

2017 Regular Session

SENATE BILL NO. 126

BY SENATOR THOMPSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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 931, relative to produce safety; to designate the Louisiana Department of Agriculture and Forestry as the state agency responsible for cooperating with the secretary of the United States Department of Health and Human Services regarding the FDA Food Safety Modernization Act; to authorize certain contracts with the Louisiana Department of Health; to authorize the commissioner of agriculture and forestry to adopt rules and employ certain personnel; to provide for the registration and regulation of covered produce farms; to provide relative to records, reports, inspections, and investigations; to provide for injunctive relief; to authorize the commissioner to issue stop orders; 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 931, is hereby enacted to read as follows:

**PART V. PRODUCE SAFETY**

**§921. Definitions**

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

3           (1) "Commissioner" means the Louisiana commissioner of agriculture  
4 and forestry.

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

8           (3) "Department" means the Louisiana Department of Agriculture and  
9 Forestry.

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

14 §922. Federal and state cooperation; designated authority

15           A.(1) The department is hereby designated as the state agency  
16 responsible for cooperating with the secretary of the United States Department  
17 of Health and Human Services regarding provisions of the FDA Food Safety  
18 Modernization Act.

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

21           B. The department shall work with the secretary of the United States  
22 Department of Health and Human Services to develop a program to ensure the  
23 safety of the food supply in Louisiana.

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

29           D. The department may enter into contractual agreements with the

1 Louisiana Department of Health to provide services presently rendered by the  
2 Louisiana Department of Health pertaining to produce safety, or any related  
3 services under applicable food safety laws, to assure compliance with the  
4 provisions of this Part.

5 E. The commissioner shall represent the state in all communications and  
6 negotiations with the secretary of the United States Department of Health and  
7 Human Services regarding the implementation of this Part and the FDA Food  
8 Safety Modernization Act.

9 §923. Authority; enforcement

10 A. The commissioner may adopt rules and regulations in accordance  
11 with the Administrative Procedure Act to:

12 (1) Enforce standards for growing, harvesting, packing, and holding of  
13 produce for human consumption.

14 (2) Enforce and administer the provisions of this Part.

15 B. The commissioner may employ such personnel as are necessary to  
16 enforce the provisions of this Part.

17 §924. Registration; inspections

18 A. Any person, firm, or corporation owning or operating a covered  
19 produce farm in the state shall:

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

22 (2) Update their registration with the department within ninety days of  
23 any changes in activity on the covered produce farm.

24 B. The commissioner shall have authority to do the following:

25 (1) Enter the premises of any covered produce farm during reasonable  
26 hours to inspect the growing, harvesting, packing, and holding of produce.

27 (2) Inspect any covered produce farm record relating to the growing,  
28 harvesting, packing, or holding of produce.

29 C. No person shall impede, obstruct, hinder, or otherwise prevent or

1 attempt to prevent the department, an inspector of the department, or any  
2 employee of the department in the performance of his duties pursuant to this  
3 Part.

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

7 §925. Records; investigations

8 A. Any person, firm, or corporation owning or operating a covered  
9 produce farm shall maintain all records required by the rules and regulations  
10 adopted pursuant to this Part and shall make those records available to the  
11 department upon request.

12 B. Records shall be kept for a minimum of two years from the date the  
13 record was created. Records kept offsite shall be made available within  
14 twenty-four hours upon request of the department.

15 C. The commissioner shall, at all reasonable times, have access to gather  
16 and compile information and investigate the organization, business, conduct,  
17 practices and management of any person, firm, or corporation owning or  
18 operating a covered produce farm and engaged in intrastate commerce, and the  
19 relation thereof to other persons, firms, and corporations.

20 D. The commissioner shall, at all reasonable times, have access to and the  
21 right to copy any documentary evidence of any person, firm, or corporation  
22 owning or operating a covered produce farm and engaged in intrastate  
23 commerce under investigation.

24 § 926. Reports required

25 Any person, firm, or corporation owning or operating a covered produce  
26 farm and engaged in intrastate commerce shall file with the commissioner  
27 annual or special reports and answers in writing. Reports and answers shall be  
28 made under oath, unless otherwise prescribed by the commissioner, and shall  
29 be filed with the commissioner within a time period prescribed by the

1 commissioner by rule.

2 §927. Petitions; injunctive relief

3 A. The commissioner may petition a court of competent jurisdiction for  
4 the following:

5 (1) Writs of mandamus, commanding any person, firm, or corporation  
6 to comply with the provisions of this Part or any order or regulation of the  
7 commissioner authorized by this Part.

8 (2) Writs of injunction, restraining and enjoining any person, firm, or  
9 corporation from violating this Part or any order or regulation promulgated by  
10 the commissioner pursuant to this Part.

11 B. It shall be the duty of the district attorney in each parish to prosecute  
12 offenses occurring in each parish under his jurisdiction.

13 §928. Stop Orders

14 A. When the commissioner has reason to believe that a violation of a  
15 provision of this Part or of any regulation adopted pursuant to this Part has  
16 occurred, the commissioner may issue a stop order prohibiting the growing,  
17 harvesting, packing, or holding of produce.

18 B. Each violation of a stop order shall constitute a separate violation.

19 C. Any person aggrieved by a stop order may petition the commissioner,  
20 in writing and within five calendar days after issuance of the stop order, to hold  
21 a hearing on the matter. The commissioner may appoint a hearing officer to  
22 preside over the matter.

23 D. The commissioner shall issue a ruling in the matter. The hearing and  
24 any subsequent appeal shall be held in accordance with the provisions of the  
25 Administrative Procedure Act.

26 E. Based on the results of the hearing, or a consent agreement mutually  
27 entered into by the commissioner and a violator, the commissioner may take  
28 one or more of the following actions:

29 (1) Release the covered produce farm or affected produce from the stop

1 **order.**

2 **(2) Require the cause for the stop order to be remedied prior to releasing**  
3 **the stop order.**

4 **(3) Destroy the affected produce.**

5 **(4) Provide for the disposition of the affected produce.**

6 **§929. 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 less**  
9 **than one thousand dollars nor more than five thousand dollars, or to**  
10 **imprisonment for a term of not more than three years, or both:**

11 **(1) To willfully make, or cause to be made, any false entry or statement**  
12 **of fact in any report or answer required by this Part.**

13 **(2) To willfully make, or cause to be made, any false entry in any**  
14 **account, record, or memorandum kept by a person, firm, or corporation subject**  
15 **to this Part.**

16 **(3) To willfully neglect or fail to make full, true, and factual entries in**  
17 **any accounts, records, or memoranda related to the business of a person, firm,**  
18 **or corporation subject to this Part.**

19 **(4) To willfully remove out of the state's jurisdiction, or mutilate, alter,**  
20 **or by any other means falsify any documentary evidence of any person, firm, or**  
21 **corporation subject to this Part.**

22 **(5) To willfully refuse to submit to the commissioner or to his authorized**  
23 **agents, for the purpose of inspection and making copies, any documentary**  
24 **evidence in the possession of or within the control of any person, firm, or**  
25 **corporation subject to this Part.**

26 **§930. Civil penalties**

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

1           **B. Thirty days after receipt of a notice of default, any person, firm, or**  
 2           **corporation failing to file an annual or special report required by R.S. 3:926**  
 3           **shall be subject to a civil penalty of one hundred dollars for each day of such**  
 4           **failure. Each day on which a violation occurs shall constitute a separate offense.**

5           **C. Civil penalties may be assessed only by ruling of the commissioner**  
 6           **based upon an adjudicatory hearing held in accordance with the provisions of**  
 7           **the Administrative Procedure Act and this Part. The commissioner may assess**  
 8           **the cost of the adjudicatory proceeding and shall, by rule and regulation,**  
 9           **determine the amount of costs to be assessed, which may include the cost of**  
 10          **inspections, investigations, and laboratory analysis.**

11          **§931. Effectiveness**

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

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

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

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

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DIGEST

SB 126 Original                      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 United States Department of Health and Human Services regarding provisions of the FDA Food Safety Modernization Act.

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 United States Department of Health and Human Services to develop a program to ensure the safety of the food supply in Louisiana.

Proposed law authorizes the commissioner to accept advisory assistance from the secretary of the United States Department of Health and Human Services in administering the program.

Proposed law authorizes the department to enter into contractual agreements with the LDH to provide services presently rendered by LDH pertaining to produce safety, or any related services under applicable food safety laws.

Proposed law requires the commissioner to represent the state in all communications and negotiations with the secretary of the United States Department of Health and Human Services regarding the implementation of proposed law and the FDA Food Safety Modernization Act.

Proposed law authorizes the commissioner to adopt rules in accordance with the Administrative Procedure Act (APA) to enforce proposed law and to enforce standards for growing, harvesting, packing, and holding of produce for human consumption and to employ necessary personnel.

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 ninety days of any changes in activity on the covered produce farm.

Proposed law authorizes the commissioner to do the following:

- (1) Enter the premises of any covered produce farm during reasonable hours to inspect the growing, harvesting, packing, and holding of produce.
- (2) Inspect any covered produce farm record relating to 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 to maintain records required by the rules and make those records available to the department upon request. Further requires that records be kept for at least two years.

Proposed law grants the commissioner, at all reasonable times, access to investigate any person, firm, or corporation owning or operating a covered produce farm and the right to copy documentary evidence.

Proposed law requires any person, firm, or corporation owning or operating a covered produce farm to file with the commissioner annual or special reports and answers in writing.

Proposed law authorizes the commissioner to petition a court of competent jurisdiction for writs of mandamus or writs of injunction and issue stop orders prohibiting the growing, harvesting, packing, or holding of produce in certain circumstances.

Proposed law provides that it is the duty of the district attorney in each parish to prosecute offenses occurring in each parish under his jurisdiction.

Proposed law authorizes the commissioner to issue a stop order prohibiting the growing, harvesting, packing, or holding of produce when he has reason to believe a violation has occurred.

Proposed law subjects any person, firm, or corporation convicted of any of the following offenses to a fine of not less than \$1000 nor more than \$5000 dollars, or to imprisonment for a term of not more than three years, or both:

- (1) To willfully make, or cause to be made, any false entry or statement of fact in a report required by proposed law.
- (2) To willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by a person, firm, or corporation subject to proposed law.
- (3) To willfully neglect or fail to make full, true, and factual entries in any accounts, records, or memoranda related to the business of a person, firm, or corporation subject 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 of any person, firm or corporation subject 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 in the possession of or within the control of any person, firm, or corporation subject to proposed law.

Proposed law authorizes the commissioner to impose a civil penalty of not more than \$500 for violations of proposed law.

Proposed law subjects any person, firm, or corporation to a civil penalty of \$100 for failure to file an annual or special report. Each day on which a violation occurs constitutes a separate offense.

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 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. 3:921-931)