
HOUSE BILL 1955

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Rayburn, Nealey, Kremen, McLean, Roland, Inslee, Rasmussen, Basich and Brekke; by request of Department of Agriculture.

Read first time February 15, 1991. Referred to Committee on Agriculture & Rural Development.

1 AN ACT Relating to the uniform Washington food, drug, and cosmetic
2 act; amending RCW 69.04.001, 69.04.110, 69.04.120, 69.04.398, and
3 69.04.780; adding a new section to chapter 69.04 RCW; and prescribing
4 penalties.

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

6 **Sec. 1.** RCW 69.04.001 and 1945 c 257 s 2 are each amended to read
7 as follows:

8 This chapter is intended to enact state legislation (1) which
9 safeguards the public health and promotes the public welfare by
10 protecting the consuming public from ~~((injury by product use))~~ (a)
11 potential injury by product use; (b) products that are adulterated; or
12 (c) products that have been produced under unsanitary conditions, and
13 the purchasing public from injury by merchandising deceit~~(())~~ flowing
14 from intrastate commerce in food, drugs, devices, and cosmetics; and
15 (2) which is uniform, as provided in this chapter, with the federal

1 food, drug, and cosmetic act; and with the federal trade commission
2 act, to the extent it expressly outlaws the false advertisement of
3 food, drugs, devices, and cosmetics; and (3) which thus promotes
4 uniformity of such law and its administration and enforcement, in and
5 throughout the United States.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.04 RCW
7 to read as follows:

8 Whenever the director finds that a person has committed a violation
9 of a provision of this chapter, the director may impose upon and
10 collect from the violator a civil penalty not exceeding one thousand
11 dollars per violation per day. Each and every such violation shall be
12 a separate and distinct offense. Imposition of the civil penalty shall
13 be subject to a hearing in conformance with chapter 34.05 RCW.

14 **Sec. 3.** RCW 69.04.110 and 1975 1st ex.s. c 7 s 25 are each amended
15 to read as follows:

16 Whenever the director shall find, or shall have probable cause to
17 believe, that an article subject to this chapter is in intrastate
18 commerce in violation of this chapter, and that its embargo under this
19 section is required to protect the consuming or purchasing public, due
20 to its being adulterated or misbranded, or to otherwise protect the
21 public from injury, or possible injury, he or she is hereby authorized
22 to affix to such article a notice of its embargo and against its sale
23 in intrastate commerce, without permission given under this chapter.
24 But if, after such article has been so embargoed, the director shall
25 find that such article does not involve a violation of this chapter,
26 such embargo shall be forthwith removed.

1 **Sec. 4.** RCW 69.04.120 and 1983 c 95 s 8 are each amended to read
2 as follows:

3 When the director has embargoed an article, he or she shall,
4 forthwith and without delay and in no event later than (~~twenty~~)
5 thirty days after the affixing of notice of its embargo, petition the
6 superior court for an order affirming the embargo. The court then has
7 jurisdiction, for cause shown and after prompt hearing to any claimant
8 of the embargoed article, to issue an order which directs the removal
9 of the embargo or the destruction or the correction and release of the
10 article. An order for destruction or correction and release shall
11 contain such provision for the payment of pertinent court costs and
12 fees and administrative expenses as is equitable and which the court
13 deems appropriate in the circumstances. An order for correction and
14 release may contain such provision for a bond as the court finds
15 indicated in the circumstances.

16 **Sec. 5.** RCW 69.04.398 and 1986 c 203 s 18 are each amended to read
17 as follows:

18 (1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and
19 69.04.396 is to promote uniformity of state legislation and
20 (~~regulations~~) rules with the Federal Food, Drug and Cosmetic Act 21
21 USC 301 et seq. and regulations adopted thereunder. In accord with
22 such declared purpose any regulation adopted under said federal food,
23 drug and cosmetic act concerning food in effect on July 1, 1975, and
24 not adopted under any other specific provision of RCW 69.04.110,
25 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been
26 adopted under the provision hereof. Further, to promote such uniformity
27 any regulation adopted hereafter under the provisions of the federal
28 food, drug and cosmetic act concerning food and published in the
29 federal register shall be deemed to have been adopted under the

1 provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in
2 accord with chapter 34.05 RCW as enacted or hereafter amended. The
3 director may, however, within thirty days of the publication of the
4 adoption of any such regulation under the federal food, drug and
5 cosmetic act give public notice that a hearing will be held to
6 determine if such regulation shall not be applicable under the
7 provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such
8 hearing shall be in accord with the requirements of chapter 34.05 RCW
9 as enacted or hereafter amended.

10 (2) The provisions of subsection (1) of this section do not apply
11 to rules adopted by the director as necessary to permit the production
12 of kosher food products as defined in RCW 69.90.010.

13 (3) Notwithstanding the provisions of subsections (1) and (2) of
14 this section the director may adopt rules necessary to carry out the
15 provisions of this chapter.

16 **Sec. 6.** RCW 69.04.780 and 1945 c 257 s 96 are each amended to read
17 as follows:

18 The director shall cause the investigation and examination of food,
19 drugs, devices, and cosmetics subject to this chapter. The director
20 shall have the right (1) to take a sample or specimen of any such
21 article, for examination under this chapter, upon tendering the market
22 price therefor to the person having such article in custody; and (2) to
23 enter any place or establishment within this state, at reasonable
24 times, for the purpose of taking a sample or specimen of any such
25 article, for such examination.

26 The director and the director's deputies, assistants, and
27 inspectors are authorized to do all acts and things necessary to carry
28 out the provisions of this chapter, including the taking of verified
29 statements. Such department personnel are empowered to administer

1 oaths of verification on the statements.