

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 537

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO FOOD SAFETY; AMENDING SECTION 22-113, IDAHO CODE, TO REVISE PRO-
2 VISIONS REGARDING THE REGULATION OF NONRETAIL ACTIVITIES SUBJECT TO THE
3 FOOD AND DRUG ADMINISTRATION'S FOOD SAFETY MODERNIZATION ACT, TO PRO-
4 VIDE FOR THE TRANSITION OF EXISTING CONTRACTS AND CONTRACTING AUTHOR-
5 ITY AND TO SPECIFY THAT THE IDAHO STATE DEPARTMENT OF AGRICULTURE, IN
6 CONSULTATION AND COOPERATION WITH THE DEPARTMENT OF HEALTH AND WELFARE,
7 SHALL CONDUCT NEGOTIATED RULEMAKING TO PROVIDE FOR IMPLEMENTATION OF
8 CERTAIN REGULATION; AND AMENDING TITLE 22, IDAHO CODE, BY THE ADDITION
9 OF A NEW CHAPTER 54, TITLE 22, IDAHO CODE, TO PROVIDE A TITLE, TO PROVIDE
10 LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR ADMINISTRATION AND
11 ENFORCEMENT, TO PROVIDE FOR RULEMAKING, TO PROVIDE FOR COOPERATION WITH
12 OTHER AGENCIES AND ENTITIES, TO PROVIDE FOR INSPECTIONS, TO PROVIDE FOR
13 VIOLATIONS AND PENALTIES, TO PROVIDE FOR COORDINATION BETWEEN THE IDAHO
14 STATE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF HEALTH AND WEL-
15 FARE AND TO PROVIDE FOR PRODUCE THAT IS IN VIOLATION OF SPECIFIED LAW OR
16 RULES.
17

18 Be It Enacted by the Legislature of the State of Idaho:

19 SECTION 1. That Section 22-113, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 22-113. UNITED STATES FOOD AND DRUG ADMINISTRATION FOOD SAFETY
22 MODERNIZATION ACT -- REGULATIONS FOR HUMAN FOOD PROCESSING. The Idaho
23 legislature hereby directs that the Idaho state department of agriculture
24 shall be the delegated state authority for regulation of any nonretail ac-
25 tivities subject to the United States food and drug administration food
26 safety modernization act, in the event the legislature enacts legislation
27 directing that the state should seek federal authorization of such regu-
28 lation, provided such nonretail activity is subject to registration under
29 section 415 of the federal food, drug and cosmetic act. Prior to the depart-
30 ment of agriculture engaging in the regulation of any activities pursuant
31 to the provisions of this section, the department of agriculture, in con-
32 sultation and cooperation with the department of health and welfare, shall
33 conduct negotiated rulemaking to provide for the implementation of such
34 regulation contracting agency for inspections in the state of Idaho that
35 are contracted by the United States food and drug administration for the
36 inspection of nonretail activities subject to registration under section
37 415 of the federal food, drug and cosmetic act. Any existing contracts and
38 contracting authority shall transition to the Idaho state department of
39 agriculture by September 29, 2019. Processors conducting nonretail activ-
40 ities and not subject to registration under section 415 of the federal food,
41 drug and cosmetic act, shall not be subject to regulation by the Idaho state
42 department of agriculture pursuant to the provisions of this section. Prior

1 to the Idaho state department of agriculture engaging in the regulation of
 2 any activities pursuant to the provisions of this section, the Idaho state
 3 department of agriculture, in consultation and cooperation with the depart-
 4 ment of health and welfare, shall conduct negotiated rulemaking to provide
 5 for the implementation of such regulation.

6 SECTION 2. That Title 22, Idaho Code, be, and the same is hereby amended
 7 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
 8 ter 54, Title 22, Idaho Code, and to read as follows:

9 CHAPTER 54
 10 IDAHO PRODUCE SAFETY

11 22-5401. TITLE. This chapter shall be known and may be cited as the
 12 "Idaho Produce Safety Law."

13 22-5402. LEGISLATIVE INTENT. The legislative intent of this act is
 14 to authorize the Idaho state department of agriculture to administer and
 15 enforce this act, the produce safety rule, not to exceed the standards re-
 16 quired by federal law. The Idaho state department of agriculture shall
 17 create a program capable of fulfilling a thorough and competent preventive
 18 food safety system through a collaborative and cooperative effort that will
 19 demonstrate movement toward the goal of improved produce safety. Such pro-
 20 gram shall ensure that fresh fruit and vegetables meet standards to provide
 21 the safest food to consumers and improve access to wholesome nutritious
 22 fresh produce across the state, the nation and the world.

23 22-5403. DEFINITIONS. As used in this chapter:

- 24 (1) "Department" means the Idaho state department of agriculture.
 25 (2) "Director" means the director of the Idaho state department of
 26 agriculture or the director's designee.
 27 (3) "Facility" in this chapter also includes a "mixed-type facility" as
 28 defined in the produce safety rule.
 29 (4) "Farm" has the same meaning as provided in the produce safety rule.
 30 (5) "Produce safety rule" means the standards for growing, harvesting,
 31 packing and holding of produce for human consumption promulgated pursuant to
 32 the food and drug administration food, drug and cosmetic act.

33 22-5404. ADMINISTRATION -- ENFORCEMENT -- RULES AND COOPERATION. (1)
 34 The department is authorized to administer and enforce this chapter. The au-
 35 thority granted to the department under this chapter is in addition to, and
 36 not in lieu of, any other lawful authority granted to the department under
 37 state or federal law to administer and enforce requirements related to food
 38 safety. The director is authorized, in conformance with chapter 52, title
 39 67, Idaho Code, to promulgate rules necessary to administer the purpose and
 40 provisions of this chapter.

41 (2) The director shall administer and enforce the produce safety rule
 42 with moneys appropriated to the department by the federal government for the
 43 purpose of administering and enforcing the produce safety rule. Provided
 44 however, if the federal government does not appropriate moneys for this pur-
 45 pose or if the produce safety rule or its authorizing statute is repealed or

1 made void, the director will cease enforcing the produce safety rule, this
2 chapter and the rules promulgated under this chapter. Any exemption made to
3 the requirements of the produce safety rule will also apply to this chapter
4 and the rules promulgated under this chapter.

5 (3) The director may cooperate with and enter into agreements with gov-
6 ernmental agencies of this state, other states, agencies of the federal gov-
7 ernment, private associations, and regulated persons and entities in order
8 to carry out the purpose and provisions of this chapter.

9 22-5405. INSPECTIONS. (1) The director, during normal business hours,
10 may enter any farm or facility that grows, harvests, packs or holds produce
11 for human consumption to:

12 (a) Inspect that farm or facility to determine whether this chapter and
13 the rules promulgated under this chapter are being violated;

14 (b) Review and copy the farm or facility's records that are relevant to
15 the enforcement of this chapter; and

16 (c) Secure and test samples needed to verify compliance with this chap-
17 ter and the rules promulgated under this chapter. The director shall
18 conduct inspections and sample collections and tests in a reasonable
19 manner.

20 (2) If the owner or operator of any farm or facility described in sub-
21 section (1) of this section, or the owner or operator's authorized agent,
22 refuses to admit the director to inspect pursuant to subsection (1) of this
23 section, the director may obtain from any state court of competent jurisdic-
24 tion an administrative warrant directing that owner, operator or agent to
25 submit the premises described in the warrant to inspection.

26 22-5406. VIOLATIONS -- PENALTIES. (1) (a) It is a violation for any
27 person to:

28 (i) Fail to comply with any of the provisions of this chapter or
29 any rules promulgated under this chapter; or

30 (ii) Interfere or attempt to interfere with the director in the
31 performance of his duties under this chapter or rules promulgated
32 under this chapter.

33 (b) The department may assess a civil penalty against a violator of not
34 more than ten thousand dollars (\$10,000) for each violation or one thou-
35 sand dollars (\$1,000) for each day of a continuing violation, in addi-
36 tion to reasonable attorney's fees in accordance with section 12-117,
37 Idaho Code.

38 (2) The department may assess a civil penalty in conjunction with any
39 other department administrative action.

40 (3) The department may not assess a civil penalty unless the person
41 charged was given notice and opportunity for a hearing pursuant to the Idaho
42 administrative procedure act, chapter 52, title 67, Idaho Code.

43 (4) If the department is unable to collect such penalty, or if any per-
44 son fails to pay all or a set portion of the civil penalty as determined by the
45 department, it may recover such amount by action in the appropriate district
46 court. In addition to the assessed penalty, the department shall be entitled
47 to recover, in accordance with section 12-117, Idaho Code, reasonable attor-
48 ney's fees and costs incurred in such action or on appeal from such action.

1 (5) Any person against whom the department has assessed a civil penalty
2 under the provisions of this section may, within thirty (30) days of the fi-
3 nal action by the department, appeal the assessment to the district court of
4 the county in which the violation is alleged by the department to have oc-
5 curred.

6 (6) All civil penalties collected pursuant to this section shall be re-
7 mitted to the produce safety account of the department.

8 22-5407. COORDINATION WITH DEPARTMENT OF HEALTH AND WELFARE. (1) In
9 the event the department of health and welfare or the Idaho state department
10 of agriculture finds or has probable cause to believe that any produce:

11 (a) Is adulterated within the meaning of chapter 1, title 37, Idaho
12 Code;

13 (b) Is so misbranded as to be dangerous or fraudulent within the meaning
14 of chapter 1, title 37, Idaho Code;

15 (c) Is unsound;

16 (d) Contains any filthy, decomposed or putrid substance;

17 (e) May be poisonous or deleterious to health or otherwise unsafe; or

18 (f) Is offered or exposed for sale or held in possession with intent to
19 distribute or sell, or is intended for distribution or sale in violation
20 of any provision of chapter 1, title 37, Idaho Code, or the provisions of
21 this chapter.

22 (2) In the event the Idaho state department of agriculture finds that
23 produce is found to be in violation of this chapter or rules promulgated
24 under this chapter, the department may issue and enforce a stop sale, use or
25 removal order to the distributor, owner or custodian of the produce and hold
26 the produce, or order it held, at a designated place until the law has been
27 complied with and the produce is released in writing by the department, or
28 the violation has been otherwise legally disposed of by written authority.
29 Any person adversely affected by the department's determination may seek
30 remedies as prescribed under the provisions of chapter 52, title 67, Idaho
31 Code.