
ENGROSSED HOUSE BILL 2132

State of Washington

54th Legislature

1996 Regular Session

By Representatives Chandler, Chappell, Grant, Mastin, Regala and Johnson; by request of Department of Agriculture

Read first time 01/08/96. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to the department of agriculture grants of rule-
2 making authority; amending RCW 15.17.020, 15.36.021, 15.58.040, and
3 16.70.040; and adding a new section to chapter 15.17 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 15.17.020 and 1963 c 122 s 2 are each amended to read
6 as follows:

7 For the purpose of this chapter:

8 (1) "Department" means the department of agriculture of the state
9 of Washington.

10 (2) "Director" means the director of the department or his duly
11 authorized representative.

12 (3) "Person" means a natural person, individual, or firm,
13 partnership, corporation, company, society, and association, and every
14 officer, agent, or employee thereof. This term shall import either the
15 singular or plural, as the case may be.

16 (4) "Horticultural plant or product" includes, but is not limited
17 to, any horticultural, floricultural, viticultural, and olericultural
18 plant, growing or otherwise, and their products whether grown above or
19 below the ground's surface.

1 (5) "Horticultural facilities" means, but is not limited to, the
2 premises where horticultural plants and products are grown, stored,
3 handled, or delivered for sale or transportation, records, and all
4 vehicles and equipment, whether aerial or surface, used to transport
5 such horticultural plants or products.

6 (6) "Deceptive pack" means the pack of any container which has in
7 the outer layer or any exposed surface, horticultural plants or
8 products which are in quality, size, condition, or any other respect so
9 superior to those in the interior of the container in the unexposed
10 portion as to materially misrepresent the contents. Such pack is
11 deceptive when the outer or exposed surface is composed of
12 horticultural plants or products whose size is not an accurate
13 representation of the variation of the size of such horticultural
14 plants or products in the entire container, even though such
15 horticultural plants or products in the container are virtually uniform
16 in size or comply with the specific horticultural plant or product for
17 which the director in prescribing standards for grading and classifying
18 has prescribed size variations or if such size variations are
19 prescribed by law.

20 (7) "Deceptive arrangement or display" of any horticultural plants
21 or products, means any bulk lot or load, arrangement or display of such
22 horticultural plants or products which has in the exposed surface,
23 horticultural plants or products which are so superior in quality,
24 size, condition, or any other respect to those which are concealed, or
25 the unexposed portion, as to materially misrepresent any part of such
26 bulk lot or load, arrangement, or display.

27 (8) "Mislabel" means the placing or presence of any false or
28 misleading statement, design, or device upon any container, or upon the
29 label or lining of any such container, or upon the wrapper of any
30 horticultural plants or products, or upon any such horticultural plants
31 or products, or any placard used in connection therewith and having
32 reference to such horticultural plants or products. A statement,
33 design, or device is false or misleading when the horticultural plant
34 or product or container to which it refers does not conform to such
35 statement.

36 (9) "Container" means any container, subcontainer used within a
37 container, or any type of a container used to prepackage any
38 horticultural plants or products: PROVIDED, That this does not include

1 containers used by a retailer to package such horticultural plants or
2 products sold from a bulk display to a consumer.

3 (10) "Agent" means broker, commission merchant, auctioneer,
4 solicitor, seller, or consignor, and any other person acting upon the
5 actual or implied authority of another.

6 (11) "Inspection and certification" means, but is not limited to,
7 the inspection of any horticultural plant or product at any time prior
8 to, during, or subsequent to harvest, by the director, and the issuance
9 by him of a written permit to move or sell or a written certificate
10 stating the grade, classification, and if such horticultural plants or
11 products are free of plant pests and/or other defects.

12 (12) "Plant pests" means, but is not limited to, any living stage
13 of any insects, mites, nematodes, slugs, snails, protozoa, or other
14 invertebrate animals, bacteria, fungi, other parasitic plants or
15 reproductive parts thereof, viruses, or any organisms similar to or
16 allied with any of the foregoing, or any infectious substance, which
17 can directly or indirectly injure or cause disease or damage in any
18 plant or parts thereof, or any processed, manufactured, or other
19 products of plants.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 15.17 RCW
21 to read as follows:

22 The director shall, by rule, establish either grades or
23 classifications, or both, for American ginseng (*Panax quinquefolius*
24 L.). In establishing grades or classifications, the director shall
25 take into account the factors of place of origin, whether the ginseng
26 is wild or cultivated, weight, and date of harvest.

27 The director shall, by rule, require the registration of ginseng
28 dealers who purchase and/or sell ginseng for the purpose of foreign
29 export. The director may, after determining that an applicant or
30 registered ginseng dealer has violated this chapter, and complying with
31 the notice and hearing requirements and all other provisions of chapter
32 34.05 RCW concerning adjudicative proceedings, deny, suspend, or revoke
33 any dealer registration or application for registration issued under
34 this chapter.

35 The director shall adopt rules requiring that records be maintained
36 by ginseng dealers.

37 The director may adopt any other rules necessary to comply with the
38 requirements of the Convention on International Trade in Endangered

1 Species of Wild Fauna and Flora, (27 U.S.T. 108); the Endangered
2 Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); and 50
3 C.F.R., Part 23 (1995), as they existed on the effective date of this
4 act, or such subsequent date as may be provided by rule, consistent
5 with the purposes of this section.

6 It is unlawful for a person to sell, offer for sale, hold for sale,
7 or ship or transport ginseng for foreign export in violation of this
8 chapter or rules adopted under this chapter.

9 **Sec. 3.** RCW 15.36.021 and 1994 c 143 s 103 are each amended to
10 read as follows:

11 The director of agriculture (~~may~~) is authorized to:

12 (1) Adopt rules necessary to carry out the purposes of chapters
13 15.36 and 15.38 RCW, which includes rules governing the farm storage
14 tank and bulk milk tanker requirements, however the rules may not
15 restrict the display or promotion of products covered under this
16 section.

17 (2) By rule, establish, amend, or both, definitions and standards
18 for milk and milk products. Such definitions and standards established
19 by the director shall conform, insofar as practicable, with the
20 definitions and standards for milk and milk products adopted by the
21 federal food and drug administration. The director of agriculture, by
22 rule, may likewise establish, amend, or both, definitions and standards
23 for products whether fluid, powdered or frozen, compounded or
24 manufactured to resemble or in semblance or imitation of genuine dairy
25 products as defined under the provisions of this chapter. Such
26 products made to resemble or in semblance or imitation of genuine dairy
27 products shall conform with all the provisions of chapter 15.38 RCW and
28 be made wholly of nondairy products.

29 All such products compounded or manufactured to resemble or in
30 semblance or imitation of a genuine dairy product shall set forth on
31 the container or labels the specific generic name of each ingredient
32 used.

33 In the event any product compounded or manufactured to resemble or
34 in semblance or imitation of a genuine dairy product contains vegetable
35 fat or oil, the generic name of such fat or oil shall be set forth on
36 the label. If a blend or variety of oils is used, the ingredient
37 statement shall contain the term "vegetable oil" in the appropriate
38 place in the ingredient statement, with the qualifying phrase following

1 the ingredient statement, such as "vegetable oils are soybean,
2 cottonseed and coconut oils" or "vegetable oil, may be cottonseed,
3 coconut or soybean oil."

4 The labels or containers of such products compounded or
5 manufactured to resemble or in semblance or imitation of genuine dairy
6 products shall not use dairy terms or words or designs commonly
7 associated with dairying or genuine dairy products, except as to the
8 extent that such words or terms are necessary to meet legal
9 requirements for labeling. The term "nondairy" may be used as an
10 informative statement.

11 (3) By rule adopt the PMO, DMO, and supplemental documents by
12 reference to establish requirements for grade A pasteurized and grade
13 A raw milk.

14 (4) Adopt rules establishing standards for grade A pasteurized and
15 grade A raw milk that are more stringent than the PMO based upon
16 current industry or public health information for the enforcement of
17 this chapter whenever he or she determines that any such rules are
18 necessary to carry out the purposes of this section and RCW 15.36.481.
19 The adoption of rules under this chapter, or the holding of a hearing
20 in regard to a license issued or that may be issued under this chapter
21 are subject to the applicable provisions of chapter 34.05 RCW, the
22 administrative procedure act.

23 (5) By rule, certify an officially designated laboratory to analyze
24 milk for standard of quality, adulteration, contamination, and
25 unwholesomeness.

26 **Sec. 4.** RCW 15.58.040 and 1991 c 264 s 2 are each amended to read
27 as follows:

28 (1) The director shall administer and enforce the provisions of
29 this chapter and rules adopted under this chapter. All the authority
30 and requirements provided for in chapter 34.05 RCW (Administrative
31 Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the
32 adoption of rules including those requiring due notice and a hearing
33 for the adoption of permanent rules.

34 (2) The director is authorized to adopt appropriate rules for
35 carrying out the purpose and provisions of this chapter, including but
36 not limited to rules providing for:

1 (a) Declaring as a pest any form of plant or animal life or virus
2 which is injurious to plants, people, animals (domestic or otherwise),
3 land, articles, or substances;

4 (b) Determining that certain pesticides are highly toxic to people.
5 For the purpose of this chapter, highly toxic pesticide means any
6 pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for
7 toxicity category I due to oral inhalation or dermal toxicity. The
8 director shall publish a list of all pesticides, determined to be
9 highly toxic, by their common or generic name and their trade or brand
10 name if practical. Such list shall be kept current and shall, upon
11 request, be made available to any interested party;

12 (c) Determining standards for denaturing pesticides by color,
13 taste, odor, or form;

14 (d) The collection and examination of samples of pesticides or
15 devices;

16 (e) The safe handling, transportation, storage, display,
17 distribution, and disposal of pesticides and their containers;

18 (f) Restricting or prohibiting the use of certain types of
19 containers or packages for specific pesticides. These restrictions may
20 apply to type of construction, strength, and/or size to alleviate
21 danger of spillage, breakage, misuse, or any other hazard to the
22 public. The director shall be guided by federal regulations concerning
23 pesticide containers;

24 (g) Procedures in making of pesticide recommendations;

25 (h) Adopting a list of restricted use pesticides for the state or
26 for designated areas within the state if the director determines that
27 such pesticides may require rules restricting or prohibiting their
28 distribution or use. The director may include in the rule the time and
29 conditions of distribution or use of such restricted use pesticides and
30 may, if it is found necessary to carry out the purpose and provisions
31 of this chapter, require that any or all restricted use pesticides
32 shall be purchased, possessed, or used only under permit of the
33 director and under the director's direct supervision in certain areas
34 and/or under certain conditions or in certain quantities or
35 concentrations. The director may require all persons issued such
36 permits to maintain records as to the use of all the restricted use
37 pesticides;

38 (i) Label requirements of all pesticides required to be registered
39 under provisions of this chapter;

1 (j) Regulating the labeling of devices; ~~((and))~~

2 (k) The establishment of criteria governing the conduct of a
3 structural pest control inspection; and

4 (1) Declaring crops, when grown to produce seed specifically for
5 crop reproduction purposes, to be nonfood and/or nonfeed sites of
6 pesticide application. The director may include in the rule any
7 restrictions or conditions regarding: (i) The application of
8 pesticides to the designated crops; and (ii) the disposition of any
9 portion of the treated crop.

10 (3) For the purpose of uniformity and to avoid confusion
11 endangering the public health and welfare the director may adopt rules
12 in conformity with the primary pesticide standards, particularly as to
13 labeling, established by the United States environmental protection
14 agency or any other federal agency.

15 **Sec. 5.** RCW 16.70.040 and 1971 c 72 s 4 are each amended to read
16 as follows:

17 (1) The secretary, with the advice and concurrence of the director
18 of the department of agriculture, shall be authorized to develop rules
19 ~~((and regulations))~~ for proposed adoption by the board relating to the
20 importation, movement, sale, transfer, or possession of pet animals as
21 defined ~~((herein))~~ in RCW 16.70.020 which are reasonably necessary for
22 the protection and welfare of the people of this state.

23 (2) The director of the department of agriculture shall also be
24 authorized to adopt rules to allow administration of permits for those
25 pet animals under subsection (1) of this section by the state
26 veterinarian.

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