

Enrolled
House Bill 2336

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Agriculture, Natural Resources and Rural Communities)

CHAPTER

AN ACT

Relating to agricultural products.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in this section and sections 2 and 3 of this 2011 Act:

(1) **“Acidic foods”** means bottled, packaged or canned foods that:

- (a) Have a natural pH level of 4.6 or less;
- (b) Are lacto-fermented; or

(c) Have acidity and water activity levels that meet the acidity and water activity standards of acidified foods as defined in 21 C.F.R. 114.3.

(2) **“Agricultural producer”** means a farmer, rancher or other person primarily responsible for the growing, raising and harvesting of agricultural products to a point at which the products are ready for direct sale.

(3) **“Commingled”** means that the agricultural products of more than one agricultural producer are mixed, pooled or otherwise combined prior to the sale of the products.

(4) **“Consignment”** means an agreement under which an agricultural producer sells to the retail purchaser the agricultural products of another agricultural producer that is located in the same county as the agricultural producer, or in any county adjoining a county in which the agricultural producer is located, without representing that the products were grown or raised by the seller.

(5) **“Farm direct marketer”** means an agricultural producer that sells directly to the retail purchaser the agricultural products grown, raised and harvested by that producer.

(6) **“Producer-processed products”** means foods:

- (a) For which the principal ingredients are agricultural products grown, raised and harvested by the same agricultural producer that bottles, packages or cans the food; and
- (b) For which ingredients other than principal ingredients are limited to herbs, spices, salt, vinegar, pectin, lemon or lime juice, honey and sugar.

SECTION 2. (1)(a) Except as provided in subsection (7) of this section, the sale, or exposure or offering for sale, of agricultural products described in subsections (2) and (3) of this section by a farm direct marketer does not make the space used by the farm direct marketer subject to ORS 585.010 to 585.220 or 616.695 to 616.755.

(b) Except as provided in subsection (7) of this section, the sale, or exposure or offering for sale, of agricultural products described in subsections (2) and (3) of this section by a farm direct marketer does not make the farm direct marketer or a consigning agricultural producer subject to ORS 585.010 to 585.220 or 616.695 to 616.755. Except as provided in subsection

(7) of this section, the storage or preparation of agricultural products identified for sale by a farm direct marketer does not make the farm direct marketer subject to ORS 585.010 to 585.220 or 616.695 to 616.755.

(2) Subsection (1) of this section applies to farm direct marketer sales of the following types of agricultural products:

(a) Fresh fruit, vegetables and herbs.

(b) Fruit, vegetables and herbs, if those items are cured or dried by the agricultural producer as part of routine post-harvest handling.

(c) Dried fruits, vegetables and herbs for which drying is not part of routine post-harvest handling, if:

(A) The principal ingredients are grown by the agricultural producer; and

(B) The product is labeled with a list of ingredients and the name and address of the agricultural producer.

(d) Shelled nuts and unshelled nuts, if those items are cured or dried by the agricultural producer as part of routine post-harvest handling.

(e) Fruit-based syrups, preserves, jams, fruits and vegetables, if those items are:

(A) Producer-processed products;

(B) Acidic foods;

(C) Labeled with a list of ingredients and the name and address of the agricultural producer; and

(D) Bottled, packaged or canned by an agricultural producer that during the preceding calendar year had annual sales of fruit-based syrups, preserves and jams, fruits and vegetables described in subparagraphs (A) to (C) of this paragraph that in total did not exceed \$20,000 or a higher limit established by State Department of Agriculture rule under section 3 of this 2011 Act.

(f) Shell eggs.

(g) Honey, if not combined with other food ingredients.

(h) Whole, hulled, crushed or ground grains, legumes and seeds, if of a type customarily cooked before consumption.

(i) Parched or roasted grains, if of a type customarily cooked before consumption.

(j) Popcorn, nuts, peppers and corn on the cob, if those items are roasted at the place of purchase by the agricultural producer after purchase and not sold for immediate consumption.

(k) Products identified by the department by rule.

(3) Subsection (1) of this section applies to consignment sales of the following types of agricultural products:

(a) Fresh fruits, vegetables and herbs.

(b) Fruit, vegetables and herbs, if those items are cured or dried by the agricultural producer as part of routine post-harvest handling.

(c) Unshelled nuts that are cured or dried by the agricultural producer as part of routine post-harvest handling.

(d) Subject to ORS 632.715, shell eggs.

(e) Honey, if not combined with other food ingredients.

(f) Products identified by the department by rule.

(4) Subsection (1) of this section does not apply to foods that have been commingled.

(5) Title to agricultural products sold on consignment remains with the consigning agricultural producer until the products are sold to consumers. Agricultural products sold on consignment must be clearly and conspicuously labeled with the name and business address of the consigning agricultural producer.

(6)(a) In addition to any other required labeling, agricultural products described in subsections (2)(e) to (i) or (3)(d) or (e) of this section shall bear on the label a statement informing consumers that the product is not prepared in an inspected food establishment.

Except as provided in paragraph (b) of this subsection, the required wording for the label statement is: "This product is homemade and is not prepared in an inspected food establishment."

(b) The department may adopt rules specifying alternative wording for the label statement required under paragraph (a) of this subsection to the extent that the alternative wording is necessary in order to comply with federal requirements.

(7) The department may require that a farm direct marketer or the space used by the farm direct marketer be licensed under ORS 585.010 to 585.220 or 616.695 to 616.755, if the farm direct marketer or the person in control of the space used by the farm direct marketer refuses to comply with a department rule adopted under ORS 616.700 or section 3 of this 2011 Act for keeping the space used by the farm direct marketer in a clean, healthful and sanitary condition or for ensuring the condition and safety of the food the farm direct marketer provides to retail purchasers.

SECTION 3. (1) The State Department of Agriculture may adopt rules for the administration and enforcement of section 2 of this 2011 Act.

(2) The department may adopt rules increasing the food sales limit described in section 2 (2)(e)(D) of this 2011 Act by an amount that reflects changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as reported by the Bureau of Labor Statistics of the United States Department of Labor. The State Department of Agriculture may not adopt rules to decrease the food sales limit described in section 2 (2)(e)(D) of this 2011 Act or to decrease an acidified food sales limit previously established by the department by rule.

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Received by Governor:

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Ramona Kenady Line, Chief Clerk of House

Approved:

.....M.,....., 2011

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