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The 2019 Florida Statutes

Title XXXIII
REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS

Chapter 500
FOOD PRODUCTS

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CHAPTER 500
FOOD PRODUCTS

500.01 Florida Food Safety Act; short title.—This chapter may be cited as the "Florida Food Safety Act."

History.—ss. 1, 26, ch. 19656, 1939; CGL 1940 Supp. 4151(664); s. 2, ch. 82-225; s. 1, ch. 87-388; s. 2, ch. 94-180.

500.02 Purpose of chapter.—This chapter is intended to:

(1) Safeguard the public health and promote the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food;

(2) Provide legislation which shall be uniform, as provided in this chapter, and administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the Federal Food, Drug, and Cosmetic Act; the Agriculture Marketing Act of 1946; and likewise uniform with the Federal Trade Commission Act, to the extent that it expressly prohibits the false advertisement of food; and

(3) Promote thereby uniformity of such state and federal laws and their administration and enforcement throughout the United States and in the several states.

History.—s. 1, ch. 19656, 1939; CGL 1940 Supp. 4151(665); s. 3, ch. 82-225; s. 2, ch. 87-388.

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(a) "Advertisement" means any representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food.

(b) "Approved laboratory" or "certified laboratory" means a laboratory of the department, a commercial laboratory certified by the Department of Health, or a competent commercial laboratory certified by an agency of another state or the United States Environmental Protection Agency to perform analyses of drinking water in accordance with the water quality testing procedures adopted by the United States Environmental Protection Agency.

(c) "Approved source" as it relates to water means a source of water, whether it is a spring, artesian well, drilled well, municipal water supply, or any other source, that complies with the Federal Safe Drinking Water Act, Pub. L. No. 93-523, as amended.

(d) "Bottled water" means a beverage, as described in 21 C.F.R. part 165 (2006), that is processed in compliance with 21 C.F.R. part 129 (2006).

(e) "Bottled water plant" means a food establishment in which bottled water is prepared for sale.

(f) "Color" includes black, white, and intermediate grays.

(g)1. "Color additive" means a material which:

a. Is a dye pigment, or other substance, made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or

b. When added or applied to a food, is capable, alone or through reaction with another substance, of imparting color thereto;

except that such term does not include any material that is exempt under the federal act.

2. Nothing in subparagraph 1. shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(h) "Contaminated with filth" applies to any food not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, all foreign or injurious contamination.

(i) "Convenience store" means a business that is engaged primarily in the retail sale of groceries or motor fuels or special fuels and may offer food services to the public. Businesses providing motor fuel or special fuel to the public which also offer groceries or food service are included in the definition of a convenience store.

(j) "Cottage food operation" means a natural person who produces or packages cottage food products at his or her residence and sells such products in accordance with s. 500.80.

(k) "Cottage food product" means food that is not a potentially hazardous food as defined by department rule which is sold by a cottage food operation in accordance with s. 500.80.

(l) "Department" means the Department of Agriculture and Consumer Services.

(m) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

(n) "Food" includes:

1. Articles used for food or drink for human consumption;

2. Chewing gum;

3. Articles used for components of any such article;

4. Articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims; and

5. Dietary supplements as defined in 21 U.S.C. s. 321(ff)(1) and (2).

The term includes any raw, cooked, or processed edible substance; ice; any beverage; or any ingredient used, intended for use, or sold for human consumption.

(o) "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, transporting, or holding food and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

1. A pesticide chemical in or on a raw agricultural commodity;

2. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

3. A color additive; or

4. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. ss. 451 et seq.); or the Meat Inspection Act of March 4, 1967 (34 Stat. 1260), as amended and extended (21 U.S.C. ss. 71 et seq.).

(p) "Food establishment" means a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include a business or activity that is regulated under s. 413.051, s. 500.80, chapter 509, or chapter 601. The term includes tomato packinghouses and repackers but does not include any other establishments that pack fruits and vegetables in their raw or natural states, including those fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled, natural form before they are marketed.

(q) "Food outlet" means any grocery store; convenience store; minor food outlet; meat, poultry, or fish and related aquatic food market; fruit or vegetable market; food warehouse; refrigerated storage facility; freezer locker; salvage food facility; or any other similar place storing or offering food for sale.

(r) "Food service establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes delicatessens that offer prepared food in individual service portions. The term does not include schools, institutions, fraternal organizations, private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, cottage food operations, and supply vehicles, nor does the term include a research and development test kitchen limited to the use of employees and which is not open to the general public.

(s) "Immediate container" does not include package liners.

(t) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there is any, of the retail package of such article or is easily legible through the outside container or wrapper.

(u) "Labeling" means all labels and other written, printed, or graphic matters:

1. Upon an article or any of its containers or wrappers; or

2. Accompanying such article.

(v) "Minor food outlet" means any retail establishment that sells groceries and may offer food service to the public, but neither business activity is a major retail function based on allocated space or gross sales.

(w) "Natural water" means bottled spring water, artesian well water, or well water that has not been altered with water from another source or that has not been modified by mineral addition or deletion, except for alteration that is necessary to treat the water through ozonation or an equivalent disinfection and filtration process.

(x) "Packaged ice" means ice that is enclosed in a container and is offered for sale for human consumption or for other use by the consumer. The term does not include ice that is manufactured by any business licensed under chapter 381 or chapter 509.

(y) "Packaged ice plant" means a food establishment in which packaged ice is manufactured or processed.

(z) "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the Florida

Pesticide Law, part I of chapter 487, and which is used in the production, storage, or transportation of raw agricultural commodities.

(aa) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(bb) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; or food and beverage vending machines.

(cc) "Vehicle" means a mode of transportation or mobile carrier used to transport food from one location to another, including, but not limited to, carts, cycles, vans, trucks, cars, trains and railway transport, and aircraft and watercraft transport.

(2) For the purpose of this chapter:

(a) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, or sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(b) If an article is a food, and it is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, or sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain ingredients or other facts concerning ingredients in the food, which facts are of material interest to consumers.

(3) For the purpose of this chapter, the selling of food includes the manufacture, production, processing, packing, exposure, offer, possession, and holding of any article of food for sale; the sale, dispensing, and giving of any article of food; and the supplying or applying of food in the conduct of any food establishment.

History.—s. 2, ch. 19656, 1939; CGL 1940 Supp. 4151(666); s. 7, ch. 22858, 1945; s. 1, ch. 59-302; s. 1, ch. 63-259; s. 1, ch. 67-345; ss. 14, 19, 35, ch. 69-106; s. 1, ch. 71-261; s. 186, ch. 71-377; s. 134, ch. 73-333; s. 415, ch. 77-147; s. 4, ch. 82-225; s. 119, ch. 83-218; s. 3, ch. 87-388; s. 8, ch. 92-180; s. 3, ch. 94-180; s. 2, ch. 95-314; s. 16, ch. 97-220; s. 20, ch. 2000-364; s. 54, ch. 2004-64; s. 2, ch. 2007-67; s. 1, ch. 2010-25; s. 19, ch. 2011-205; s. 32, ch. 2014-150; s. 4, ch. 2016-61.

500.032 Declaration of policy and cooperation among departments.—

(1) The department is charged with the administration and enforcement of this chapter in order to prevent fraud, harm, adulteration, misbranding, or false advertising in the preparation, manufacture, or sale of articles of food. It is further charged to enforce the provisions of this chapter relating to the production, manufacture, transportation, and sale of food, as well as articles entering into, and intended for use as ingredients in the preparation of, food.

(2) The specific delegation of authority granted in subsection (1) is to specifically place responsibility and should not be construed so as to cause respective agencies to not cooperate each with the other by interchange of information and copies of reports when deemed advisable.

History.—s. 17, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 417, ch. 77-147; s. 5, ch. 82-225; s. 4, ch. 87-388; s. 4, ch. 94-180.

Note.—Former s. 500.45.

500.033 Florida Food Safety and Food Defense Advisory Council.—

(1) There is created the Florida Food Safety and Food Defense Advisory Council for the purpose of serving as a forum for presenting, investigating, and evaluating issues of current importance to the assurance of a safe and secure food supply to the citizens of Florida. The Florida Food Safety and Food Defense Advisory Council shall consist of, but not be limited to: the Commissioner of Agriculture or his or her designee; the State Surgeon General or his or her designee; the Secretary of Business and Professional Regulation or his or her designee; the person responsible for domestic security with the Department of Law Enforcement; members representing the production, processing, distribution, and sale of foods; consumers or members of citizens groups; representatives of food industry groups; scientists or other experts in aspects of food safety from state universities; representatives from local, state, and federal agencies that are charged with responsibilities for food safety or food defense; the chairs of the Agriculture Committees of the Senate and the House of Representatives or their designees; and the chairs of the committees of the Senate and the House of Representatives with jurisdictional oversight of home defense issues or their designees. The Commissioner of Agriculture shall appoint the remaining members. The council shall make periodic reports to the Department of Agriculture and Consumer Services concerning findings and recommendations in the area of food safety and food defense.

(2) The council shall consider the development of appropriate advice or recommendations on food safety or food defense issues. In the discharge of their duties, the council members may receive for review confidential data exempt from the provisions of s. 119.07(1); however, it is unlawful for any member of the council to use the data for his or her advantage or reveal the data to the general public.

History.—s. 1, ch. 2003-255; s. 6, ch. 2006-289; s. 108, ch. 2008-6.

500.04 Prohibited acts.—The following acts and the causing thereof within the state are prohibited:

(1) The manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded.

(2) The adulteration or misbranding of any food.

(3) The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of s. 500.12.

(5) The dissemination of any false advertisement.

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by s. 500.147.

(7) The giving of a guaranty or undertaking with respect to a food, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in this state from whom she or he received in good faith the food.

(8) The removal, disposal, or use of a detained or embargoed article or food processing equipment in violation of s. 500.172.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, or the doing of any other act with respect to a food, if such act is done while such article is held for sale and such act results in such article being misbranded.

(10) Forging; counterfeiting; simulating; falsely representing; or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling information, whether in coded form or otherwise, identifying the article's expiration date or similar date, date of manufacture, or manufacturing or distribution lot or batch, if such act is done while such article is held for sale.

History.—s. 3, ch. 19656, 1939; CGL 1940 Supp. 4151(667); s. 2, ch. 57-167; s. 1, ch. 70-994; s. 6, ch. 82-225; s. 120, ch. 83-218; s. 5, ch. 87-388; s. 9, ch. 92-180; s. 5, ch. 94-180; s. 602, ch. 97-103; s. 17, ch. 97-220.

500.09 Rulemaking; analytical work.—

(1) When in the judgment of the department such action will promote safety, honesty, and fair dealing in the interest of consumers, the department shall adopt rules for:

(a) Providing food safety information, or requiring that food safety information be provided, to notify consumers of potential health and safety concerns involving the preparation or consumption of certain foods. The information must be based on sound scientific evidence.

(b) Fixing and establishing for any food or class of food under its common or usual name a reasonable definition and standard of identity, a reasonable standard of quality or fill of container, or any reasonable sanitary rules governing the manufacture, processing, or handling of food products. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the varieties of fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting safety, honesty, and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so adopted must conform to the definitions and standards adopted by the Secretary of the United States Department of Health and Human Services under authority conferred by 21 U.S.C. s. 341 and those definitions and standards adopted by the Secretary of the United States Department of Agriculture under the authority conferred by the Agriculture Marketing Act of 1946.

(2) The department may adopt rules exempting from any labeling requirements of this chapter:

(a) Small open containers of fresh fruits and fresh vegetables.

(b) Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment.

(3) The department may adopt rules necessary for the efficient enforcement of this chapter. Such rules must be consistent with those adopted under the federal act in regard to food and, to this end, the department may adopt by reference those rules and the current edition of the model Food Code issued by the Food and Drug Administration and Public Health Service of the United States Department of Health and Human Services, when applicable and practicable.

(4) The department may adopt rules relating to food safety and consumer protection requirements for the manufacturing, processing, packing, holding, or preparing of food; the selling of food at

wholesale or retail; or the transporting of food by places of business not regulated under chapter 381 or chapter 509.

(5) The analytical work necessary for the proper enforcement of this law and rules adopted by the department in regard to food shall be done by the department or under the direction of the department and is prima facie evidence in any court in this state.

(6) The department may perform laboratory services relating to, or having potential impact on, food safety or the compliance of food with the requirements of this chapter for any person or public agency.

(7) The department may establish and collect reasonable fees for laboratory services performed pursuant to subsection (6) or to recover the cost of each reinspection of a food establishment when the reinspection is conducted for the purpose of verifying compliance with the provisions of this chapter or rules promulgated thereunder. Such fees shall be deposited in the department's General Inspection Trust Fund and shall be used solely for the recovery of costs for the services provided.

(8) The department may adopt rules necessary for the sanitary manufacture, processing, or handling of food, except for those governing the design, construction, erection, alteration, modification, repair, or demolition of any building, structure, or facility wherein food products are manufactured, processed, handled, stored, sold, or distributed. It is the intent of the Legislature to preempt those functions to the Florida Building Commission through adoption and maintenance of the Florida Building Code. The department shall provide technical assistance to the commission in updating the construction standards of the Florida Building Code which relate to food safety. However, the department is authorized to enforce the provisions of the Florida Building Code which apply to food establishments in conducting any inspections authorized by this chapter.

History.—s. 9, ch. 19656, 1939; CGL 1940 Supp. 4151(672); ss. 14, 35, ch. 69-106; s. 6, ch. 87-388; s. 10, ch. 92-180; s. 6, ch. 94-180; s. 4, ch. 98-396; s. 44, ch. 2000-141; s. 34, ch. 2001-186; s. 10, ch. 2001-279; s. 3, ch. 2001-372; s. 11, ch. 2012-190; s. 89, ch. 2013-15.

500.10 Food deemed adulterated.—A food is deemed to be adulterated:

(1)(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which is unsafe within the meaning of s. 500.13(1);

(c) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of 21 U.S.C. s. 346(a) or s. 500.13(1);

(d) If it is or it bears or contains, any food additive which is unsafe within the meaning of 21 U.S.C. s. 348 or s. 500.13(1); provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. s. 346 or s. 500.13(1), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of s. 500.13, and this paragraph, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity;

(e) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

(f) If it has been produced, prepared, packed, transported, or held under insanitary conditions whereby it may become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(g) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

(h) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(2)(a) If any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(b) If any substance has been substituted wholly or in part therefor;

(c) If damage or inferiority has been concealed in any manner; or

(d) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(3) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4 percent, harmless natural gum, and pectin; however, this subsection shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; to any confectionery by reason of its containing less than 0.5 percent by volume of alcohol derived solely from the use of flavoring extracts; or to any candy by reason of its containing more than 0.5 percent but less than 5 percent by volume of alcohol derived from any source, if such candy:

(a) Is not sold to persons under 21 years of age;

(b) Is labeled with the following statement written in conspicuous print on the principal display panel of the package, or if sold in individual units, in a conspicuous manner adjacent to the product: “This product may not be sold to anyone under 21 years of age”;

(c) Is not sold in a form containing liquid alcohol so that it constitutes an alcoholic beverage under the Beverage Law; and

(d) Is distributed directly to Florida consumers only from permanent facilities owned or controlled by the product’s manufacturer, or from a vendor licensed pursuant to chapter 565, or from a vendor approved by the Department of Business and Professional Regulation consistent with rules adopted by such department establishing standards for such vendors.

(4) If it is or bears or contains any color additive which is unsafe within the meaning of the federal act or s. 500.13.

(5) If a dietary supplement or its ingredients present a significant risk of illness or injury due to:

(a) The recommended or suggested conditions of use on the product labeling;

(b) The failure to provide conditions of use on the product labeling; or

(c) An ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant risk of illness or injury.

History.—s. 10, ch. 19656, 1939; CGL 1940 Supp. 4151(678); s. 2, ch. 63-259; s. 1, ch. 87-269; s. 7, ch. 94-180; s. 200, ch. 94-218; s. 5, ch. 2016-61.

500.11 Food deemed misbranded.—

(1) A food is deemed to be misbranded:

(a) If its labeling is false or misleading in any particular; however, corn meal shall not be considered misbranded because of its being labeled “Water Ground,” where such corn meal so labeled has been

ground on rocks having a diameter of not less than 42 inches and which revolve during the grinding of same at a speed not greater than 186 revolutions per minute.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words “imitation” and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If in package form, unless it bears a label containing:

1. The name and place of business of the manufacturer, packer, or distributor;

2. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under this subparagraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department.

(f) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by statute or by rules as provided by s. 500.09, unless:

1. It conforms to such definition and standard; and

2. Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such rules, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as:

1. A food for which a standard of quality has been prescribed by rules as provided by s. 500.09 and its quality falls below such standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard; or

2. A food for which a standard or standards of fill of container have been prescribed by rule as provided by s. 500.09 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(i) Unless its label bears:

1. The common or usual name of the food, if any; and

2. If it is fabricated from two or more ingredients, the common or usual name of each ingredient and, if the food purports to be a beverage containing vegetable or fruit juice, a statement placed with appropriate prominence on the information panel specifying the total percentage of such vegetable or fruit juice contained in the food; except that spices, flavorings, and color additives not required to be certified under 21 U.S.C. s. 379(e), other than those sold as such, may be designated as spices, flavorings, and color additives, without naming each; provided, that, to the extent that compliance with this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by rules adopted by the department.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the department.

(l) If it is a fresh fruit or vegetable or a package of honey or bee pollen not labeled in accordance with the provisions of s. 504.012 or not otherwise labeled in such a manner as to indicate to an ultimate purchaser the country of origin.

(m) If it is offered for sale and its label or labeling does not comply with the requirements of 21 U.S.C. s. 343(q) or (w) pertaining to nutrition or allergen information.

(n) If it is offered for sale and its label or labeling does not comply with the requirements of 21 U.S.C. s. 343(r) pertaining to nutritional content claims and health claims.

(o) If it is bottled water and its label bears a corporate name, brand name, or trademark containing the word “spring,” “springs,” “well,” “artesian well,” “natural,” or any derivative of those words without stating on the label the source of the water in typeface at least equal to the size of the typeface of the corporate name, brand name, or trademark, if the source of the water is different from the source indicated in the corporate name, brand name, or trademark.

(p) If it is an animal product that fails to have directly thereon or on its container the official inspection legend as required by the United States Department of Agriculture and, unrestricted by any other provision of this section, such other information as the department requires to ensure that it shall not have false or misleading labeling and that the public is informed of the manner of handling required to maintain the product in a wholesome condition.

(2) When soft drinks are offered for sale in sanitary returnable or nonreturnable containers, sealed or securely capped, impervious to contamination by leakage or contact with foreign substances, and when the trade name, net content, and declaration of artificial flavor or color, when used, appear on the principal display panel, which may be the cap, crown, lid, or side of the container of such drinks, and when the manufacturer, at least once every year and oftener when required by the department, files with the department an affidavit stating the trade names of such drinks manufactured by him or her and the territorial limits in the state within which such drinks are offered for sale, the provisions of this chapter requiring additional labeling and branding of such drinks do not apply. However, nothing in this subsection shall in any manner otherwise restrict, modify, or impair the jurisdiction and authority of the department over such drinks as food products and the conditions pertaining to the manufacture of same.

History.—s. 11, ch. 19656, 1939; CGL 1940 Supp. 4151(674); s. 1, ch. 26723, 1951; s. 1, ch. 28269, 1953; s. 30, ch. 63-572; s. 1, ch. 69-26; ss. 14, 35, ch. 69-106; s. 1, ch. 80-76; s. 1, ch. 83-14; s. 7, ch. 87-388; s. 6, ch. 92-290; s. 98, ch. 92-291; s. 8, ch. 94-180; s. 603, ch. 97-103; s. 18, ch. 97-220; s. 10, ch. 98-396; s. 6, ch. 2016-61.

500.115 Advertisement of food deemed false.—An advertisement of a food is deemed to be false if it is false or misleading in any particular.

History.—s. 19, ch. 19656, 1939; CGL 1940 Supp. 4151(682); ss. 19, 35, ch. 69-106; s. 424, ch. 77-147; s. 13, ch. 82-225.
Note.—Former s. 500.19.

500.12 Food permits; building permits.—

(1)(a) A food permit from the department is required of any person who operates a food establishment or retail food store, except:

1. Persons operating minor food outlets that sell food that is commercially prepackaged, not potentially hazardous, and not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet and no other food is sold by the minor food outlet.

2. Persons subject to continuous, onsite federal or state inspection.

3. Persons selling only legumes in the shell, either parched, roasted, or boiled.

4. Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state. Such bottles must contain a label listing the producer's name and street address, all added ingredients, the net weight or volume of the product, and a statement that reads, "This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services."

(b) Each food establishment and retail food store regulated under this chapter must apply for and receive a food permit before operation begins. An application for a food permit from the department must be accompanied by a fee in an amount determined by department rule. The department shall adopt by rule a schedule of fees to be paid by each food establishment and retail food store as a condition of issuance or renewal of a food permit. Such fees may not exceed $650 and shall be used solely for the recovery of costs for the services provided, except that the fee accompanying an application for a food permit for operating a bottled water plant may not exceed $1,000 and the fee accompanying an application for a food permit for operating a packaged ice plant may not exceed $250. The fee for operating a bottled water plant or a packaged ice plant shall be set by rule of the department. Food permits are not transferable from one person or physical location to another. Food permits must be renewed annually on or before January 1. If an application for renewal of a food permit is not received by the department within 30 days after its due date, a late fee not exceeding $100 must be paid in addition to the food permit fee before the department may issue the food permit. The moneys collected shall be deposited in the General Inspection Trust Fund.

(c) For bottled water plants:

1. Water that is transported into the state and that is bottled before or after importation into the state must be bottled, labeled, handled, and otherwise processed and sold according to the provisions of this chapter.

2. An application for a food permit for operating a bottled water plant must state the location of the bottled water plant, the source of the water, and any other information considered necessary by the department to verify compliance with the safety, quality, and labeling requirements of this chapter.

(d) For packaged ice plants:

1. Packaged ice that is transported into the state and that is packaged before or after importation into the state must be packaged, labeled, handled, and otherwise processed and sold according to the provisions of this chapter.

2. An application for a food permit for operating a packaged ice plant must state the location of the packaged ice plant, the source of the water, the treatment the water received prior to being made into ice and packaged, and any other information considered necessary by the department to verify compliance with the safety, quality, and labeling requirements of this chapter.

(e) The department is the exclusive regulatory and permitting authority for all food outlets, retail food stores, food establishments, convenience stores, and minor food outlets in accordance with this section. Application for a food permit must be made on forms provided by the department, which forms must also contain provision for application for registrations and permits issued by other state agencies and for collection of the food permit fee and any other fees associated with registration, licensing, or applicable surcharges. The details of the application shall be prescribed by department rule.

(f) The department may by rule establish conditions for the manufacturing, processing, packing, holding, or preparing of food; the selling of food at wholesale or retail; or the transporting of food to

protect the public health and promote public welfare by protecting the purchasing public from injury by merchandising deceit.

(2) When any person applies for a building permit to construct, convert, or remodel any food establishment, food outlet, or retail food store, the authority issuing such permit shall make available to the applicant a printed statement, provided by the department, regarding the applicable sanitation requirements for such establishments. A building permitting authority, or municipality or county under whose jurisdiction a building permitting authority operates, may not be held liable for a food establishment, food outlet, or retail food store that does not comply with the applicable sanitation requirements due to failure of the building permitting authority to provide the information as provided in this subsection.

(a) The department shall furnish, for distribution, a statement that includes the checklist to be used by the food inspector in any preoperational inspections to assure that the food establishment is constructed and equipped to meet the applicable sanitary guidelines. Such preoperational inspection shall be a prerequisite for obtaining a food permit in accordance with this section.

(b) The department may provide assistance, when requested by the applicant, in the review of any construction or remodeling plans for food establishments. The department may charge a fee for such assistance which covers the cost of providing the assistance and which shall be deposited in the General Inspection Trust Fund for use in funding the food safety program.

(c) A building permitting authority or other subdivision of local government may not require the department to approve construction or remodeling plans for food establishments and retail food stores as a condition of any permit or license at the local level.

(3) Any person selling or distributing for sale any candy containing more than 0.5 percent but less than 5 percent by volume of alcohol must apply for a food permit pursuant to subsection (1) and disclose to the department any intent to sell or distribute such candy. If the person already holds a permit, written disclosure of intent to sell or distribute such candy shall be provided to the department, and the person shall comply with all rules adopted by the department relating to such candy. If the product is sold by a person licensed under chapter 565, the Department of Business and Professional Regulation shall inspect, sample, and verify compliance with this chapter. The Department of Agriculture and Consumer Services and the Department of Business and Professional Regulation shall enter into a cooperative agreement relative to the enforcement of this chapter, including delegation of authority under ss. 500.173-500.175 relating to seizure and condemnation of adulterated or misbranded products.

(4)(a) The department may suspend immediately upon notice any permit issued under this section if it finds that any of the conditions of the permit have been violated. The holder of a permit so suspended may at any time apply for the reinstatement of such permit; and the department shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if the department finds that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(b) The department shall have access to any food establishment for the purpose of ascertaining compliance with this section. Denial of access for such inspection is a ground for suspending the permit until access to the food establishment is freely given by the operator.

(5) It is the intent of the Legislature to eliminate duplication of regulatory inspections of food. Regulatory and permitting authority over any food establishment is preempted to the department, except as provided in chapter 379.

(a) Food establishments or retail food stores that have ancillary food service activities shall be permitted and inspected by the department.

(b) Food service establishments, as defined in s. 381.0072, that have ancillary, prepackaged retail food sales shall be regulated by the Department of Health.

(c) Public food service establishments, as defined in s. 509.013, which have ancillary, prepackaged retail food sales shall be licensed and inspected by the Department of Business and Professional Regulation.

(d) The department and the Department of Business and Professional Regulation shall cooperate to assure equivalency of inspection and enforcement and to share information on those establishments identified in paragraphs (a) and (c) and to address any other areas of potential duplication. The department and the Department of Business and Professional Regulation are authorized to adopt rules to enforce statutory requirements under their purview regarding foods.

(6) The department shall adopt rules for the training and certification of managers of food establishments and food service establishments regulated under this section and for the training and certification of department personnel.

(7) In conducting any preoperational or other inspection, the department may enforce provisions of the Florida Building Code relating to food establishments.

(8) A person who applies for or renews a local business tax certificate to engage in business as a food establishment or retail food store must exhibit a current food permit or an active letter of exemption from the department before the local business tax certificate may be issued or renewed.

History.—s. 12, ch. 19656, 1939; CGL 1940 Supp. 4151(675); ss. 14, 35, ch. 69-106; s. 3, ch. 70-994; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 11, 39, ch. 82-225; ss. 1, 3, 4, ch. 83-8; s. 2, ch. 87-269; s. 8, ch. 87-388; s. 11, ch. 92-180; s. 102, ch. 92-291; s. 9, ch. 94-180; s. 201, ch. 94-218; s. 19, ch. 97-220; s. 1, ch. 98-13; s. 14, ch. 98-396; s. 243, ch. 99-8; s. 45, ch. 2000-141; s. 15, ch. 2000-308; s. 11, ch. 2001-279; s. 12, ch. 2006-289; s. 5, ch. 2008-107; s. 64, ch. 2009-21; s. 33, ch. 2014-150.

500.121 Disciplinary procedures.—

(1) In addition to the suspension procedures provided in s. 500.12, if applicable, the department may impose an administrative fine in the Class II category pursuant to s. 570.971 against any retail food store, food establishment, or cottage food operation that violates this chapter, which fine, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund. The department may revoke or suspend the permit of any such retail food store or food establishment if it is satisfied that the retail food store or food establishment has:

(a) Violated this chapter.

(b) Violated or aided or abetted in the violation of any law of this state governing or applicable to retail food stores or food establishments or any lawful rules of the department.

(c) Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme, or device whereby another person, lawfully relying upon the word, representation, or conduct of a retail food store or food establishment, acts to her or his injury or damage.

(d) Committed any act or conduct of the same or different character than that enumerated which constitutes fraudulent or dishonest dealing.

(2) A manufacturer, processor, packer, or distributor who misrepresents or mislabels the country of origin of any food may, in addition to any penalty provided in this chapter, be subject to an additional administrative fine in the Class II category pursuant to s. 570.971 for each violation.

(3) Any administrative order made and entered by the department imposing a fine pursuant to this section shall specify the amount of the fine and the time limit for payment thereof, not exceeding 21

days, and, upon failure of the permitholder to pay the fine within that time, the permit is subject to suspension or revocation.

(4) In any court proceeding relating to administrative orders, the burden of proving violations of this chapter and of upholding administrative orders is with the department.

(5) The department shall post a prominent closed-for-operation sign on any food establishment that has had its permit suspended or revoked. The department shall also post such a sign on any establishment judicially or administratively determined to be operating without a permit. It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to deface or remove such closed-for-operation sign or for any food establishment to open for operation without a permit or to open for operation while its permit is suspended or revoked. The department may impose administrative sanctions for violations of this subsection.

(6) If the department determines that a food offered in a food establishment is labeled with nutrient claims that are in violation of this chapter, the department shall retest or reexamine the product within 90 days after notification to the manufacturer and to the firm at which the product was collected. If the product is again found in violation, the department shall test or examine the product for a third time within 60 days after the second notification. The product manufacturer shall reimburse the department for the cost of the third test or examination. If the product is found in violation for a third time, the department shall exercise its authority under s. 500.172 and issue a stop-sale or stop-use order. The department may impose additional sanctions for violations of this subsection.

(7) The department may determine that a food establishment regulated under this chapter requires immediate closure when the food establishment fails to comply with this chapter or rules adopted under this chapter and presents an imminent threat to the public health, safety, and welfare. The department may accept inspection results from other state and local building officials and other regulatory agencies as justification for such action. The department shall, upon such a determination, issue an immediate final order to close a food establishment as follows:

(a) The division director or designee shall determine that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.

(b) Upon such determination, the department shall issue an immediate final order directing the owner or operator of the food establishment to cease operation and close the food establishment. The department shall serve the order upon the owner, operator, or agent thereof of the food establishment. The department may attach a closed-for-operation sign to the food establishment while the order remains in place.

(c) The department shall inspect the food establishment within 24 hours after the issuance of the order. Upon a determination that the food establishment has met the applicable requirements to resume operations, the department shall serve a release upon the owner, operator, or agent thereof of the food establishment.

(d) A food establishment ordered by the department to cease operation and close under this section shall remain closed until released by the department or by a judicial order to reopen.

(e) It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for a person to deface or remove a closed-for-operation sign placed on a food establishment by the department or for the owner or operator of a food establishment to resist closure of the establishment by the department. The department may impose administrative sanctions for violations of this paragraph.

(f) The department may adopt rules to administer this subsection.

History.—s. 1, ch. 72-73; s. 6, ch. 78-95; s. 2, ch. 81-318; ss. 12, 39, ch. 82-225; ss. 2, 3, 4, ch. 83-8; s. 9, ch. 87-388; s. 102, ch. 92-291; s. 10, ch. 94-180; s. 604, ch. 97-103; s. 20, ch. 97-220; s. 1, ch. 98-13; ss. 5, 14, ch. 98-396; s. 1, ch. 2002-85; s. 26, ch. 2002-295; s. 20, ch. 2011-205; s. 34, ch. 2014-150.

500.13 Addition of poisonous or deleterious substance to food.—

(1) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of s. 500.10(1)(b) with respect to any food, unless there is in effect a regulation pursuant to subsection (2) limiting the quantity of such substance, and the use or intended use of such substance conform to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food shall not, by reason of bearing or containing such substance in accordance with the regulation, be considered adulterated within the meaning of s. 500.10(1)(a).

(2) The department, whenever public interest in the state so requires, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the federal act, prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities or for color additives, including, but not limited to, zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes, upon his or her own motion or upon the petition of any interested party requesting that such a regulation be established, and it shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and a failure to comply with the request shall be sufficient grounds to deny the request. In adopting, amending or repealing regulations relating to such substances the department shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

(a) The name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect.

(b) The probable composition of, or other relevant exposure from the article and of any substance formed in or on a food, resulting from the use of such substance.

(c) The probable consumption of such substance in the diet of humans and animals taking into account any chemically or pharmacologically related substance in such diet.

(d) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data.

(e) The availability of any needed practicable methods of analysis for determining the identity and quantity of such substance in or on an article, any substance formed in or on such article because of the use of such substance, and the pure substance and all intermediates and impurities.

(f) Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History.—s. 13, ch. 19656, 1939; CGL 1940 Supp. 4151(676); s. 3, ch. 63-259; ss. 14, 35, ch. 69-106; s. 605, ch. 97-103.

500.147 Inspection of food establishments, food records, and vehicles.—

(1) The department or its duly authorized agent shall have free access at all reasonable hours to any food establishment, any food records, or any vehicle being used to transport or hold food in commerce for the purpose of inspecting such establishment, records, or vehicle to determine whether this chapter or any rule adopted under this chapter is being violated; to secure a sample or a specimen of any food after paying or offering to pay for such sample; to see that all sanitary rules adopted by the department are complied with; to facilitate tracing of food products in the event of a food-borne illness outbreak or identification of an adulterated or misbranded food item; or to enforce the special-occupancy provisions of the Florida Building Code which apply to food establishments.

(2) The department or its duly authorized agent may appoint inspectors for making such inspections and taking such samples as are necessary for the proper enforcement of this chapter. The department shall make or cause to be made examination of samples secured under the provisions of this section to determine if any provision of this chapter is being violated.

(3) For bottled water plants:

(a) Bottled water must be from an approved source. Bottled water must be processed in conformance with 21 C.F.R. part 129 (2006), and must conform to 21 C.F.R. part 165 (2006). A person operating a bottled water plant shall be responsible for all water sampling and analyses required by this chapter.

(b) All microbiological, chemical, physical, or radiological testing and analyses of source water and finished product required by this chapter must be performed by an approved laboratory. Records of the sampling and analyses must be maintained on file at the plant for not less than 2 years and made available to the department upon request.

(4) For packaged ice plants:

(a) Water used in packaged ice must be from an approved source. The finished product must meet the primary water quality standards established under the Federal Safe Drinking Water Act, Pub. L. No. 93-523, as amended. A person operating a packaged ice plant shall be responsible for all water sampling and analyses required by this chapter.

(b) All packaged ice plants must submit to an approved laboratory, once every 3 months, a sample of each type of finished product for microbiological analysis. The quarterly laboratory analysis must include testing for fecal and total coliform organisms. Total coliforms must not be greater than 2.2 organisms/100 ml. using the most probable number method or not greater than 1 organism/100 ml. using the membrane filtration method. Packaged ice must have no fecal coliform-positive samples. All microbiological, chemical, physical, or radiological analyses required by this chapter must be performed by an approved laboratory.

(c) All records of sampling and analyses of source water and finished product must be maintained by the plant for a period of not less than 2 years and made available to the department upon request.

(5) Visits for the purpose of sample collection do not constitute inspection visits.

History.—s. 21, ch. 19656, 1939; CGL 1940 Supp. 4151(684); s. 4, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 426, ch. 77-147; s. 15, ch. 82-225; s. 11, ch. 87-388; s. 12, ch. 94-180; s. 21, ch. 97-220; s. 46, ch. 2000-141; s. 3, ch. 2007-67; s. 12, ch. 2012-190; s. 35, ch. 2014-150.

Note.—Former s. 500.21.

500.148 Reports and dissemination of information; confidentiality.—

(1)(a) Information that is deemed confidential under 21 C.F.R. s. 20.61, s. 20.62, or s. 20.88, or 5 U.S.C. s. 552(b), and that is provided to the department during a joint investigation concerning food safety or food-borne illness, as a requirement for conducting a federal-state contract or partnership

activity, or for regulatory review, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Such confidential and exempt information may not be disclosed except under a final determination by the appropriate federal agency that the information is no longer entitled to protection or pursuant to an order of the court.

(c) This section does not prohibit the department from collecting, reporting, or illustrating the results of these investigations.

(2) The department may:

(a) Publish reports summarizing all judgments and court orders that have been rendered under this chapter, including the nature of the charges and the disposition thereof.

(b) Disseminate any information regarding food which it considers necessary in the interest of public health and the protection of the consumer against fraud.

(3)(a) Upon request of a food establishment, the department may issue a report certifying that the requesting food establishment currently complies with the sanitation and permitting requirements of this chapter and the rules adopted thereunder. Such certification may be requested for the purpose of exporting food to a foreign country.

(b) The department may recover the cost associated with carrying out the provisions of this subsection, the amount of which shall be set by rule.

History.—s. 22, ch. 19656, 1939; CGL 1940 Supp. 4151(685); ss. 14, 19, 35, ch. 69-106; ss. 3, 5, ch. 76-47; s. 427, ch. 77-147; s. 16, ch. 82-225; s. 12, ch. 87-388; s. 13, ch. 94-180; s. 27, ch. 2002-295; s. 1, ch. 2003-172; s. 137, ch. 2008-4; s. 1, ch. 2008-218.

Note.—Former s. 500.22.

500.149 Employment of help; expenses and salaries.—The department may employ all help necessary to carry out and enforce the provisions of this chapter relating to foods and may designate any employee of the department to perform any duties necessary to carry out such provisions. All expenses and salaries shall be paid out of the General Inspection Trust Fund.

History.—s. 23, ch. 19656, 1939; CGL 1940 Supp. 4151(686); s. 5, ch. 59-302; s. 2, ch. 61-119; ss. 14, 19, 35, ch. 69-106; s. 428, ch. 77-147; s. 17, ch. 82-225; s. 13, ch. 87-388.

Note.—Former s. 500.23.

500.165 Transporting shipments of food items; rules; penalty.—

(1) It is unlawful for a carrier to transport food items in a vehicle or rail car that has been or is being used to transport solid waste, hazardous substances, hazardous wastes, biohazardous wastes, or any substance that may pose a threat to human health.

(2) The department may by rule set standards for decontamination and provide for exceptions when the standards are met. The department may adopt rules to implement the provisions of this section. The department shall also adopt rules for administrative fines based upon the potential damage caused by violation, not to exceed the amount specified in subsection (3).

(3) A person who violates subsection (1) or the rules adopted under subsection (2) is subject to an administrative fine in the Class III category pursuant to s. 570.971 for each violation. In addition, a person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 15, ch. 92-180; s. 14, ch. 94-180; s. 36, ch. 2014-150.

500.166 Records of interstate shipment.—For the purpose of enforcing this chapter, carriers engaged in interstate commerce and persons receiving food in interstate commerce shall, upon the

request by an officer or employee duly designated by the department, permit the officer or employee to have access to and to copy all records showing the movement in interstate commerce of any food, and the quantity, shipper, and consignee thereof.

History.—s. 11, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 433, ch. 77-147; s. 22, ch. 82-225; s. 14, ch. 87-388; s. 15, ch. 94-180.

Note.—Former s. 500.39.

500.167 Carriers in interstate commerce; exception.—Carriers engaged in interstate commerce are exempt from the provisions of this chapter, except ss. 500.165 and 500.166.

History.—s. 12, ch. 59-302; s. 23, ch. 82-225; s. 15, ch. 87-388; s. 16, ch. 92-180.

Note.—Former s. 500.40.

500.169 Enforcement of federal act.—The department may exercise the enforcement powers granted by, and subject to the limitations of, 21 U.S.C. s. 337(b).

History.—s. 16, ch. 94-180.

500.171 Injunction to restrain violation.—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department may bring an action to enjoin the violation or threatened violation of any provision of this chapter, or rule adopted under this chapter, in the circuit court of the county in which the violation occurred or is about to occur. Upon the department's presentation of competent and substantial evidence to the court of the violation or threatened violation, the court shall immediately issue the temporary or permanent injunction sought by the department. The injunction shall be issued without bond. A single act in violation of any provision of this chapter shall be sufficient to authorize the issuance of an injunction.

History.—s. 4, ch. 19656, 1939; CGL 1940 Supp. 4151(668); ss. 14, 19, 35, ch. 69-106; s. 418, ch. 77-147; s. 1, ch. 81-36; s. 7, ch. 82-225; s. 22, ch. 97-220.

Note.—Former s. 500.05.

500.172 Embargoing, detaining, destroying of food, food processing equipment, or areas that are in violation.—

(1) When the department, or its duly authorized agent who has received appropriate education and training regarding the legal requirements of this chapter, finds or has probable cause to believe that any food, food processing equipment, food processing area, or food storage area is in violation of this chapter or any rule adopted under this chapter so as to be dangerous, unwholesome, fraudulent, or insanitary within the meaning of this chapter, an agent of the department may issue and enforce a stop-sale, stop-use, removal, or hold order, which order gives notice that such article, processing equipment, processing area, or storage area is or is suspected of being in violation and has been detained or embargoed and which order warns all persons not to remove, use, or dispose of such article, processing equipment, processing area, or storage area by sale or otherwise until permission for removal, use, or disposal is given by the department or the court. A person may not remove, use, or dispose of such detained or embargoed article, processing equipment, processing area, or storage area by sale or otherwise without such permission.

(2) If an article, processing equipment, processing area, or storage area detained or embargoed under subsection (1) has been found by the department to be in violation of law or rule, the department may, within a reasonable period after the issuance of such notice, petition the circuit court in the jurisdiction of which the article, processing equipment, processing area, or storage area is detained or embargoed for an order for condemnation of such article, processing equipment, processing area, or storage area. When the department has found that an article, processing equipment, processing area, or

storage area so detained or embargoed is not in violation, the department shall rescind the stop-sale, stop-use, removal, or hold order.

(3) If the court finds that the detained or embargoed article, processing equipment, processing area, or storage area is in violation, such article, processing equipment, processing area, or storage area shall, after entry of the decree, be destroyed or made sanitary at the expense of the claimant thereof under the supervision of the department, and all court costs, fees, and storage and other proper expenses shall be taxed against the claimant of such article, processing equipment, processing area, or storage area or her or his agent. However, if the violation can be corrected by proper labeling of the article or sanitizing of the processing equipment, processing area, or storage area, and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article be so labeled or processed or such processing equipment, processing area, or storage area so sanitized, has been executed, the court may by order direct that such article, processing equipment, processing area, or storage area be made available to the claimant thereof for such labeling, processing, or sanitizing under the supervision of the department. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article, processing equipment, processing area, or storage area on representation to the court by the department that the article, processing equipment, processing area, or storage area is no longer in violation of this chapter and that the expenses of such supervision have been paid.

(4) When the department or any of its authorized agents finds in any room, building, vehicle, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound or contain any filthy, decomposed, or putrid substances, or which may be poisonous or deleterious to health or otherwise unsafe, the same is declared to be a nuisance, and the department or its authorized agent shall condemn or destroy the same or in any other manner render the same unsalable as human food.

History.—s. 6, ch. 19656, 1939; CGL 1940 Supp. 4151(669); s. 18, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 2, ch. 70-994; s. 8, ch. 82-225; s. 16, ch. 87-388; s. 17, ch. 94-180; s. 606, ch. 97-103; s. 37, ch. 2014-150.

Note.—Former s. 500.06.

500.173 Causes for seizure and condemnation of foods.—Any article of food that is adulterated or misbranded under the provisions of this chapter is subject to seizure and condemnation by the department or by its duly authorized agents designated for that purpose in regard to foods.

History.—s. 13, ch. 59-302; s. 3, ch. 61-456; ss. 14, 19, 35, ch. 69-106; s. 434, ch. 77-147; s. 24, ch. 82-225; s. 17, ch. 87-388.

Note.—Former s. 500.41.

500.174 Seizure; procedure; prohibition on sale or disposal of article; penalty.—

(1) Whenever the department or its duly authorized agent finds cause, or has probable cause to believe that a ground exists for the seizure of any food as set out in this chapter, an agent of the department shall affix to the article a tag, stamp, or other appropriate marking, giving notice that the article is, or is suspected of being, subject to seizure under this chapter and that the article has been detained and seized by the department. The department shall also warn all persons not to remove or dispose of the article by sale or otherwise, until permission of the department, or of the court of competent jurisdiction in the jurisdiction of which the article was detained or seized, is given. It is unlawful for any person to remove or dispose of the detained or seized article by sale or otherwise without permission of the department or of the court in such cases. Any person who violates this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who sells candy containing more than 0.5 percent by volume of alcohol in violation of s. 500.10(3) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 14, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 455, ch. 71-136; s. 435, ch. 77-147; s. 25, ch. 82-225; s. 121, ch. 83-218; s. 3, ch. 87-269; s. 18, ch. 87-388; s. 36, ch. 91-220; s. 18, ch. 94-180.

Note.—Former s. 500.42.

500.175 Condemnation and sale; release of seized article.—

(1) When any article detained or seized under s. 500.174 has been found by the department to be subject to seizure and condemnation under s. 500.174, the department may petition a court for an order of condemnation or sale, as the court may direct. The proceeds of the sale of food used for human consumption, less the legal costs and charges, shall be deposited in the State Treasury into the General Inspection Trust Fund.

(2) Upon the payment of the costs of the condemnation proceeding and upon the execution and delivery of a surety bond to the effect that the goods shall not be sold or otherwise disposed of contrary to the provisions of this chapter, the department or court may order that the goods be delivered to the owner thereof instead of being condemned or sold.

(3) If the department finds that any article seized under the provisions of s. 500.174 was not subject to seizure under that section, the department or the designated officer or employee shall remove the tag or marking.

History.—s. 15, ch. 59-302; s. 1, ch. 61-31; ss. 14, 19, 35, ch. 69-106; s. 436, ch. 77-147; s. 26, ch. 82-225; s. 19, ch. 87-388.

Note.—Former s. 500.43.

500.177 Penalty for violation of s. 500.04; dissemination of false advertisement.—

(1) Any person who violates any provision of s. 500.04 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; but, if the violation is committed after a conviction of such person under this section has become final, such person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) No person shall be subject to the penalties of subsection (1) for having violated s. 500.04(1) or (3) if he or she establishes a guaranty or undertaking, which guaranty or undertaking is signed by and contains the name and address of the person residing in the state or the manufacturer from whom he or she received the article in good faith, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, citing the appropriate section thereof.

(3) A publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the food establishment or the seller of the article to which a false advertisement relates, is not liable under this section by reason of the dissemination of such false advertisement, unless the publisher, licensee, or agency or medium refuses, on the request of the department, to furnish the name and post office address of the food establishment, seller, or advertising agency in the state which caused the dissemination of such advertisement.

History.—s. 5, ch. 19656, 1939; CGL 1940 Supp. 7678(1); ss. 14, 19, 35, ch. 69-106; s. 451, ch. 71-136; s. 429, ch. 77-147; s. 3, ch. 81-36; s. 18, ch. 82-225; s. 122, ch. 83-218; s. 20, ch. 87-388; s. 19, ch. 94-180; s. 607, ch. 97-103; s. 23, ch. 97-220.

Note.—Former s. 500.24.

500.178 Duty of state attorney.—Each state attorney to whom the department or its designated agent reports any violation of this chapter shall cause an appropriate proceeding to be instituted in the proper court without delay and to be prosecuted in the manner required by law.

History.—s. 7, ch. 19656, 1939; CGL 1940 Supp. 4151(670); s. 1, ch. 65-402; ss. 14, 19, 35, ch. 69-106; s. 419, ch. 77-147; s. 6, ch. 78-95; s. 9, ch. 82-225; s. 21, ch. 87-388; s. 20, ch. 94-180.

Note.—Former s. 500.07.

500.179 Issuance of warnings for minor violations.—Nothing in this chapter shall be construed as requiring the department to report, for the institution of proceedings under this chapter, minor violations of this chapter when it believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History.—s. 8, ch. 19656, 1939; CGL 1940 Supp. 4151(671); ss. 14, 19, 35, ch. 69-106; s. 420, ch. 77-147; s. 10, ch. 82-225; s. 22, ch. 87-388.

Note.—Former s. 500.08.

500.451 Horse meat; offenses.—

(1) It is unlawful for any person to:

(a) Sell in the markets of this state horse meat for human consumption unless the horse meat is clearly stamped, marked, and described as horse meat for human consumption.

(b) Knowingly transport, distribute, sell, purchase, or possess horse meat for human consumption that is not clearly stamped, marked, and described as horse meat for human consumption or horse meat that is not acquired from a licensed slaughterhouse.

(2) A person that violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, except that any person who commits a violation of this section must be sentenced to a minimum mandatory fine of $3,500.

(3) In addition to any penalties provided in subsection (2), any license of any restaurant, store, or other business may be suspended as provided in the applicable licensing law upon conviction of an owner or employee of that business for a violation of this section in connection with that business.

History.—ss. 1, 2, ch. 21986, 1943; s. 11, ch. 25035, 1949; s. 454, ch. 71-136; s. 19, ch. 82-225; s. 27, ch. 94-180; s. 3, ch. 2010-87; s. 21, ch. 2019-167.

Note.—Former s. 500.33.

500.459 Water vending machines.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to protect the public health through licensing and establishing standards for water vending machines to ensure that consumers obtaining water through such means are given appropriate information as to the nature of such water and that such consumers are assured that the water meets acceptable standards for human consumption.

(2) DEFINITIONS.—

(a) "Sanitized" means treated in conformity with 21 C.F.R. s. 110.3 (1996).

(b) "Vended water" means water dispensed by means of a water vending machine.

(c) "Water vending machine" means a self-service device that, upon insertion of a coin or token or upon receipt of payment by other means, dispenses a serving of water into a container.

(d) "Water vending machine operator" means a person who owns, leases, or manages, or is otherwise responsible for, the operation of a water vending machine.

(3) PERMITTING REQUIREMENTS.—

(a) Each person or public body that establishes, maintains, or operates any water vending machine in the state must secure an operating permit from the department each year.

(b) An application for an operating permit must be made to the department on forms provided by the department and must be accompanied by a fee as provided in subsection (4). The application must state the location of each water vending machine, the source of the water to be vended, the treatment

the water will receive prior to being vended, and any other information considered necessary by the department.

(4) FEES.—A person seeking an operating permit must pay the department a fee not exceeding $200, which fee shall be set by rule of the department. Such fees shall be deposited in the General Inspection Trust Fund.

(5) OPERATING STANDARDS.—

(a) A water vending machine operator must obtain a permit prior to operating any water vending machine.

(b) Each water vending machine must be located indoors or otherwise protected against tampering and vandalism and must be located in an area that can be maintained in a clean condition and in a manner that avoids insect and rodent harborage. The floor upon which the water vending machine is located should be smooth and of cleanable construction.

(c) The source of water supply must be an approved public water system.

(d) Each water vending machine must have a backflow prevention device that conforms with the applicable provision of the Florida Building Code and an adequate system for collecting and handling dripping, spillage, and overflow of water.

(e) All parts and surfaces of a water vending machine with which water comes into contact must be made of nontoxic, corrosion-resistant, nonabsorbent material capable of withstanding repeated cleaning and sanitizing treatments.

(f) Each water vending machine must be maintained in a clean and sanitary condition, free from rust, dirt, and vermin.

(g) The vended water must receive treatment and postdisinfection according to approved methods established by rule of the department. Activated carbon, if used, must comply with specifications for granular activated carbon used in water treatment applications as established by rule of the department.

(h) The vended water may not be described as “purified water” unless the water conforms to the definition of that term. Further, a water vending machine operator must not claim that the vended water has medicinal or health-giving properties and must not describe any vended water as “spring water.”

(i) The operator shall place on each water vending machine, in a position clearly visible to customers, the following information: the name and address of the operator; the fact that the water is obtained from a public water supply; the method of treatment used; the method of postdisinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

(6) DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT.—

(a) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section conferring duties upon it.

(b) If, considering the source of water and the treatment process provided by the water vending machine, the department finds that the vended water will not meet the primary and secondary drinking water quality standards as provided for in department rules, the permit shall be denied. Specific technical reasons for the denial shall be given by the department.

(c) The water from each water vending machine shall be sampled and tested for compliance with the water quality standards established by rule of the department at regular intervals established by rule of the department.

(d) The vended water from each water vending machine using silver-impregnated carbon filters in the treatment process shall be sampled for silver at regular intervals established by rule of the department.

(e) The department shall order a water vending machine operator to discontinue the operation of any water vending machine the condition of which represents a threat to the life or health of any person, or when the vended water does not meet the standards provided in this section. Such water vending machine must not be returned to use or be used until the department determines that the condition that caused the discontinuance of operation no longer exists.

(7) PENALTIES.—

(a) The department may deny, suspend, or revoke a permit if it finds that there has been a substantial failure to comply with this section or rules adopted under this section.

(b) Any person who operates a water vending machine without first obtaining an operating permit as required by subsection (3), who operates a water vending machine in violation of an order to discontinue operation, or who maintains or operates a water vending machine after revocation of the operating permit is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 84-118; s. 1, ch. 85-65; s. 40, ch. 85-81; s. 61, ch. 91-224; s. 30, ch. 91-297; s. 4, ch. 91-429; s. 36, ch. 92-78; s. 3, ch. 92-180; s. 31, ch. 94-180; s. 24, ch. 97-220; s. 170, ch. 98-200; s. 32, ch. 98-287; s. 128, ch. 2000-141; s. 16, ch. 2000-308; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 8, ch. 2018-84.

Note.—Former s. 381.295; s. 381.0071.

500.511 Fees; enforcement; preemption.—

(1) FEES.—All fees collected under s. 500.459 shall be deposited into the General Inspection Trust Fund and shall be accounted for separately and used for the sole purpose of administering the provisions of such section.

(2) ENFORCEMENT AND PENALTIES.—In addition to the provisions contained in s. 500.459, the department may enforce s. 500.459 in the manner provided in s. 500.121. Any person who violates a provision of s. 500.459 or any rule adopted under such section shall be punished as provided in such section. However, criminal penalties may not be imposed against any person who violates a rule.

(3) PREEMPTION OF AUTHORITY TO REGULATE.—Regulation of bottled water plants, water vending machines, water vending machine operators, and packaged ice plants is preempted by the state. No county or municipality may adopt or enforce any ordinance that regulates the licensure or operation of bottled water plants, water vending machines, or packaged ice plants, unless it is determined that unique conditions exist within the county which require the county to regulate such entities in order to protect the public health. This subsection does not prohibit a county or municipality from requiring a business tax pursuant to chapter 205.

History.—s. 33, ch. 94-180; s. 25, ch. 97-220; s. 123, ch. 2007-5.

500.60 Regulation of meat preempted to state.—Notwithstanding any other law or local ordinance to the contrary and to ensure uniform health and safety standards, the regulation, identification, and packaging of meat, poultry, and fish is preempted to the state and the Department of Agriculture and Consumer Services.

History.—s. 54, ch. 2004-350.

500.70 Tomato food safety standards; inspections; penalties; tomato good agricultural practices; tomato best management practices.—

(1) As used in this section, the term:

(a) "Field packing" means the packing of tomatoes on a tomato farm or in a tomato greenhouse into containers for sale for human consumption without transporting the tomatoes to a packinghouse.

(b) "Packing" or "repacking" means the packing of tomatoes into containers for sale for human consumption. The term includes the sorting or separating of tomatoes into grades and sizes. The term also includes field packing.

(c) "Producing" means the planting, growing, or cultivating of tomatoes on a tomato farm or in a tomato greenhouse for sale for human consumption.

(2) The department may adopt rules establishing food safety standards to safeguard the public health and promote the public welfare by protecting the consuming public from injury caused by the adulteration or the microbiological, chemical, or radiological contamination of tomatoes. The rules must be based on federal requirements, available scientific research, generally accepted industry practices, or recommendations of food safety professionals. The rules shall apply to the producing, harvesting, packing, and repacking of tomatoes for sale for human consumption by a tomato farm, tomato greenhouse, or tomato packinghouse or repacker in this state. The rules may include, but are not limited to, standards for:

(a) Registration with the department of a person who produces, harvests, packs, or repacks tomatoes in this state who does not hold a food permit issued under s. 500.12.

(b) Proximity of domestic animals and livestock to the production areas for tomatoes.

(c) Food safety related use of water for irrigation during production and washing of tomatoes after harvest.

(d) Use of fertilizers.

(e) Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas.

(f) Health, hygiene, and sanitation of employees who handle tomatoes.

(g) Training and continuing education of a person who produces, harvests, packs, or repacks tomatoes in this state, and the person's employees who handle tomatoes.

(h) Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

(3)(a) The department may inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with the applicable provisions of this chapter and the rules adopted under this chapter.

(b) The department may impose an administrative fine in the Class II category pursuant to s. 570.971 for each violation, or issue a written notice or warning under s. 500.179, against a person who violates any applicable provision of this section or any rule adopted under this section.

(4)(a) The department may adopt rules establishing tomato good agricultural practices and tomato best management practices for the state's tomato industry based on applicable federal requirements, available scientific research, generally accepted industry practices, or recommendations of food safety professionals.

(b) A person who documents compliance with the department's rules, tomato good agricultural practices, and tomato best management practices is presumed to introduce tomatoes into the stream of commerce that are safe for human consumption, unless the department identifies noncompliance through inspections.

(5) Subsections (2) and (4) do not apply to tomatoes that are sold by the grower on the premises where the tomatoes are grown, at a local farmers' market, at a U-pick operation, or at a roadside stand if the quantity of tomatoes sold does not exceed two 25-pound boxes per customer per day.

(6) Any person who produces, harvests, packs, or repacks tomatoes in this state and does not hold a food permit issued under s. 500.12 shall annually register each location of a tomato farm, tomato greenhouse, tomato packinghouse, or tomato repacker by August 1 on a form prescribed by the department. Any person who produces, harvests, packs, or repacks tomatoes at more than one location may submit one registration for all such locations but must provide the physical address of each location. The department may set by rule an annual registration fee not to exceed $500. Moneys collected pursuant to this subsection shall be deposited into the General Inspection Trust Fund.

(7) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

History.—s. 2, ch. 2010-25; s. 16, ch. 2011-206; s. 39, ch. 2014-150.

500.80 Cottage food operations.—

(1)(a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of s. 500.12 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed $50,000.

(b) For purposes of this subsection, a cottage food operation's annual gross sales include all sales of cottage food products at any location, regardless of the types of products sold or the number of persons involved in the operation. A cottage food operation must provide the department, upon request, with written documentation to verify the operation's annual gross sales.

(2) A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet, but such products must be delivered in person directly to the consumer or to a specific event venue. A cottage food operation may not sell, offer for sale, or deliver cottage food products by mail order or at wholesale.

(3) A cottage food operation may only sell cottage food products which are prepackaged with a label affixed that contains the following information:

(a) The name and address of the cottage food operation.

(b) The name of the cottage food product.

(c) The ingredients of the cottage food product, in descending order of predominance by weight.

(d) The net weight or net volume of the cottage food product.

(e) Allergen information as specified by federal labeling requirements.

(f) If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements.

(g) The following statement printed in at least 10-point type in a color that provides a clear contrast to the background of the label: "Made in a cottage food operation that is not subject to Florida's food safety regulations."

(4) A cottage food operation may only sell cottage food products that it stores on the premises of the cottage food operation.

(5) This section does not exempt a cottage food operation from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations.

(6) A cottage food operation must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence.

(7)(a) The department may investigate any complaint which alleges that a cottage food operation has violated an applicable provision of this chapter or rule adopted under this chapter.

(b) Only upon receipt of a complaint, the department's authorized officer or employee may enter and inspect the premises of a cottage food operation to determine compliance with this chapter and

department rules, as applicable. A cottage food operation's refusal to permit the department's authorized officer or employee entry to the premises or to conduct the inspection is grounds for disciplinary action pursuant to s. 500.121.

(8) This section does not apply to a person operating under a food permit issued pursuant to s. 500.12.

History.—s. 21, ch. 2011-205; s. 1, ch. 2017-32.

500.81 Healthy Food Financing Initiative.—

(1) As used in this section, the term:

(a) "Community facility" means a property owned by a nonprofit or for-profit entity in which health and human services are provided and space is offered in a manner that provides increased access to, or delivery or distribution of, food or other agricultural products to encourage public consumption and household purchases of fresh produce or other healthy food to improve the public health and well-being of low-income children, families, and older adults.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Independent grocery store or supermarket" means an independently owned grocery store or supermarket whose parent company does not own more than 40 grocery stores throughout the country based upon ownership conditions as identified in the latest Nielsen TDLinx Supermarket/Supercenter database.

(d) "Low-income community" means a population census tract, as reported in the most recent United States Census Bureau American Community Survey, which meets one of the following criteria:

1. The poverty rate is at least 20 percent;

2. In the case of a low-income community located outside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income; or

3. In the case of a low-income community located inside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income or 80 percent of the metropolitan median family income, whichever is greater.

(e) "Program" means the Healthy Food Financing Initiative established by the department.

(f) "Underserved community" means a distressed urban, suburban, or rural geographic area where a substantial number of residents have low access to a full-service supermarket or grocery store. An area with limited supermarket access must be:

1. A census tract, as determined to be an area with low access by the United States Department of Agriculture, as identified in the Food Access Research Atlas;

2. Identified as a limited supermarket access area as recognized by the Community Development Financial Institutions Fund of the United States Department of the Treasury; or

3. Identified as an area with low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental initiative, or well-established or well-regarded philanthropic healthy food initiative.

(2) The department shall establish a Healthy Food Financing Initiative program that is composed of and coordinates the use of grants from any source; federal, state, and private loans from a governmental entity or institutions regulated by a governmental entity; federal tax credits; and other types of financial assistance for the rehabilitation or expansion of independent grocery stores, supermarkets, community facilities, or other structures to increase access to fresh produce and other nutritious food in underserved communities.

(3)(a) The department may contract with one or more qualified nonprofit organizations or Florida-based federally certified community development financial institutions to administer the program

through a public-private partnership. Eligible community development financial institutions must be able to demonstrate:

1. Prior experience in healthy food financing.

2. Support from the Community Development Financial Institutions Fund of the United States Department of the Treasury.

3. The ability to successfully manage and operate lending and tax credit programs.

4. The ability to assume full financial risk for loans made under this initiative.

(b) The department shall:

1. Establish program guidelines, raise matching funds, promote the program statewide, evaluate applicants, underwrite and disburse grants and loans, and monitor compliance and impact. The department may contract with a third-party administrator to carry out such duties. If the department contracts with a third-party administrator, funds shall be granted to the third-party administrator to create a revolving loan fund for the purpose of financing projects that meet the criteria of the program. The third-party administrator shall report to the department annually.

2. Create eligibility guidelines and provide financing through an application process. Eligible projects must:

a. Be located in an underserved community;

b. Primarily serve low-income communities; and

c. Provide for the renovation or expansion of, including infrastructure upgrades to, existing independent grocery stores or supermarkets; or the renovation or expansion of, including infrastructure upgrades to, community facilities to improve the availability and quality of fresh produce and other healthy foods.

3. Report annually to the President of the Senate and the Speaker of the House of Representatives on the projects funded, the geographic distribution of the projects, the costs of the program, and the outcomes, including the number and type of jobs created.

(4)(a) The Office of Program Policy Analysis and Government Accountability shall review the program and data collected from the department after a term of 7 years and report to the President of the Senate and the Speaker of the House of Representatives. The report shall include, but is not limited to, health impacts based on data collected by the state on diabetes, heart disease and other obesity-related diseases, and other factors as determined by the department.

(b) If the report determines the program to be unsuccessful after 7 years, the department shall create guidelines for unused funds to be returned to the initial investor.

(5) A for-profit entity, including a convenience store or a fueling station, or a not-for-profit entity, including, but not limited to, a sole proprietorship, partnership, limited liability company, corporation, cooperative, nonprofit organization, nonprofit community development entity, or private university, may apply for financing. An applicant for financing must:

(a) Demonstrate the capacity to successfully implement the project and the likelihood that the project will be economically self-sustaining;

(b) Demonstrate the ability to repay the loan; and

(c) Agree, as an independent grocery store or supermarket, for at least 5 years, to:

1. Accept Supplemental Nutrition Assistance Program benefits;

2. Apply to accept Special Supplemental Nutrition Program for Women, Infants, and Children benefits and accept such benefits, if approved;

3. Allocate at least 30 percent of food retail space for the sale of perishable foods, which may include fresh or frozen dairy products, fresh produce, and fresh meats, poultry, and fish;

4. Comply with all data collection and reporting requirements established by the department; and
5. Promote the hiring of local residents.

Projects including, but not limited to, corner stores, bodegas, or other types of nontraditional grocery stores that do not meet the 30 percent minimum in subparagraph 3. can still qualify for funding if such funding will be used for refrigeration, displays, or other one-time capital expenditures to promote the sale of fresh produce and other healthy foods.

(6) In determining which qualified projects to finance, the department or third-party administrator shall:

(a) Give preference to local Florida-based grocers or local business owners with experience in grocery stores and to grocers and business owners with a business plan model that includes written documentation of opportunities to purchase from Florida farmers and growers before seeking out-of-state purchases;

(b) Consider the level of need in the area to be served;

(c) Consider the degree to which the project will have a positive economic impact on the underserved community, including the creation or retention of jobs for local residents;

(d) Consider the location of existing independent grocery stores, supermarkets, or other markets relevant to the applicant's project and provide the established entity the right of first refusal for such project; and

(e) Consider other criteria as determined by the department.

(7) Financing for projects may be used for the following purposes:

(a) Site acquisition and preparation.

(b) Construction and build-out costs.

(c) Equipment and furnishings.

(d) Workforce training or security.

(e) Predevelopment costs, such as market studies and appraisals.

(f) Energy efficiency measures.

(g) Working capital for first-time inventory and startup costs.

(h) Acquisition of seeds and starter plants for the residential cultivation of fruits, vegetables, herbs, and other culinary products. However, only 7 percent of the total funds expended in any one project under this section may be used for such acquisition.

(i) Other purposes as determined by the department or a third-party administrator.

(8) The department shall adopt rules to administer this section.

(9) The department may not distribute more than $500,000 among more than three recipients.

History.—s. 1, ch. 2016-221.

500.90 Regulation of polystyrene products preempted to department.—The regulation of the use or sale of polystyrene products by entities regulated under this chapter is preempted to the department. This preemption does not apply to local ordinances or provisions thereof enacted before January 1, 2016, and does not limit the authority of a local government to restrict the use of polystyrene by individuals on public property, temporary vendors on public property, or entities engaged in a contractual relationship with the local government for the provision of goods or services, unless such use is otherwise preempted by law.

History.—s. 7, ch. 2016-61.