

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)

1 AN ACT

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

10 Be it enacted by the Legislature of Louisiana:

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

13 PART V. PRODUCE SAFETY

14 §921. Definitions

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

17 (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, but
5 shall not include farms that have twenty-five thousand dollars or less of gross
6 income from sales of produce in a year.

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

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

13 §922. Federal and state cooperation; designated authority

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

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 agricultural produce 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 program authorized by this Part, technical and laboratory assistance and
27 training, including necessary curriculum, instructional materials, and
28 equipment, and financial assistance or other aid for administration of the
29 program authorized by this Part.

1 **D. The commissioner shall represent the state in all communications and**
2 **negotiations with the secretary of the United States Department of Health and**
3 **Human Services regarding the implementation of this Part and the provisions**
4 **of the FDA Food Safety Modernization Act that fall within the department's**
5 **authority granted by this Part.**

6 **§923. Authority; enforcement**

7 **A. The commissioner is authorized to and may adopt rules and**
8 **regulations in accordance with the Administrative Procedure Act to do the**
9 **following:**

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

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

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

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

18 **(5) Issue stop orders prohibiting the growing, harvesting, packing, or**
19 **holding of produce.**

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

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

27 **§924. Records; registration; reports**

28 **Any person, firm, or corporation owning or operating a covered produce**
29 **farm in the state shall:**

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

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

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

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

9 §925. Criminal penalties; offenses

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

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

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

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

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

28 §926. Civil penalties

29 A. Any person who violates a provision of this Part or a regulation

1 adopted pursuant to the provisions of this Part shall be subject to a civil penalty
2 of not more than one hundred dollars per violation.

3 B. Civil penalties may be assessed only by ruling of the commissioner
4 based upon an adjudicatory hearing held in accordance with the provisions of
5 the Administrative Procedure Act and this Part.

6 §927. Louisiana Department of Health; authority

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

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

15 §928. Effectiveness

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

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

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

The original instrument was prepared by Curry J. Lann. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

DIGEST

SB 256 Reengrossed

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. Specifies that this does not include farms that have \$25,000 or less of gross income from sales of produce in a year.
- (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)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Specifies that the definition of "covered produce farm" does not include farms that have \$25,000 or less of gross income from sales of produce in a year.