

HOUSE BILL REPORT

SSB 5315

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to agriculture and marketing.

Brief Description: Modifying agriculture regulations.

Sponsors: Senate Committee on Agriculture & Agricultural Trade & Development (originally sponsored by Senators Rasmussen, Morton, Loveland, Newhouse and Roach; by request of Department of Agriculture).

Brief History:

Committee Activity:

Agriculture & Ecology: 3/30/95 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Kremen and Schoesler.

Minority Report: Do not pass. Signed by 5 members: Representatives R. Fisher; Poulsen; Regala; Robertson and Rust.

Staff: Kenneth Hirst (786-7105).

Background:

Food Processing Act & Food and Drug Act. An establishment, other than a restaurant or similar food service business, that processes food in preparation for its sale for human consumption must be licensed under the Washington Food Processing Act. Although the act provides criminal penalties for violations, the civil remedies of the Uniform Washington Food, Drug, and Cosmetic (UWFDC) Act may also be imposed for violations of the processing act. In addition to criminal penalties that may be levied for violations of the UWFDC Act, articles that are adulterated or misbranded or that may injure the public may be embargoed, a civil fine of up to \$1000 per day may be levied for a violator, and injunctions may be secured to prevent violations of the act.

Milk and Milk Products. A milk hauler must be licensed under the state's fluid milk laws. A dairy inspection program administered by the Department of Agriculture is funded, in part, by an assessment of not more than 0.54 cents per hundred weight of milk. The assessment expires June 30, 1995.

Eggs. The sale and distribution of eggs is regulated under the State's Wholesome Eggs and Egg Products Act.

Commercial Feed. The sale and distribution of commercial feed is regulated by state law. Each commercial feed must be registered with the department annually. Registration fees and inspection fees are set or limited by statute. The registration fee for feed distributed in packages of 10 pounds or more is \$11 and such feed is also subject to an inspection fee of not more than 14 cents per ton. The registration fee for feed distributed in packages of less than 10 pounds is \$45; this feed is not subject to an inspection fee.

Animal Health/Deleterious Exotic Wildlife. The Director of Agriculture has broad powers to prevent the introduction or spread of diseases affecting domestic animals. The director has specific authority to establish and enforce embargoes and quarantines to control certain diseases in bovines. The director may require veterinarians to report cases of certain diseases. State laws administered by the Department of Fish and Wildlife define deleterious exotic wildlife as species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

Livestock. The fee for brand inspections of cattle performed by the department may not be more than 75 cents per head. Beginning July 1, 1997, the fee is lowered to 60 cents per head. Public livestock markets must be licensed and pay a licensing fee. The amount of the licensing fee is based on the market's gross sales volume per sales day. A certified feed lot must pay a fee of not more than 15 cents per head of cattle handled through the feed lot. The fee is used for administering the feed lot and livestock identification laws. On July 1, 1997, the fee is reduced to 12 cents per head. If livestock running at large are impounded by any person, the sheriff or brand inspector must cause them to be impounded at the nearest public livestock market. After the publication of a notice, if the animals are not claimed by the owner within 10 days, they must be sold at the next public livestock market sale.

Summary of Amended Bill:

Food Storage Warehouses. An annual license is now required to operate a food storage warehouse. Application for a license is on a form prescribed by the director and is to be accompanied by a \$50 licensing fee. Licensing is waived for firms that are licensed under the state's Food Processing Act or fluid milk laws and for warehouses that are inspected by the state or federal government or an independent

sanitation consultant approved by the department. These inspections must be conducted at least annually for compliance with federal Food and Drug Administration rules regarding good manufacturing practice in manufacturing, packing, or holding human food. A late renewal fee is established. The grounds for which the director may deny, suspend, or revoke a license are listed, which include violations of the Uniform Washington Food, Drug and Cosmetic Act or rules adopted under the act, or failure to keep records or to provide access to the warehouse or records. If a warehouse is operating under conditions which pose an immediate danger to the public health or if the director is actively prevented from determining whether such a condition exists during an on-site inspection, the director may summarily suspend the license for the warehouse causing operations to cease.

The director must inspect a licensed food storage warehouse annually to determine compliance with the UWFDC Act. For warehouses inspected by other entities, inspection reports listing violations must be forwarded to the department within 60 days. The director conducts inspections as needed. If a copy of an inspection report is not forwarded to the department in a 12 month period, the warehouse must be licensed and inspected by the director annually for two years.

If a warehouse is not in substantial compliance, it is to be reinspected as needed and other actions may be taken against the warehouse under the UWFDC Act, including embargoes to protect the public from adulterated foods. Civil remedies available under the UWFDC Act may be used to enforce these laws regarding food storage warehouses. All monies collected under these laws are to be deposited in an account in the Agricultural Local Fund and used solely for carrying out these laws and the UWFDC Act.

It is unlawful to sell or distribute in intrastate commerce food from or stored in a warehouse that must be licensed but is unlicensed, following notification to the persons selling or distributing the food that it is in or from such an unlicensed warehouse.

Food Processing Act. The fee for issuing a sanitary certificate under the Food Processing Act is raised from \$20 to \$50.

Milk and Milk Products. A milk hauler's license must identify and contain separate endorsements for each milk transport vehicle used under the license. If a milk transport vehicle is in violation of the fluid milk statutes or rules, the endorsement for the vehicle must be suspended or revoked; however, the suspension or revocation does not apply to other vehicles operated by the hauler. The director of the Department of Agriculture is granted express authority to revoke a milk processing plant's or milk producer's license or to degrade the licensee's product to Grade C if the licensee's product fails to qualify as Grade A or Grade A raw.

The expiration of the dairy inspection assessment is postponed. It now expires June 30, 2000.

Dairy Products Commission. If only one person is nominated for a position on the Dairy Products Commission, the director must determine whether the person possesses the qualifications required by statute for the position and, if the person does, the director is to declare that the person is elected.

Eggs. An egg or egg product is considered to be adulterated under the state's Wholesome Eggs and Egg Products Act if it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs. The annual fee for an egg dealer's license is increased from \$10 to \$30 and the annual fee for an egg dealer branch license is increased from \$5 to \$15. Rather than being exempted entirely from the egg laws, the sale of eggs by a producer with an annual production from a flock of not more than 3,000 hens may be exempted from specific provisions of the egg laws by the director by rule.

Retailers and distributors must store eggs awaiting sale or display eggs under clean and sanitary conditions in areas free from rodents and insects. The eggs must be stored up off the floor away from strong odors, pesticides, and cleaners. After the point of first purchase, graded eggs packed in containers for the purpose of sale to consumers must be held and transported under refrigeration at temperatures surrounding the eggs which are no greater than 45°F.

Current law specifies that violations of certain prohibitions established in the egg laws are gross misdemeanors but a person's initial violation of any other provision of the egg laws or rules adopted under them is a misdemeanor and subsequent violations within a five year period are gross misdemeanors. The latter two-tiered criminal penalty now applies to all violations. If a violation has not been punished as a crime, the director may impose a civil penalty on the violator. The civil penalty may not exceed \$1,000 per violation per day.

Commercial Feed and Pet Food. Except for pet foods, the annual registration of each commercial feed product is no longer required. An annual commercial feed license is required for a person who manufactures commercial feed, is the initial distributor of commercial feed, or is the person listed on the label for the feed as the responsible party. The license must be obtained for each facility. Exempted from this requirement are: the sale of food processing byproducts from fruit, vegetable, and potato processing, freezing, or dehydration facilities; bona fide experiments; and pet food. The sale of byproducts or products of sugar refineries are not exempted. The licensing fee is \$50, except during the half year preceding the first expiration date, in which case the fee is \$25. A \$15 late renewal fee is established. Applications may

be denied and licenses revoked for violations of the commercial feed laws or rules. Application forms are to be provided by the department.

The annual registration fee for each pet food distributed in packages of 10 pounds or more is \$11, except for the half year before the first expiration date, in which case the fee is \$5.50. The registration fee for each pet food distributed in packages of less than 10 pounds is \$45, except for the half year before the first expiration date, in which case the fee is \$22.50. Provisions are established for denying or cancelling a registration. It is a violation of the commercial feed laws to distribute an unregistered pet food.

The items to be listed on the label of commercial feed as its guaranteed analysis are no longer specified by statute. The analysis is to be stated in such terms as the department by rule determines is required to advise the user of its composition or to support claims made by the label. The substances or elements must be determinable by laboratory methods. The label for commercial feeds containing drugs must also include directions for safe and effective use. This may be required by rule for other commercial feed as well. Precautionary statements may be required by rule. As under current law, the label for customer-formula feed is the shipping document. However, the product name and quantity statement of commercial feed contained in the customer-formula feed need no longer be listed on this label; it must be kept on file for one year at the plant producing the product. Specific labeling requirements are set for such products that contain drugs. The department may, under conditions set by rule, request copies of labels to determine compliance with the commercial feed laws.

Unmixed seeds are not considered to be commercial feed in certain instances. The department may, by rule, exempt from regulation as commercial feed or from specific aspects of regulation certain other commodities and individual chemical compounds or substances which are not intermixed with other materials and are not adulterated. A bona fide employee of a manufacturer or distributor of commercial feed is no longer automatically exempted from regulation as a contract feeder. In adopting rules, the director must consider the definitions of feed ingredients and terms adopted by the Association of American Feed Control Officials and applicable regulations adopted by the Food and Drug Administration.

The maximum amount of the fee that may be set by rule for inspecting commercial feed is lowered. It may be no greater than 12 cents per ton, rather than 14 cents per ton. The minimum inspection fee is \$12.50 per six months or \$25 per year. A late payment fee of 15 percent of the inspection fee (\$50 minimum) is established. The use of the revenue generated by these fees may now be used more broadly for the administration of the commercial feed laws. The inspection fee will be paid on materials used in the preparation of pet foods. To determine the tonnage of commercial feed distributed, the department may require each registrant or licensee to

maintain records or file additional reports and may examine these records. The records must be retained for two years.

Adulterated commercial feed now includes: feed that is or contains any new animal drug that is unsafe within the meaning of the federal Food, Drug and Cosmetic Act; and feed that contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to rules adopted by the department to assure that the drug meets the requirements of the commercial feed laws as to safety and has the characteristics it is purported to possess. These rules are to be the rules for Type A medicated articles and Type B and C medicated feeds established under the federal Food, Drug and Cosmetic Act unless the department determines those rules are not appropriate for conditions in this state.

Inspectors of the department, upon presenting credentials and a written notice, are authorized to enter during normal business hours and to inspect at reasonable times and within reasonable limits and in a reasonable manner an establishment in which commercial feed is manufactured, processed, packed or held for distribution or a vehicle used to transport or hold such feed. Rules for such inspections and for taking inspection samples are specified. If entry or inspection is refused, the department may obtain a warrant from a court of competent jurisdiction. A provision of law is repealed which expressly makes decisions denying, revoking or suspending a registration subject to the Administrative Procedure Act.

Livestock. Self-inspection slips for cattle are recognized as an alternative to brand inspection certificates. A requirement that brand inspection fees be payable at the time the brand is inspected may be waived by rule. A nonrefundable original application fee is established for a license application for a public livestock market. The fee is \$1,500. The maximum fee for cattle handled by certified feed lots is reduced from 15 to 10 cents per head on January 1, 1996, and is eliminated on June 30, 1997.

Alternative Livestock. The Director of Agriculture must, by rule, immediately designate as alternative livestock animal species that have come into commercial production in this state after 1980. A person desiring to propagate any other animal species for commercial purposes may request the director to designate that species as well; before so designating the species, the director must find that it is appropriate for commercial production in the state. "Alternative livestock" are species so designated by the director by rule which are confined by humans, raised or used in private farm or ranch operations, and produced on the farm or ranch or legally acquired for it. Alternative livestock does not include domestic dogs or cats, other *Felidae* or other animals held or propagated as companion animals, private sector aquatic products, animals raised for release into the wild, animals raised for the purpose of hunting in this state, traditional livestock, or animals currently allowed to be raised under fur or

game farming licenses. Wildlife species that exist in the wild in this state may not be taken for use in an alternative livestock farming operation.

The Department of Agriculture is the principal state agency for regulating and providing state marketing support activities for the alternative livestock industry. The owner of an alternative livestock farm or ranch must register with the department annually and must provide production statistical data. Registration fees must be set by the Director of Agriculture by rule for developing and maintaining the registration list and are to be deposited in the Agricultural Local Fund. Meat and meat by-products from alternative livestock must be governmentally inspected. The department may, by rule, establish a program for conducting these inspections and establish fees for the inspections. The director may adopt rules setting enclosure standards for alternative livestock and may establish identification requirements for alternative livestock and the products from such livestock to permit the Department of Fish and Wildlife to enforce the wildlife laws. "Wildlife," for the purposes of the state's wildlife laws, is defined to exclude animals regulated under the federal Animal Welfare Act and alternative livestock. "Deleterious exotic wildlife" is defined to exclude traditional livestock and alternative livestock. The current authority of the Director of Agriculture to prevent or control disease in domestic animals now applies to all animals and special distinctions in the law for bovine embargoes or quarantines are repealed. It is unlawful intentionally and falsely to make, complete, alter, use or sign an animal health certificate or instrument.

Monies Owed to the Department. Unless specified otherwise by statute, an assessment levied by the director or a designee constitutes a personal debt of the person assessed and is due and payable when called for by the department. If the person fails to pay the full amount of the assessment by the due date, the department may add to the debt an amount not exceeding 10 percent of the debt to defray collection costs and may bring a civil action against the person in a court of competent jurisdiction. Except as otherwise specified by law, the director may retain a collection agency to collect monies owed to the department and may collect as costs money paid to the agency as charges, moneys paid to financial institutions for things such as checks returned for nonpayment, interest on the unpaid balance, and a reasonable handling fee for each dishonored negotiable instrument. If a check or negotiable instrument is not paid within 15 days and proper notice is sent, the department may recover the assessment, the handling fee and other charges allowed by Article 3 of the Uniform Commercial Code regarding dishonored checks.

Pesticide Registrations. The revenue generated by pesticide registration fees must be deposited in the Agricultural Local Fund to support the activities of the department's pesticide program. Licensing fees paid under the Pesticide Control Act shall be used exclusively for the enforcement of the act. A provision of law is repealed that currently directs all monies received under the act to be paid into the state treasury.

Other. From January 1, 1994, to June 30, 1997, the Director of Agriculture may waive a requirement of law that a fair must have conducted two successful consecutive annual fairs before it is eligible to receive funding from the State Fair Fund. It may be waived for certain county fairs that are reorganized as area fairs. The director may also waive a requirement of law that requires an impounded animal to be sold at a particular public livestock market sale by providing that the animal be sold at another public sale. A provision of the UWFDC Act that requires the director to petition the Superior Court for an order affirming an embargo does not apply if the owner or claimant of the products embargoed agrees in writing to the order of the director. State laws are repealed that specified the vitamin and mineral content of flour, white bread, rolls, and macaroni products. An exemption from the Budget, Accounting, and Reporting System Act currently provided to agricultural commodity commissions applies to all commodity commissions unless specified otherwise in a commission's enabling statutes.

Rulemaking. The Department of Agriculture is authorized to adopt rules to carry out the purposes of new laws regarding food storage warehouses. The director may, by rule, exempt from specific provisions of the egg laws certain sales of eggs. The department may also, by rule: exempt from regulation as commercial feed or from specific aspects of regulation certain commodities and chemical compounds or substances; set conditions under which it may request copies of labels to determine compliance with the commercial feed laws; determine the nature of the statements for guaranteed analyses that must appear on labels under the commercial feed laws; require that the label for commercial feed contain directions and precautionary statements; establishing requirements for manufacturing feed containing drugs; require feed registrants and licensees to maintain records and file reports regarding tonnage; and waive a requirement that brand inspection fees be payable at the time the brand is inspected. The director must adopt rules designating certain species as alternative livestock and may designate others. With regard to alternative livestock, the director may adopt rules: setting a farm registration fee, establishing a program for inspecting meat and setting fees for the inspection, adopting enclosure requirements, and establishing identification requirements.

Amended Bill Compared to Substitute Bill: The striking amendment exempts from licensure food storage warehouses for which certain inspections are conducted at least annually and reduces the licensing fee to \$50. The amendment also exempts from licensure warehouses licensed under the Food Processing Act or fluid milk laws. The substitute Senate bill permits such an exemption. The amendment adds provisions: regarding alternative livestock and animal disease control; providing a qualification waiver for fairs that may receive moneys from the Fair Fund; reducing and subsequently eliminating a per head fee paid by certified feed lots; and allowing a waiver of the requirement that an impounded animal be sold at a specific public livestock market sale.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains emergency clauses. The provisions regarding the sale of impounded animals and the designation of animals as alternative livestock take effect immediately. Other sections regarding alternative livestock and those regarding animal disease, public livestock markets, and the use of the fair fund take effect 90 days after the legislative session. A provision lowering a per head fee paid by certified feed lots takes effect on January 1, 1996. All other provisions take effect on June 30, 1995.

Testimony For: Of the food storage warehouses inspected by the department, about 10 percent have violations of sanitation requirements and about 1 percent have serious violations. All such facilities should be inspected at least annually.

Testimony Against: (1) The department has not documented that a food storage problem exists which warrants its solution. (2) Many food storage facilities are already heavily inspected, by a variety of entities. The bill raises revenue but does not improve food safety. (3) The \$50 licensing fee in the striking amendment may not be enough to cover the department's inspection costs.

Testified: Jim Jesernig and Mary Beth Lang, Department of Agriculture (pro); Ken Yates, Washington Food Processors Council (con); Sheryl Hershey, Bellingham Cold Storage Company (con); and Marty Neisz, Northwest Food Processors Association (con).