

CHAPTER 68

(HB 420)

AN ACT relating to food safety.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act, unless context requires a different meaning:

- (1) (a) *"Covered produce" means food that is:*
1. *Produce as defined in 21 C.F.R pt. 112 and is a raw agricultural commodity; or*
 2. *A fruit or vegetable, including but not limited to: 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 including but not limited to bok choy, mustard, and Napa; cantaloupes, carambolas, carrots, cauliflower, celeriac, celery, chayote fruit, sweet cherries, chestnuts, chicory roots and tops; citrus including but not limited to clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and unqi fruit; cowpea beans, cress-garden, cucumbers, curly endive, currants, dandelion leaves, fennel-Florence, garlic, genip, gooseberries, grapes, green beans, guavas; herbs including but not limited to basil, chives, cilantro, oregano, and parsley; honeydew, huckleberries, Jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leek, lettuce, lychees, macadamia nuts, mangos; other melons including but not limited to Canary, Crenshaw, and Persian; mulberries, mushrooms, mustard greens, nectarines, onions, papayas, parsnips, passion fruit, peaches, pears, peas, and peas-pigeon; peppers including but not limited to bell and hot; pine nuts, pineapples, plantains, plums, plumcots, quince, radishes, raspberries, rhubarb, rutabagas, scallions, shallots, snow peas, soursop, and spinach; sprouts including but not limited to alfalfa and mung bean; strawberries; summer squash including but not limited to patty pan, yellow, and zucchini; sweetsop, Swiss chard, taro, tomatoes, turmeric, turnips including roots and tops, walnuts, watercress, watermelons, and yams; and mixes of intact fruits and vegetables, including but not limited to fruit baskets.*
- (b) *"Covered produce" does not include produce that is:*
1. *Rarely consumed raw, specifically the produce on the following exhaustive list: asparagus, black beans, great northern beans, kidney beans, lima beans, navy beans, pinto beans; garden beets including roots and tops; sugar beets, cashews, sour cherries, chickpeas, cocoa beans, coffee beans, collards, sweet corn, cranberries, and dates; dill including seeds and weed; eggplants, figs, ginger, hazelnuts, horseradish, lentils, okra, peanuts, pecans, peppermint, potatoes, pumpkins, winter squash, sweet potatoes, and water chestnuts;*
 2. *Produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management; or*
 3. *Not a raw agricultural commodity;*
- (2) *"Covered farm" means a farm or farm mixed-type facility that:*
- (a) *Has an average annual monetary value of produce sold during the previous three (3) year period of more than twenty-five thousand dollars (\$25,000) on a rolling basis, adjusted for inflation using 2011 as the baseline year for the calculation of the adjustment; and*
 - (b) *Is subject to all applicable requirements of 21 C.F.R. pt. 112, Sections 1 to 8 of this Act, or any administrative regulation adopted pursuant to Section 5 of this Act, including registration requirements;*
- (3) *"Department" means the Kentucky Department of Agriculture;*
- (4) *"Farm" has the same meaning as in 21 C.F.R. sec. 112.3;*

- (5) *"Farm mixed-type facility" has the same meaning as in 21 C.F.R. sec. 112.3;*
- (6) *"Food" has the same meaning as in 21 C.F.R. sec. 112.3;*
- (7) *"Produce" has the same meaning as in 21 C.F.R. sec. 112.3;*
- (8) *"Qualified end user" has the same meaning as in 21 C.F.R. sec. 112.3;*
- (9) *"Raw agricultural commodity" has the same meaning as in 21 C.F.R. sec. 112.3; and*
- (10) *"Stop movement order" means an order issued by the department or its representative that removes covered produce and stops the sale of the removed product until a release or change of order has been issued by the department or its representative.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *The department is directed to implement the Produce Safety Rule, 21 C.F.R. pt. 112, which was promulgated by the United States Food and Drug Administration under the authority of the Food Safety Modernization Act, Pub. L. No. 111-353.*
- (2) *Notwithstanding any provision of the law to the contrary, the department shall discontinue its implementation efforts upon the earliest of the following occurrences:*
 - (a) *The federal government declines to provide funds to the department for the implementation of 21 C.F.R. pt. 112; or*
 - (b) *The exhaustion of the federal funds received by the department for implementation of 21 C.F.R. pt. 112.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *A representative of the department shall have access, at reasonable hours, to enter onto any covered farm or any farm that is eligible for an exemption in accordance with 21 C.F.R. pt. 112, Sections 1 to 8 of this Act, or any administrative regulation adopted pursuant to Section 5 of this Act for the purpose of:*
 - (a) *Inspecting the farm;*
 - (b) *Securing samples or specimens; or*
 - (c) *Making copies of documents.*
- (2) *The department shall make or cause to be made examinations of samples or specimens secured pursuant to this section to determine whether any provision of Sections 1 to 8 is being violated.*
- (3) *No person shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent a representative of the department or any other person in the performance of his or her duty in connection with Sections 1 to 8 or any administrative regulation adopted pursuant to Section 5 of this Act.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *Covered produce is eligible for a commercial processing exemption and the provisions set forth in Sections 1 to 8 of this Act if:*
 - (a) *The covered produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance;*
 - (b) *The covered farm discloses in documents accompanying the produce, in accordance with the practice of the trade, that the food is "not processed to adequately reduce the presence of microorganisms of public health significance";*
 - (c) *The covered farm complies with the requirements of 21 C.F.R. sec. 112.2;*
 - (d) *The requirements of 21 C.F.R. pt. 112 Subpart A and Subpart Q apply to that produce; and*
 - (e) *An entity that provides a written assurance under 21 C.F.R. sec. 112.2 acts consistently with the assurance and documents its actions taken to satisfy the written assurance.*
- (2) *A covered farm is not subject to Sections 1 to 8 of this Act if:*
 - (a) *It satisfies the requirements in 21 C.F.R. secs. 112.5, 112.6, and 112.7; and*

- (b) *An owner, operator, or agent in charge of a covered farm that is eligible for a qualified exemption be required to complete any training courses as designated by the department; and*
 - (c) *The United States Food and Drug Administration or the department has not withdrawn the covered farm's exemption in accordance with the requirements of 21 C.F.R pt. 112 Subpart R, Sections 1 to 8 of this Act or any administrative regulation adopted pursuant to Section 5 of this Act.*
- (3) *A covered farm is eligible for a qualified exemption and associated modified requirements in a calendar year if:*
- (a) *During the previous three (3) year period preceding the applicable calendar year, the average annual monetary value of the food the farm sold directly to qualified end users during that period exceeded the average annual monetary value of the food the farm sold to all other buyers during that period; and*
 - (b) *The average annual monetary value of all food the farm sold during the three (3) year period preceding the applicable calendar year was less than five hundred thousand dollars (\$500,000), adjusted for inflation, using 2011 as the baseline year for the calculation.*
- (4) *If a farm is eligible for a qualified exemption in accordance with 21 C.F.R. sec. 112.5, then the farm is subject to the requirements of 21 C.F.R. sec. 112 Subparts A, O, Q, and R and the modified requirements established in 21 C.F.R. secs. 112.6 and 112.7.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

The department shall have the following powers, and all powers incidental or necessary to same, in carrying out the duties set forth in Sections 1 to 8 of this Act:

- (1) *Promulgate administrative regulations necessary for the accomplishment of the purposes intended and the proper administration and enforcement of Sections 1 to 8 of this Act; and*
- (2) *Enter into cooperative agreements with state agencies, federal agencies, universities, and other entities.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *If a representative of the department believes that 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 any provision of 21 C.F.R. pt. 112, Sections 1 to 8 of this Act, or administrative regulations of the department adopted pursuant to Section 5 of this Act, then the department is authorized to issue a stop movement order for that covered produce.*
- (2) *If a representative of the department believes that 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 any provision of 21 C.F.R. pt. 112, Sections 1 to 8 of this Act, or administrative regulations of the department adopted pursuant to Section 5 of this Act, then the department is authorized to order the destruction of the covered produce.*
- (3) *Prior to an order of destruction of the covered produce, the department shall order the covered produce be destroyed in accordance with this section and secure written agreement from the person to whom a stop movement order was issued on a form to be provided by the department.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 249 IS CREATED TO READ AS FOLLOWS:

If the covered produce that has been issued a stop movement order or sought to be destroyed is found to be in violation of any provision of 21 C.F.R pt. 112, Sections 1 to 8 of this Act, or administrative regulations adopted pursuant to Section 5 of this Act, it shall be the duty of the Circuit Court to render judgment that covered produce be forfeited to the Commonwealth and that the goods be destroyed or sold by the department for any purpose other than to be used for food. Either party may appeal the Circuit Court's decision to the Court of Appeals.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *No covered farm or farm eligible for a qualified exemption shall violate any provision of 21 C.F.R. pt. 112, Sections 1 to 8 of this Act, or any administrative regulation adopted pursuant to Section 5 of this Act.*
- (2) *In addition to other criminal or civil penalties provided for elsewhere by law or by administrative regulation, any person who violates Sections 1 to 8 of this Act, or an administrative regulation adopted*

pursuant to Section 5 of this Act, shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000) per violation.

- (3) *In determining the amount of any civil penalty, the department shall give due consideration to:*
- (a) *The person's previous violations, if any;*
 - (b) *The seriousness of the violation; and*
 - (c) *The demonstrated good faith of the person charged in attempting to achieve compliance after being notified of the violation.*

Signed by Governor March 27, 2020.