

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1385

Chapter 337, Laws of 2019

66th Legislature
2019 Regular Session

UNITED STATES FOOD AND DRUG ADMINISTRATION NONPUBLIC INFORMATION--
PUBLIC RECORDS ACT EXEMPTION

EFFECTIVE DATE: July 28, 2019

Passed by the House March 1, 2019
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 25, 2019
Yeas 48 Nays 0

CYRUS HABIB

President of the Senate

Approved May 9, 2019 2:48 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1385** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 13, 2019

**Secretary of State
State of Washington**

HOUSE BILL 1385

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Representatives Springer, Kretz, Blake, Chandler, Gregerson, and Walsh; by request of Department of Agriculture

1 AN ACT Relating to exempting United States food and drug
2 administration nonpublic information from disclosure under the state
3 public disclosure act; reenacting and amending RCW 42.56.380; adding
4 a new section to chapter 15.130 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the United
7 States food and drug administration has stopped sharing nonpublic
8 information with the Washington state department of agriculture and
9 has indicated that unless the state can protect nonpublic food and
10 drug administration information from disclosure consistent with
11 federal law, the food and drug administration may discontinue future
12 contracts and cooperative agreements with the Washington state
13 department of agriculture for food safety, feed safety, rapid
14 response, and laboratory programs. The legislature further finds that
15 the loss of these contracts and cooperative agreements would result
16 in significant reductions in state food safety funding, staffing, and
17 infrastructure. The loss of certain nonpublic information diminishes
18 the department of agriculture's ability to respond to food-related
19 public health emergencies and degrades the department of
20 agriculture's capacity to support the movement of state agricultural
21 products in interstate and international commerce. The legislature

1 therefore intends to exempt United States food and drug
2 administration nonpublic information from disclosure under the state
3 public disclosure act when the department of agriculture obtains such
4 information or records in the course of a federal contract or
5 commissioning agreement entered into under the authority of chapter
6 15.130 RCW, the food safety and security act.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 15.130
8 RCW under the subchapter heading "general provisions" to read as
9 follows:

10 The following information or records obtained from the federal
11 food and drug administration pursuant to a contract or commissioning
12 agreement is exempt from public inspection and copying under chapter
13 42.56 RCW to the extent it is exempt from disclosure under 5 U.S.C.
14 Sec. 552, the federal freedom of information act: Trade secrets;
15 confidential commercial information; information under the federal
16 deliberative process privilege; information compiled for law
17 enforcement purposes; and information expressly required to be kept
18 confidential by other federal laws.

19 **Sec. 3.** RCW 42.56.380 and 2018 c 170 s 1 and 2018 c 106 s 11 are
20 each reenacted and amended to read as follows:

21 The following information relating to agriculture and livestock
22 is exempt from disclosure under this chapter:

- 23 (1) Business-related information under RCW 15.86.110;
24 (2) Information provided under RCW 15.54.362;
25 (3) Production or sales records required to determine assessment
26 levels and actual assessment payments to commodity boards and
27 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,
28 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required
29 by the department of agriculture to administer these chapters or the
30 department's programs;
31 (4) Consignment information contained on phytosanitary
32 certificates issued by the department of agriculture under chapters
33 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates
34 issued under 7 C.F.R. 353 through cooperative agreements with the
35 animal and plant health inspection service, United States department
36 of agriculture, or on applications for phytosanitary certification
37 required by the department of agriculture;

1 (5) Financial and commercial information and records supplied by
2 persons (a) to the department of agriculture for the purpose of
3 conducting a referendum for the potential establishment of a
4 commodity board or commission; or (b) to the department of
5 agriculture or commodity boards or commissions formed under chapter
6 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100,
7 15.89, or 16.67 RCW with respect to domestic or export marketing
8 activities or individual producer's production information;

9 (6) Information obtained regarding the purchases, sales, or
10 production of an individual American ginseng grower or dealer, except
11 for providing reports to the United States fish and wildlife service
12 under RCW 15.19.080;

13 (7) Information collected regarding packers and shippers of
14 fruits and vegetables for the issuance of certificates of compliance
15 under RCW 15.17.140(2) and 15.17.143;

16 (8) Financial statements obtained under RCW 16.65.030(1)(d) for
17 the purposes of determining whether or not the applicant meets the
18 minimum net worth requirements to construct or operate a public
19 livestock market;

20 (9) Information submitted by an individual or business to the
21 department of agriculture under the requirements of chapters 16.36,
22 16.57, and 43.23 RCW for the purpose of herd inventory management for
23 animal disease traceability. This information includes animal
24 ownership, numbers of animals, locations, contact information,
25 movements of livestock, financial information, the purchase and sale
26 of livestock, account numbers or unique identifiers issued by
27 government to private entities, and information related to livestock
28 disease or injury that would identify an animal, a person, or
29 location. Disclosure to local, state, and federal officials is not
30 public disclosure. This exemption does not affect the disclosure of
31 information used in reportable animal health investigations under
32 chapter 16.36 RCW once they are complete;

33 (10) Results of testing for animal diseases from samples
34 submitted by or at the direction of the animal owner or his or her
35 designee that can be identified to a particular business or
36 individual;

37 (11) Records of international livestock importation that can be
38 identified to a particular animal, business, or individual received
39 from the United States department of homeland security or the United

1 States department of agriculture that are not disclosable by the
2 federal agency under federal law including 5 U.S.C. Sec. 552;

3 (12) Records related to the entry of prohibited agricultural
4 products imported into Washington state or that had Washington state
5 as a final destination received from the United States department of
6 homeland security or the United States department of agriculture that
7 are not disclosable by the federal agency under federal law including
8 5 U.S.C. Sec. 552; (~~and~~)

9 (13) Information obtained from the federal government or others
10 under contract with the federal government or records obtained by the
11 department of agriculture, in accordance with RCW 15.135.100; (~~and~~)

12 (14) Hop grower lot numbers and laboratory results associated
13 with the hop grower lot numbers where this information is used by the
14 department of agriculture to issue export documents; and

15 (15) Information or records obtained pursuant to a food and drug
16 administration contract or commissioning agreement, in accordance
17 with section 2 of this act.

Passed by the House March 1, 2019.

Passed by the Senate April 25, 2019.

Approved by the Governor May 9, 2019.

Filed in Office of Secretary of State May 13, 2019.

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