

2017 Regular Session

SENATE BILL NO. 256 (Substitute of Senate Bill No. 126 by Senator Thompson)

BY SENATOR THOMPSON

AGRICULTURAL COMMODITIES. Provides relative to produce safety. (gov sig)

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AN ACT

To enact Part V of Chapter 7 of Title 3 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 3:921 through 928, relative to produce safety; to provide relative to the authority of the Louisiana Department of Agriculture and Forestry and the Louisiana Department of Health regarding the provisions of the FDA Food Safety Modernization Act; to provide for the authority of the commissioner of agriculture and forestry; to authorize the commissioner to adopt rules; to provide for the registration and regulation of covered produce farms; to provide for criminal and civil penalties; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part V of Chapter 7 of Title 3 of the Louisiana Revised Statutes of 1950, comprised of R.S. 3:921 through 928, is hereby enacted to read as follows:

PART V. PRODUCE SAFETY

§921. Definitions

As used in this Part, the following words, terms, and phrases shall have the meanings ascribed to them as follows:

(1) "Commissioner" means the Louisiana commissioner of agriculture

1 and forestry.

2 (2) "Covered produce farm" means any farm engaged in the growing,
3 harvesting, packing, or holding of produce for human consumption which is
4 subject to the requirements of the FDA Food Safety Modernization Act.

5 (3) "Department" means the Louisiana Department of Agriculture and
6 Forestry.

7 (4) "Produce" means any food that is defined as such within the meaning
8 of the FDA Food Safety Modernization Act and is a raw agricultural
9 commodity, including raw agricultural commodities that are grown
10 domestically or imported or offered for sale in Louisiana.

11 §922. Federal and state cooperation; designated authority

12 A.(1) The department is hereby designated as the state agency
13 responsible for cooperating with the secretary of the United States Department
14 of Health and Human Services regarding provisions of the FDA Food Safety
15 Modernization Act that fall within the department's authority granted by this
16 Part.

17 (2) The commissioner is authorized to receive and expend state and
18 federal funds appropriated for the administration of this Part.

19 B. The department shall work with the secretary of the United States
20 Department of Health and Human Services to develop a program to ensure the
21 safety of agricultural produce in Louisiana.

22 C. The commissioner may accept advisory assistance from the secretary
23 of the United States Department of Health and Human Services in developing
24 the program authorized by this Part, technical and laboratory assistance and
25 training, including necessary curriculum, instructional materials, and
26 equipment, and financial assistance or other aid for administration of the
27 program authorized by this Part.

28 D. The commissioner shall represent the state in all communications and
29 negotiations with the secretary of the United States Department of Health and

1 Human Services regarding the implementation of this Part and the provisions
2 of the FDA Food Safety Modernization Act that fall within the department's
3 authority granted by this Part.

4 §923. Authority; enforcement

5 A. The commissioner is authorized and may adopt rules and regulations
6 in accordance with the Administrative Procedure Act to do the following:

7 (1) Enforce standards for growing, harvesting, packing, and holding of
8 produce for human consumption and administer the provisions of this Part.

9 (2) Enter the premises of any covered produce farm during reasonable
10 hours to inspect the growing, harvesting, packing, and holding of produce.

11 (3) Investigate the organization, business, conduct, practices, and
12 management of any covered produce farm engaged in intrastate commerce.

13 (4) Inspect or copy any covered produce farm record related to the
14 growing, harvesting, packing, or holding of produce.

15 (5) Issue stop orders prohibiting the growing, harvesting, packing, or
16 holding of produce.

17 B. No person shall impede, obstruct, hinder, or otherwise prevent or
18 attempt to prevent the department, an inspector of the department, or any
19 employee of the department in the performance of his duties pursuant to this
20 Part.

21 C. The provisions of this Section shall not limit the commissioner's
22 authority to respond to an emergency in order to prevent a public health
23 hazard, including communication with applicable state and federal agencies.

24 §924. Records; registration; reports

25 Any person, firm, or corporation owning or operating a covered produce
26 farm in the state shall:

27 (1) Register with the department on an annual basis no later than July
28 first of each year.

29 (2) Update their registration with the department within ninety days of

1 any changes in activity on the covered produce farm.

2 (3) Maintain all records required by the rules adopted pursuant to this
3 Part and make those records available to the department upon request.

4 (4) File with the commissioner annual or special reports and answers in
5 writing.

6 §925. Criminal penalties; offenses

7 A. Any person, firm, or corporation convicted in a court of competent
8 jurisdiction of any of the following offenses shall be subject to a fine of not more
9 than five hundred dollars:

10 (1) To willfully make, or cause to be made, any false entry or statement
11 of fact.

12 (2) To willfully make, or cause to be made, any false entry in any
13 account, record, or memorandum required pursuant to this Part.

14 (3) To willfully neglect or fail to make full, true, and factual entries in
15 any accounts, records, or memoranda required pursuant to this Part.

16 (4) To willfully remove out of the state's jurisdiction, or mutilate, alter,
17 or by any other means falsify any documentary evidence required pursuant to
18 this Part.

19 (5) To willfully refuse to submit to the commissioner or to his authorized
20 agents, for the purpose of inspection and making copies, any documentary
21 evidence required pursuant to this Part.

22 B. The department shall not impose a fine pursuant to the provisions of
23 this Section if the federal government has imposed a fine for the same violation
24 pursuant to provisions of the FDA Food Safety Modernization Act.

25 §926. Civil penalties

26 A. Any person who violates a provision of this Part or a regulation
27 adopted pursuant to the provisions of this Part shall be subject to a civil penalty
28 of not more than one hundred dollars per violation.

29 B. Civil penalties may be assessed only by ruling of the commissioner

1 **based upon an adjudicatory hearing held in accordance with the provisions of**
2 **the Administrative Procedure Act and this Part.**

3 **§927. Louisiana Department of Health; authority**

4 **A. Nothing in this Part shall be construed as eliminating or diminishing**
5 **the authority of the Louisiana Department of Health to regulate food as**
6 **provided in Title 40 of the Louisiana Revised Statutes of 1950.**

7 **B. The Louisiana Department of Health is hereby designated as the state**
8 **agency responsible for cooperating with the secretary of the United States**
9 **Department of Health and Human Services regarding provisions of the FDA**
10 **Food Safety Modernization Act that fall within its authority granted in Title 40**
11 **of the Louisiana Revised Statutes of 1950.**

12 **§928. Effectiveness**

13 **A. The provisions of this Part shall remain in effect only as long as the**
14 **federal funds required to implement the provisions of the FDA Food Safety**
15 **Modernization Act referenced in this Part are provided.**

16 **B. The provisions of this Part shall be null and void upon the date of**
17 **repeal of 21 C.F.R. Part 112.**

18 Section 2. This Act shall become effective upon signature by the governor or, if not
19 signed by the governor, upon expiration of the time for bills to become law without signature
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become
22 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Curry Lann.

SB 256 Original

DIGEST
2017 Regular Session

Thompson

Proposed law provides for the following definitions:

- (1) "Commissioner" means the La. commissioner of agriculture and forestry.
- (2) "Covered produce farm" means any farm engaged in the growing, harvesting, packing, or holding of produce for human consumption which is subject to the requirements of the FDA Food Safety Modernization Act.

- (3) "Department" means the La. Dept. of Agriculture and Forestry.
- (4) "Produce" means any food that is defined as such within the meaning of the FDA Food Safety Modernization Act and is a raw agricultural commodity, including raw agricultural commodities that are grown domestically or imported or offered for sale in Louisiana.

Proposed law designates the department as the state agency responsible for cooperating with the secretary of the U.S. Department of Health and Human Services regarding provisions of the FDA Food Safety Modernization Act that fall within the department's authority granted by proposed law.

Proposed law authorizes the commissioner to receive and expend state and federal funds appropriated for the administration of proposed law.

Proposed law requires the department to work with the secretary of the U.S. Department of Health and Human Services to develop a program to ensure the safety of agricultural produce in Louisiana.

Proposed law authorizes the commissioner to accept advisory assistance from the secretary of the U.S. Department of Health and Human Services in administering the program authorized by proposed law.

Proposed law requires the commissioner to represent the state in all communications and negotiations with the secretary of the U.S. Department of Health and Human Services regarding the implementation of proposed law and the provisions of the FDA Food Safety Modernization Act that fall within the department's authority granted by proposed law.

Proposed law authorizes the commissioner to adopt rules in accordance with the Administrative Procedure Act (APA) and further authorizes the commissioner to do the following:

- (1) Enforce standards for growing, harvesting, packing, and holding of produce for human consumption and administer the provisions of proposed law.
- (2) Enter the premises of any covered produce farm during reasonable hours to inspect the growing, harvesting, packing, and holding of produce.
- (3) Investigate the organization, business, conduct, practices, and management of any covered produce farm engaged in intrastate commerce.
- (4) Inspect or copy any covered produce farm record related to the growing, harvesting, packing, or holding of produce.
- (5) Issue stop orders prohibiting the growing, harvesting, packing, or holding of produce.

Proposed law provides that a person shall not impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department, an inspector of the department, or any employee of the department in the performance of his duties.

Proposed law provides that nothing in proposed law shall limit the commissioner's authority to respond to an emergency in order to prevent a public health hazard.

Proposed law requires any person, firm, or corporation owning or operating a covered produce farm in Louisiana to do the following:

- (1) Register with the department on an annual basis no later than July first of each year.

- (2) Update their registration with the department within 90 days of any changes in activity on the covered produce farm.
- (3) Maintain all records required by the rules adopted pursuant to proposed law and make those records available to the department upon request.
- (4) File with the commissioner annual or special reports and answers in writing.

Proposed law subjects any person, firm, or corporation convicted of any of the following offenses to a fine of not more than \$500:

- (1) To willfully make, or cause to be made, any false entry or statement of fact.
- (2) To willfully make, or cause to be made, any false entry in any account, record, or memorandum required pursuant to proposed law.
- (3) To willfully neglect or fail to make full, true, and factual entries in any accounts, records, or memoranda required pursuant to proposed law.
- (4) To willfully remove out of the state's jurisdiction, or mutilate, alter, or by any other means falsify any documentary evidence required pursuant to proposed law.
- (5) To willfully refuse to submit to the commissioner or to his authorized agents, for the purpose of inspection and making copies, any documentary evidence required pursuant to proposed law.

Proposed law prohibits the department from imposing a fine pursuant to the provisions of proposed law if the federal government has imposed a fine for the same violation pursuant to provisions of the FDA Food Safety Modernization Act.

Proposed law authorizes the commissioner to impose a civil penalty of not more than \$100 for violations of proposed law.

Proposed law provides that penalties may only be assessed by a ruling of the commissioner based upon an adjudicatory hearing held in accordance with the APA.

Proposed law provides that no provision of proposed law shall be construed as eliminating or diminishing the authority of the LDH to regulate food as provided in present law.

Proposed law designates LDH as the state agency responsible for cooperating with the secretary of the U.S. Department of Health and Human Services regarding provisions of the FDA Food Safety Modernization Act that fall within its authority granted in present law.

Proposed law shall remain in effect only as long as the federal funds required to implement the provisions of the FDA Food Safety Modernization Act are provided.

Proposed law shall be null and void upon the date of repeal of 21 C.F.R. Part 112.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 3:921-928)