AMENDED

May 3, 2017

**H. 4003**

Introduced by Reps. Hiott, Hewitt, Davis, Forrest, Bennett, West, Ott, Atkinson and Hixon

S. Printed 5/3/17--S.

Read the first time March 29, 2017.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 26 TO TITLE 39 SO AS TO ENACT THE “PRODUCE SAFETY ACT”, TO ESTABLISH THE AUTHORITY OF THE SOUTH CAROLINA DEPARTMENT OF AGRICULTURE TO ENFORCE CERTAIN FOOD SAFETY STANDARDS APPLICABLE TO FARM PRODUCE INCLUDING, BUT NOT LIMITED TO, THE AUTHORITY TO INSPECT CERTAIN FARMS; TO SEIZE, CONDEMN, AND DESTROY COVERED PRODUCE; AND TO OBTAIN A COURT ORDER FOR FORFEITURE AND DESTRUCTION OF COVERED PRODUCE; TO PROVIDE FOR THE APPEAL OF COURT ORDERS; TO DEFINE CERTAIN TERMS, INCLUDING “FARM” AND “COVERED PRODUCE”; TO PROVIDE EXCEPTIONS FOR CERTAIN FARMS AND PRODUCE; TO AUTHORIZE THE DEPARTMENT TO PROMULGATE REGULATIONS; TO ESTABLISH CERTAIN PENALTIES FOR VIOLATION OF THE CHAPTER; TO PROVIDE FOR THE REPEAL OF THE CHAPTER UNDER CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 39 of the 1976 Code is amended by adding:

“CHAPTER 26

Produce Safety Act

Section 39‑26‑10. This chapter may be cited as the ‘South Carolina Produce Safety Act’.

Section 39‑26‑20. (A) As used in this chapter:

(1) ‘Adequate’ means satisfactory for a particular purpose, fully sufficient, suitable, or fit.

(2) ‘Agricultural water’ means water used at a farm for agronomic reasons, including water used for irrigation, transpiration control, frost protection, washing produce, harvesting, or as a carrier for fertilizers and pesticides. Occasionally, a more specific term may be used, such as irrigation water. Typical sources of agricultural water include flowing surface waters from rivers, streams, irrigation ditches or open canals; impoundment; wells; and municipal supplies.

(3) ‘Clean’ means washed, rinsed and/or reasonably free of dust, dirt, food residues, and other debris.

(4) ‘Commissioner’ means the South Carolina Commissioner of Agriculture.

(5) ‘Covered produce’ means food that is produce within the meaning of 21 C.F.R. Part 112 and that is a raw agricultural commodity, as defined in 21 C.F.R Section 112.3(c), unless excluded under Section 39‑26‑30(A) or exempted under Section 39‑26‑30(B).

(6) ‘Department’ means the South Carolina Department of Agriculture.

(7) ‘Documentation’ means a written procedure or record of a task being completed.

(8) ‘Farm’ means a farm, as defined in 21 C.F.R. Section 112.3(c), or a farm mixed‑type facility, as defined in 21 C.F.R. Section 112.3(c).

(9) ‘Pathogen’ means a microorganism of public health significance capable of causing human disease or injury.

(10) ‘Personal‑service area’ means an area used for activities not directly connected with the production or service function performed by the operation or facility. Such activities include, but are not limited to, first aid, medical services, dressing, showering, toilet use, washing, and eating. A personal‑service area may include outdoor areas adjacent to a field in production.

(11) ‘Pest’ means any animal or insect of public health significance including, but not limited to, birds, rodents, cockroaches, flies, and larvae that may carry pathogens which can contaminate food or food‑contact surfaces.

(12) ‘Post‑harvest activity’ means any activity that takes place after the edible portion of the plant has been harvested. This may include washing, cooling, sorting, or packing in the field or at another location.

(13) ‘Produce’ means food that is produce within the meaning of 21 C.F.R. Part 112 and that is a raw agricultural commodity, as defined in 21 C.F.R Section 112.3(c).

(14) ‘Sanitize’ means to treat food‑contact surfaces with a process that is effective in destroying or substantially reducing the number of microorganisms of public health concern as well as other undesirable microorganisms, without adversely affecting the quality of the involved product or its safety for the consumer.

(15) ‘Water source’ or ‘source water’ means the origin of the water being used at the farm or packing operation facility. It may be a municipal supply, private well, pond, stream or other body of water.

Section 39‑26‑30. (A) ‘Covered produce’ includes all of the following:

(1) fruits and vegetables such as 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 (bok choy, mustard, and Napa), cantaloupes, carambolas, carrots, cauliflower, celeriac, celery, chayote fruit, cherries (sweet), chestnuts, chicory (roots and tops), citrus (such as clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and uniq fruit), cowpea beans, cress‑garden, cucumbers, curly endive, currants, dandelion leaves, fennel‑Florence, garlic, genip, gooseberries, grapes, green beans, guavas, herbs (such as basil, chives, cilantro, oregano, and parsley), honeydew, huckleberries, Jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leek, lettuce, lychees, macadamia nuts, mangos, other melons (such as Canary, Crenshaw, and Persian), mulberries, mushrooms, mustard greens, nectarines, onions, papayas, parsnips, passion fruit, peaches, pears, peas, peas‑pigeon, peppers (such as bell and hot), pine nuts, pineapples, plantains, plums, plumcots, quince, radishes, raspberries, rhubarb, rutabagas, scallions, shallots, snow peas, soursop, spinach, sprout (such as alfalfa and mung bean), strawberries, summer squash (such as patty pan, yellow and zucchini), sweetsop, Swiss chard, taro, tomatoes, turmeric, turnips (roots and tops), walnuts, watercress, watermelons, and yams; and

(2) a mix of intact fruits and vegetables, such as a fruit basket.

(B) ‘Covered produce’ does not include:

(1) produce that is 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, beets, garden beets (roots and tops), sugar beets, cashews, sour cherries, chickpeas, cocoa beans, coffee beans, collards, sweet corn, cranberries, dates, dill (seeds and weed), eggplants, figs, ginger, hazelnuts, horseradish, lentils, okra, peanuts, pecans, peppermint, potatoes, pumpkins, mature southern field peas (such as black‑eyed peas, cowpeas, crowder peas, purple hull peas, sea island peas, silver peas, and speckled peas), winter squash, sweet potatoes, and water chestnuts;

(2) produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management; or

(3) produce that is not a raw agricultural commodity, as defined in 21 C.F.R Section 112.3(c).

(C) Produce is eligible for exemption from the requirements of this chapter under the following conditions:

(1) the produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance;

(2) 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;

(3) the covered farm complies with the requirements of 21 C.F.R. Section 112.2(b)(3);

(4) the covered farm complies with the requirements of 21 C.F.R. Section 112.2(b)(4);

(5) the requirements of 21 C.F.R. Section 112 Subpart A and Subpart Q apply to such produce; and

(6) an entity that provides a written assurance under 21 C.F.R. Section 112.2(b)(3)(i) or (ii) acts consistently with the assurance and documents its actions taken to satisfy the written assurance.

Section 39‑26‑40. (A) Except as provided in subsection (B), a farm with an average annual monetary value of produce sold during the previous three‑year period of more than twenty‑five thousand dollars on a rolling basis, adjusted for inflation using 2011 as the baseline year for calculating the adjustment, is a ‘covered farm’ as used in this chapter, unless the context requires a different meaning. A covered farm shall comply with all applicable requirements of 21 C.F.R. Part 21, this chapter, or any provision of a regulation of the department promulgated pursuant to Section 39‑26‑50 when conducting a covered activity, as defined in 21 C.F.R. Section 112.3(c), on covered produce.

(B) A farm is not subject to this chapter if:

(1) it satisfies the requirements in 21 C.F.R. Section 112.5; and

(2) the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has not withdrawn the farm’s exemption in accordance with the requirements of 21 C.F.R. Section 112 Subpart R; or if the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has stayed the withdrawal of the farm’s exemption pursuant to the procedures and requirements of 21 C.F.R. Section 112 Subpart R; or if the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has revoked the withdrawal of the farm’s exemption pursuant to the procedures and requirements of 21 C.F.R. Section 112 Subpart R; or if the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has not confirmed the withdrawal of the farm’s exemption in response to the farm’s appeal of the withdrawal pursuant to the procedures and requirements of 21 C.F.R. Section 112 Subpart R; or if the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has reinstated the farm’s exemption pursuant to the procedures and requirements of 21 C.F.R. Section 112 Subpart R.

(C) A farm is eligible for a qualified exemption and associated modified requirements in a calendar year if:

(1) during the previous three‑year period preceding the applicable calendar year, the average annual monetary value of the food, as defined in 21 C.F.R. Section 112.3(c), the farm sold directly to qualified end‑users, as defined in 21 C.F.R. Section 112.3(c), during such period exceeded the average annual monetary value of the food the farm sold to all other buyers during that period; and

(2) the average annual monetary value of all food, as defined in 21 C.F.R. Section 112.3(c), the farm sold during the three‑year period preceding the applicable calendar year was less than five hundred thousand dollars, adjusted for inflation, using 2011 as the baseline year for calculating the adjustment for inflation.

(D) If a farm is eligible for a qualified exemption in accordance with 21 C.F.R. Section 112.5, the farm is subject to the requirements of 21 C.F.R. Section 112 Subparts A, O, Q, and R.

(E) If a farm is eligible for a qualified exemption in accordance with 21 C.F.R. Section 112.5, the farm is subject to the modified requirements established in 21 C.F.R. Section 112.6(b).

(F) A farm eligible for an exemption under this section may complete forms made available by the department. The department shall issue the farm an exemption certificate as an official acknowledgement of the farm’s exemption status. However, receipt of any certificate from the department is in no way a condition of eligibility for an exemption under this section.

Section 39‑26‑50. The South Carolina Department of Agriculture may promulgate regulations necessary or convenient to carry out the purposes of this chapter.

Section 39‑26‑60. (A) For purposes of enforcement of this chapter, the Commissioner, or any authorized agent of the Commissioner, upon presenting appropriate credentials to the farm’s owner, operator, or agent in charge, may:

(1) enter at reasonable hours on any farm in which produce is grown, packed, stored or held for introduction into commerce or after introduction or enter any vehicle being used to transport or hold this food in commerce;

(2) inspect at reasonable hours and within reasonable limits and in a reasonable manner the farm and all pertinent equipment, finished and unfinished materials, containers, and labeling and to obtain samples necessary for the enforcement of this chapter; and

(3) have access to and to copy all records of carriers in commerce showing the movement in commerce of any food, or the holding of it during or after movement, and the quantity, shipper, and consignee of it. Evidence obtained pursuant to this subsection may not be used in a criminal prosecution of the person from whom it was obtained. Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.

(B) The Commissioner, or any authorized agent of the Commissioner, shall have access only at reasonable hours to any farm eligible for a qualified exemption in accordance with 21 C.F.R. Section 112.5 for the purpose of:

(1) reviewing relevant records to demonstrate that the farm is in compliance with the applicable requirements of 21 C.F.R. Section 112 Subparts A, O, Q, and R; and

(2) in the event of an active investigation of a foodborne illness outbreak that is directly linked to the farm, in which case the Commissioner, or any authorized agent of the Commissioner, is authorized to inspect the farm and secure samples or specimens directly relevant to the active investigation.

Section 39‑26‑70. If the Commissioner, or any authorized agent of the Commissioner, believes 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. Part 112, this chapter, or regulations of the department promulgated pursuant to Section 39‑26‑50, the Commissioner, or any authorized agent of the Commissioner, is authorized to seize or take possession of the covered produce.

Section 39‑26‑80. (A) If the Commissioner, or any authorized agent of the Commissioner, believes 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. Part 112, this chapter, or regulations of the department promulgated pursuant to Section 39‑26‑50, the Commissioner, or any authorized agent of the Commissioner, is authorized to condemn, destroy, or require the destruction of the covered produce.

(B) Prior to condemning, destroying, or requiring the destruction of covered produce pursuant to subsection (A), the Commissioner, or any authorized agent of the Commissioner, shall seize the covered produce in accordance with Section 39‑26‑70 and either:

(1) secure the written consent to the condemnation or destruction, on a form to be provided by the Commissioner, or any authorized agent of the Commissioner, from the person from whom the covered produce was seized; or

(2) make complaint before a magistrate pursuant to Section 39‑26‑90.

Section 39‑26‑90. If unable to secure the written consent to the condemnation or destruction in accordance with Section 39‑26‑80(B)(1), the Commissioner, or any authorized agent of the Commissioner, shall make a complaint before a magistrate, or other officer authorized to issue summons, having jurisdiction where the covered produce was seized. The magistrate or other officer shall issue his summons to the person from whom the covered produce was seized, directing him to appear before an appropriate court in the jurisdiction not less than six nor more than twelve days from the date of issuing the summons and show cause why the covered produce should not be condemned or destroyed. If the person from whom the covered produce was seized cannot be found, then the summons must be served upon the person then in possession of the covered produce. The summons must be served at least six days before the time of appearance as directed herein by the appropriate court. If the person from whom the covered produce was seized cannot be found, no one can be found in possession of the covered produce, and the defendant does not appear on the return day, an appropriate court shall proceed in the cause in the same manner as where a writ of attachment is returned not personally served upon any of the defendants and none of the defendants appears upon the return day.

Section 39‑26‑100. (A) Unless otherwise shown or if the covered produce to be condemned or destroyed pursuant to Section 39‑26‑80 is found upon trial to be in violation of any provision of 21 C.F.R. Part 112, this chapter, or regulations of the department promulgated pursuant to Section 39‑26‑50, it is the duty of the circuit court to render judgment that the covered produce be forfeited to the department and that the goods be destroyed or sold by the Commissioner, or any authorized agent of the Commissioner, for any purpose other than to be used for human consumption. The mode of procedure before the circuit court must be the same, as near as may be in civil proceedings. Either party may appeal to the South Carolina Court of Appeals as appeals are taken from the circuit court, but it is not necessary for the State of South Carolina or the department to give any appeal bond.

(B) The proceeds arising from any sale ordered pursuant to subsection (A) must be disposed of in accordance with this chapter, or regulations of the department promulgated pursuant to Section 39‑26‑50.

Section 39‑26‑110. No covered farm or farm eligible for a qualified exemption in accordance with 21 C.F.R. Section 112.5 shall violate any provision of 21 C.F.R. Part 112 or any provision of a regulation of the department promulgated pursuant to Section 39‑26‑50, that is applicable to that covered farm or qualified exempt farm.

Section 39‑26‑120. No person shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the Commissioner, or any authorized agent of the Commissioner, an inspector, or any other department personnel in the performance of his duty in connection with this chapter.

Section 39‑26‑130. A person who willfully violates the provisions of this chapter is subject to a civil penalty of up to one thousand dollars for each violation as determined by the department. Any person willfully violating this section also is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than thirty days. The criminal penalty does not apply for violations of state regulations.

Section 39‑26‑140. This chapter is repealed upon the effective date of the repeal of 21 C.F.R. Part 112.

Section 39‑26‑150. Any exemption to the requirements of 21 C.F.R. Part 112, as established in 21 C.F.R. Part 112, also applies to this chapter*.*

Section 39‑26‑160. This chapter is repealed if the federal government declines to award funds to the State of South Carolina to implement the provisions of federal law embodied in this chapter or the federal funds awarded are exhausted, as determined by the Commissioner, whichever is later.

Section 39‑26‑170. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑