upon any of the defendants and none of the defendants appears upon the return day.

§145-F Judgment; appeal; proceeds. (a) Unless otherwise shown or if the covered produce to be condemned or destroyed pursuant to section 145-D is found to be in violation of any provision of this part or rules adopted pursuant to section 145-I, it shall be the duty of the district court to render judgment that the covered produce be forfeited to the State and that the goods be destroyed or sold by the department for any purpose other than to be used for food. Either party aggrieved by the district court may appeal to the intermediate appellate court.

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

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

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

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

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

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

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

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

- (1) This Act shall be repealed upon the effective date of the repeal of title 21 Code of Federal Regulations part 112 or on July 1, 2022, whichever occurs sooner; and
- (2) This Act shall expire if the federal government declines to award funds to the State to implement the provisions of federal law embodied in this Act or the federal funds awarded are exhausted, whichever is later.

(Approved June 21, 2019.)