

CHAPTER 202

[Senate Bill No. 6164]

FOOD PRODUCTS TRANSPORTATION

AN ACT Relating to the transportation of food products; amending RCW 69.04.810; adding new sections to chapter 69.04 RCW; creating a new section; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The definitions in this section apply throughout sections 1 through 7 of this act:

(1) "Food" means: (a) Any article used for food or drink for humans or used as a component of such an article; or (b) a food grade substance.

(2) "Food grade substance" means a substance which satisfies the requirements of the federal food, drug, and cosmetic act, meat inspection act, and poultry products act and rules promulgated thereunder as materials approved by the federal food and drug administration, United States department of agriculture, or United States environmental protection agency for use: (a) As an additive in food or drink for human consumption, (b) in sanitizing food or drink for human consumption, (c) in processing food or drink for human consumption, or (d) in maintaining equipment with food contact surfaces during which maintenance the substance is expected to come in contact with food or drink for human consumption.

(3) "In bulk form" means a food or substance which is not packaged or contained by anything other than the cargo carrying portion of the vehicle or vessel.

(4) "Vehicle or vessel" means a commercial vehicle or commercial vessel which has a gross weight of more than ten thousand pounds, is used to transport property, and is a motor vehicle, motor truck, trailer, railroad car, or vessel.

NEW SECTION. Sec. 2. (1) Except as provided in sections 4 and 6 of this act, no person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel that has been used for transporting in bulk form a cargo other than food.

(2) No person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel unless the vehicle or vessel is marked "Food or Food Compatible Only" in conformance with rules adopted under section 3 of this act.

(3) No person may transport in intrastate commerce a substance in bulk form other than food or a substance on a list adopted under section 3 of this act in the cargo carrying portion of a vehicle or vessel marked "Food or Food Compatible Only."

(4) This section does not apply to the transportation of a raw agricultural commodity from the point of its production to the facility at which the commodity is first processed or packaged.

NEW SECTION. Sec. 3. (1) The director of agriculture and the secretary of health shall jointly adopt by rule:

(a) A list of food compatible substances other than food that may be transported in bulk form as cargo in a vehicle or vessel that is also used, on separate occasions, to transport food in bulk form as cargo. The list shall contain those substances that the director and the secretary determine will not pose a health hazard if food in bulk form were transported in the vehicle or vessel after it transported the substance. In making this determination, the director and the secretary shall assume that some residual portion of the substance will remain in the cargo carrying portion of the vehicle or vessel when the food is transported;

(b) The procedures to be used to clean the vehicle or vessel after transporting the substance and prior to transporting the food;

(c) The form of the certificates to be used under section 4 of this act; and

(d) Requirements for the "Food or Food Compatible Only" marking which must be borne by a vehicle or vessel under section 2 or 4 of this act.

(2) In developing and adopting rules under this section and section 5 of this act, the director and the secretary shall consult with the secretary of transportation, the chief of the state patrol, the chair of the utilities and transportation commission, and representatives of the vehicle and vessel transportation industries, food processors, and agricultural commodity organizations.

NEW SECTION. Sec. 4. Transporting food as cargo in bulk form in intrastate commerce in a vehicle or vessel that has previously been used to transport in bulk form a cargo other than food does not constitute a violation of section 2 of this act if:

(1) The cargo is a food compatible substance contained on the list adopted by the director and secretary under section 3 of this act;

(2) The vehicle or vessel has been cleaned as required by the rules adopted under section 3 of this act;

(3) The vehicle or vessel is marked "Food or Food Compatible" in conformance with rules adopted under section 3 of this act; and

(4) A certificate accompanies the vehicle or vessel when the food is transported by other than railroad car which attests, under penalty of perjury, to the fact that the vehicle or vessel has been cleaned as required by those rules and is dated and signed by the party responsible for that cleaning. Such certificates shall be maintained by the owner of the vehicle or vessel for not less than three years and shall be available for inspection concerning compliance with sections 1 through 7 of this act. The director of agriculture and the secretary of health shall jointly adopt rules requiring such certificates for the transportation of food under this section by railroad car and requiring such certificates to be available for inspection concerning

compliance with sections 1 through 7 of this act. Forms for the certificates shall be provided by the department of agriculture.

NEW SECTION. Sec. 5. The director of agriculture and the secretary of health shall jointly adopt by rule:

(1) A list of substances which, if transported in bulk form in the cargo carrying portion of a vehicle or vessel, render the vehicle or vessel permanently unsuitable for use in transporting food in bulk form because the prospect that any residue might be present in the vehicle or vessel when it transports food poses a hazard to the public health; and

(2) Procedures to be used to rehabilitate a vehicle or vessel that has been used to transport a substance other than a substance contained on a list adopted under section 3 of this act or under subsection (1) of this section. The procedures shall ensure that transporting food in the cargo carrying portion of the vehicle or vessel after its rehabilitation will not pose a health hazard.

NEW SECTION. Sec. 6. A vehicle or vessel that has been used to transport a substance other than food or a substance contained on the lists adopted by the director and secretary under sections 3 and 5 of this act, may be rehabilitated and used to transport food only if:

(1) The vehicle or vessel is rehabilitated in accordance with the procedures established by the director and secretary in section 5 of this act;

(2) The vehicle or vessel is inspected by the department of agriculture, and the department determines that transporting food in the cargo carrying portion of the vehicle or vessel will not pose a health hazard;

(3) A certificate accompanies the vehicle or vessel certifying that the vehicle or vessel has been rehabilitated and inspected and is authorized to transport food, and is dated and signed by the director of agriculture, or an authorized agent of the director. Such certificates shall be maintained for the life of the vehicle by the owner of the vehicle or vessel, and shall be available for inspection concerning compliance with sections 1 through 7 of this act. Forms for the certificates shall be provided by the department of agriculture; and

(4) The vehicle or vessel is marked as required by section 2 of this act or is marked and satisfies the requirements of section 4 of this act which are not inconsistent with the rehabilitation authorized by this section.

No vehicle or vessel that has transported in bulk form a substance contained on the list adopted under section 5 of this act qualifies for rehabilitation.

The cost of rehabilitation shall be borne by the vehicle or vessel owner. The director shall determine a reasonable fee to be imposed on the vehicle or vessel owner based on inspection, laboratory, and administrative costs incurred by the department in rehabilitating the vehicle or vessel.

NEW SECTION. Sec. 7. A person who knowingly transports a cargo in violation of section 2 of this act or who knowingly causes a cargo to be transported in violation of section 2 of this act is subject to a civil penalty, as determined by the director of agriculture, for each such violation as follows:

(1) For a person's first violation or first violation in a period of five years, not more than five thousand dollars;

(2) For a person's second or subsequent violation within five years of a previous violation, not more than ten thousand dollars.

The director shall impose the penalty by an order which is subject to the provisions of chapter 34.05 RCW.

The director shall, wherever practical, secure the assistance of other public agencies, including but not limited to the department of health, the utilities and transportation commission, and the state patrol, in identifying and investigating potential violations of section 2 of this act.

NEW SECTION. Sec. 8. The director of agriculture and the secretary of health shall examine, in consultation with an industry advisory committee, the potential hazards that may be posed to the public health by the transportation of food in other than bulk form in intrastate commerce. The director and secretary shall report the findings to the legislature by January 1, 1992, concerning the extent of the potential hazards, the frequency of mixed shipments of packaged food and nonfood items, the manner in which mixed shipments of packaged food and nonfood items are transported, and the incidents of food contamination in Washington state within the past five years. The findings shall include recommendations, if any, for regulating the transportation of food in other than bulk form.

The director and the secretary shall establish an industry advisory committee to provide advice regarding the examination required by this section. The director and the secretary shall jointly appoint not less than nine persons to the committee. These persons shall be representatives from the manufacturing, processing, wholesaling, distributing, and retailing sectors of the food industry.

Sec. 9. Section 99, chapter 257, Laws of 1945 and RCW 69.04.810 are each amended to read as follows:

For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the

nature or kind of food, drug, device, or cosmetic to which such request relates: PROVIDED, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: PROVIDED FURTHER, That except for violations of section 2 of this act, penalties levied under section 7 of this act, the requirements of sections 1 through 7 of this act, and the requirements of this section, carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers.

NEW SECTION. Sec. 10. Sections 1 through 7 of this act are each added to chapter 69.04 RCW.

Passed the Senate March 6, 1990.

Passed the House February 28, 1990.

Approved by the Governor March 27, 1990.

Filed in Office of Secretary of State March 27, 1990.

CHAPTER 203

[Substitute Senate Bill No. 5340]

ESCROW AGENTS DISBURSEMENTS

AN ACT Relating to depository checks; amending RCW 18.44.070; and adding a new section to chapter 62A.3 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 7, chapter 153, Laws of 1965 as last amended by section 1, chapter 178, Laws of 1988 and RCW 18.44.070 are each amended to read as follows:

Every certificated escrow agent shall keep adequate records of all transactions handled by or through the agent including itemization of all receipts and disbursements of each transaction, which records shall be open to inspection by the director or the director's authorized representatives.

Every certificated agent shall keep a separate escrow fund account in a recognized Washington state depository authorized to receive funds, in which shall be kept separate and apart and segregated from the agent's own funds, all funds or moneys of clients which are being held by the agent pending the closing of a transaction and such funds shall be deposited not later than the first banking day following receipt thereof.

An escrow agent, unless exempted by RCW 18.44.020(2), shall not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. An escrow agent shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that