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**HOUSE BILL 1385**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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