

Amendment No. 1 to HB1302

Todd
Signature of Sponsor

AMEND Senate Bill No. 1265*

House Bill No. 1302

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 53, Chapter 7, Part 2, is amended by deleting the part and substituting:

53-7-201. Short title.

This part is known and may be cited as the "Tennessee Meat Inspection Act."

53-7-202. Part definitions.

As used in this part:

- (1) "Adulterated" has the same meaning as defined in 21 U.S.C. § 601;
- (2) "Capable of use as human food" has the same meaning as defined in 21 U.S.C. § 601;
- (3) "Carcass" means all parts of a slaughtered animal, including viscera prior to their preparation as meat or meat food products that may be capable of use as human food;
- (4) "Commissioner" means the commissioner of agriculture or the commissioner's designee;
- (5) "Container" means any box, tin, cloth, receptacle, or other material in which meat or meat food products are packed;
- (6) "Custom operation":
 - (A) Means a facility in this state operated under the authority of this part to slaughter, dress, or prepare another's animal for that person's

use or consumption within the household or among nonpaying guests or employees; and

(B) Includes application as to slaughter or processing of livestock or game animals;

(7) "Establishment" means a facility in this state operated under the authority of this part to slaughter livestock or prepare livestock carcasses for meat or meat food products for use in intrastate commerce;

(8) "Federal Meat Inspection Act" means 21 U.S.C. § 601 et seq., its subsequent amendments, and associated regulations;

(9) "Immediate container" means the container in which meat or meat food products are packed as individual units;

(10) "Intrastate commerce" means commerce within this state;

(11) "Label" has the same meaning as defined in 21 U.S.C. § 601;

(12) "Labeling" has the same meaning as defined in 21 U.S.C. § 601;

(13) "Livestock":

(A) Means cattle, sheep, swine, or goats; and

(B) Does not include feral animals or animals slaughtered for sport or recreational purposes;

(14) "Meat":

(A) Means muscle or part of any muscle of an animal;

(B) Is either skeletal or is found in the tongue, diaphragm, heart, or esophagus, and exists with or without the accompanying fat and portions of bone, skin, sinew, nerve, and blood vessels that normally accompany muscle tissue and that are not separated from it in the process of dressing; and

(C) Does not include muscle found in the lips, snout, or ears;

(15) "Meat food product" means any product capable of use as human food that is made wholly or in part from any meat or other portion of the carcass of an animal, excepting products:

(A) That contain meat only in de minimis proportion or that are not reasonably understood by consumers to contain meat; and

(B) That are exempted from the definition of a meat food product by the commissioner under such conditions as the commissioner may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products;

(16) "Misbranded" has the same meaning as defined in 21 U.S.C. § 601;

(17) "Person" means any individual, partnership, firm, corporation, association, or another form of business entity;

(18) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, packed, packaged, or otherwise manufactured or processed; and

(19) "USDA" means the United States department of agriculture.

53-7-203. Purpose – Scope.

(a) The purpose of this part is to create a federally recognized state meat inspection program to increase production capacity in this state for unadulterated and properly branded meat and meat food products.

(b) This part applies to:

(1) A person operating an establishment in this state where livestock are slaughtered or prepared for use in intrastate commerce;

(2) A person in this state dealing in intrastate commerce relative to livestock carcasses, meat, or meat food products of livestock; and

(3) A custom operation in this state.

(c) This part does not apply to:

(1) Slaughter, processing, or transporting of carcasses, meat, or meat food products from a person's own animals for use or consumption by the person or the person's household or nonpaying guests and employees;

(2) Preparation and sale of carcasses, meat, and meat food products incident to retail food store or restaurant operations; provided, the meat and meat food products were previously inspected and approved under either this part or the federal Meat Inspection Act;

(3) Third-party carrier services for the transportation of carcasses, meat, and meat food products previously inspected and approved under either this part or the federal Meat Inspection Act; or

(4) An establishment operating solely under a federal grant of inspection from the United States department of agriculture, food safety inspection service.

(d) State jurisdiction within the scope of this part is exclusive to the department of agriculture. A political subdivision of the state shall not regulate or inspect the slaughtering of any livestock or the processing or transportation of the carcasses, meat, or meat food products of livestock. This subsection (d) does not preclude or restrict political subdivisions of the state from exercising police powers, including zoning and code enforcement, at any establishment or custom operation licensed under this part or from entering collaborative agreements with the department of agriculture for performance of inspection duties and enforcement under this part.

(e) Compliance with this part does not relieve any person from compliance with the Tennessee Food, Drug and Cosmetic Act, compiled in chapter 1 of this title, and the Testing and Sealing – Use of Weights and Measures Act, compiled in title 47, chapter 26, part 9.

53-7-204. Adoption of federal law.

(a) For purposes of implementing a federally recognized state meat inspection program, the state adopts the following provisions of federal law:

(1) 7 U.S.C. § 1902, relative to humane slaughter and humane handling in connection with livestock;

(2) 7 U.S.C. § 1906, relative to ritual slaughter of livestock;

(3) 7 U.S.C. § 1907, relative to the humane treatment of nonambulatory livestock;

(4) 21 U.S.C. § 603, relative to antemortem inspection, quarantine, segregation, and humane slaughter of livestock;

(5) 21 U.S.C. § 604, relative to postmortem inspection, labeling, destruction, and reinspection of livestock carcasses;

(6) 21 U.S.C. § 605, relative to the inspection of carcasses, meat, or meat food products of livestock brought into establishments;

(7) 21 U.S.C. § 606, relative to inspection and labeling of meat food products of livestock;

(8) 21 U.S.C. § 607, relative to labeling, marking, and container requirements for carcasses, meat, and meat food products of livestock; provided, that the commissioner may withhold any false or misleading mark, label, or container unless the marking, labeling, or container is modified in such manner as the commissioner may prescribe so that it will not be false or misleading;

(9) 21 U.S.C. § 608, relative to sanitary conditions;

(10) 21 U.S.C. § 610, relative to prohibited acts;

(11) 21 U.S.C. § 611, relative to devices, marks, labels, and certificates;

(12) 21 U.S.C. § 612, relative to notifying the commissioner of adulterated or misbranded meat or meat food products of livestock;

(13) 21 U.S.C. § 613, relative to recall procedures and process control plans;

(14) 21 U.S.C. § 619, relative to identification of livestock and separation of slaughtering and preparation activities;

(15) 21 U.S.C. § 621, relative to appointment and duties of inspectors;

(16) 21 U.S.C. § 623, relative to personal slaughter and custom slaughtering;

(17) 21 U.S.C. § 641, relative to products not intended for use as human food and denaturation;

(18) 21 U.S.C. § 642, relative to recordkeeping requirements;

(19) 21 U.S.C. § 643, relative to registration of businesses dealing in carcasses, meat, or meat food products of livestock in intrastate commerce; and

(20) 21 U.S.C. § 644, relative to transportation of or transactions involving dead, dying, disabled, or diseased animals.

(b) For application to a state meat inspection program, the federal laws adopted under subsection (a) must be construed as follows, unless otherwise appropriate according to context:

(1) References to secretary refer to the commissioner;

(2) References to amenable species, lists of species, and species designated by regulations of the secretary refer to livestock and any additional species of animal that the commissioner defines as an amenable species by rule;

(3) References to commerce refer to intrastate commerce;

(4) References to the United States or any state, territory, or the District of Columbia refer to this state;

(5) Whenever an official mark, form, certificate, or seal is designated or required, the mark, form, certificate, or seal established by the commissioner must be substituted; and

(6) Except as provided in subdivisions (b)(1)-(5), for terms that are not otherwise defined in § 53-7-202, the state adopts the definitions in 21 U.S.C. § 601.

53-7-205. License requirements – Fees.

(a) A person operating an establishment or custom operation must first obtain a license from the commissioner. All licenses provided for in this part expire annually.

(b) In order to obtain and maintain a license under this part, a person must:

(1) Submit, on forms provided by the department of agriculture, information prescribed by rule as necessary for the efficient enforcement of this part;

(2) Pay to the department of agriculture annual license fees, prescribed by rule under § 43-1-703;

(3) Consent to reasonable inspection of the person's facilities, equipment, and inventory of carcasses, meat, and meat food products; and

(4) Not have been convicted of a felony or convicted of more than one (1) of any other crime, either of which is based upon the acquiring, handling, or distributing of adulterated, misbranded, or deceptively packaged food, or upon fraud in connection with food transactions. This restriction applies to persons operating an establishment and persons responsibly connected to the establishment.

(c) Prior to the approval of an application for licensure, the commissioner must inspect the sanitary condition of the establishment or custom operation. If the commissioner finds its condition conforms to the requirements of this part, the department of agriculture may issue the license.

(d) Licenses issued under this part are for the location of the licensed establishment or custom operation and are not transferable from person to person or location to location.

53-7-206. Powers of commissioner.

(a) The commissioner is authorized to:

(1) Carry out or cause to be carried out all provisions of this part;

(2) Collect all fees established pursuant to this part and apply the fees to the necessary and incidental costs of the administration of this part in accordance with title 43, chapter 1, part 7;

(3)

(A) Promulgate rules, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to effectuate this part, including, but not limited to, rules that adopt required standards under the federal Meat Inspection Act or that otherwise establish:

(i) Fees for licensure, registration, and inspection services of persons and facilities under this part;

(ii) Standards for the sale or transportation of dead, dying, disabled, or diseased animals;

(iii) Standards for the sanitary operation of establishments and custom operations;

(iv) Applicant information required for licensure under this part;

(v) Registration requirements for persons engaged in businesses set forth in Section 203 of the federal Meat Inspection Act (21 U.S.C. § 643);

(vi) Inspection, humane handling, and sanitation requirements for animals other than livestock which can or may be used in and for the preparation of meat or meat food products; and

(vii) Requirements for denaturing and identifying products as not intended for use as human food; and

(B) Rules promulgated pursuant to this part must conform with requirements of the federal Meat Inspection Act as necessary to gain

federal recognition and approval of a state-inspected meat program and incorporate regulations compiled at 9 CFR, chapter 3, subchapters A and E;

(4) Cooperate with the USDA in developing and administering the meat inspection program of this state under this part to ensure that its requirements are at least equal to those imposed by the federal Meat Inspection Act;

(5) Accept from the USDA advisory assistance; technical and laboratory assistance and training, including necessary curricular and instructional materials and equipment; and financial and other aid for administration of the program;

(6) Spend state funds, subject to appropriation in the general appropriations act, for administration of this part;

(7) Recommend to the USDA officials or employees for appointment to the advisory committee provided for in 21 U.S.C. § 661;

(8) Cooperate with other state, county, or municipal agencies for administration of this part, including entering into agreements with county or municipal health departments to carry out duties and requirements of this part;

(9) Conduct all inspections as provided in this part and designate any officer or employee of this state or any political subdivision of this state for such purpose;

(10) Embargo articles found or suspected to be in violation of this part;

(11) Seek injunctions from any court of competent jurisdiction to restrain persons from violating this part;

(12) Determine requirements for and issue licenses under this part;

(13) Deny, suspend, or revoke licenses and issue civil penalties for violations of this part;

(14) Inspect and copy records of establishments and custom operations for purposes of determining their compliance with this part;

(15) Hire or appoint qualified personnel sufficient to carry out the duties required by this part; and

(16) Serve as the governor's representative for consultation with the USDA under the federal Meat Inspection Act unless the governor designates another representative.

53-7-207. Inspections.

(a) Establishments and persons are ineligible for inspection services under this part unless they have obtained a valid license from the commissioner.

(b) The commissioner may provide voluntary inspection for animals other than livestock that can or may be used in and for the preparation of meat or meat food products for distribution in intrastate commerce. The commissioner may refuse to provide voluntary inspection services for good cause shown, including, but not limited to, limitation of staff resources or inspector expertise. In all instances, the commissioner shall give scheduling priority to inspection services that are mandated by the federal Meat Inspection Act for processing of livestock in intrastate commerce.

(c) For the purpose of providing inspection required under this part, establishments shall provide the department of agriculture, upon showing of proper credentials, free access and opportunity to examine establishment facilities and equipment, to review and copy records, and to take reasonable samples of inventory or product as necessary to determine compliance with this part.

(d)

(1) The cost for inspection services is as follows:

(A) For livestock, the cost of inspection required under this part is borne by the state; provided, that any extra cost of inspection from overtime or holiday operation is borne by the establishment, as set by rule under § 43-1-703; and

(B) For voluntary inspection services, the cost of inspection required under this part is borne by the establishment, as set by rule under § 43-1-703.

(2) The costs for inspection services under subdivision (d)(1) do not cover costs associated with devices and supplies used for marking and stamping, containers, and labels, which are borne by the establishment, as set by rule under § 43-1-703. However, all devices and supplies used for marking inspection approvals upon food products are under the exclusive control of the department of agriculture.

53-7-208. Custom operations.

(a) Custom operations are subject only to provisions of this part relating to licensing, registration, humane slaughter, humane handling, sanitation, misbranding, and adulteration.

(b) The commissioner may exempt from state meat inspection any animals or their meat or meat food products that are processed for custom operations; provided, that:

(1) The custom operations occur in a facility that is licensed under this part;

(2) The facility separates at all times carcasses, meat, meat food products, and their containers prepared on a custom basis from inspected carcasses, meat, or meat food products, and their containers prepared for sale;

(3) The facility plainly marks all articles and their containers prepared on a custom basis as "Not for Sale". The mark must be made immediately after being packaged and the article kept so identified until delivered to the owner; and

(4) The facility is maintained and operated in a sanitary manner.

(c) Notwithstanding subsection (a), custom operations shall provide the department of agriculture, upon showing of proper credentials, free access and

opportunity to examine custom operation facilities and equipment, to review and copy records, and to take reasonable samples of inventory or product as necessary to determine whether the custom operation qualifies for exemption from regular inspections and is otherwise in compliance with this part.

53-7-209. Prohibited acts.

(a) It is a violation of this part for a person to:

- (1) Engage in an act prohibited under the federal Meat Inspection Act;
- (2) Slaughter livestock or process meat or meat food products in violation of this part;
- (3) Slaughter livestock in intrastate commerce, process meat or meat food products in intrastate commerce, or conduct a custom operation without a license required under this part;
- (4) Generate products from a custom operation unless individually labeled "Not for Sale";
- (5) Sell, offer for sale, distribute, or transport in commerce products generated from a custom operation;
- (6) Fail to denature or otherwise identify as required by rules any meat or meat food product that has been inspected and found to be adulterated;
- (7)
 - (A) Interfere with the commissioner in the performance of official duties, including inspection of licensed establishments; and
 - (B) As used in this subdivision (a)(7), "interfere" includes, but is not limited to, forcible assault or resistance, physical impediment, intimidation, or other conduct designed to interrupt performance of departmental duties under this part;
- (8) Remove, sell, or dispose of an embargoed article without permission of the commissioner or a court; or

(9) Remove a tag or other marking affixed to an article giving notice that the article is embargoed.

(b) A violation of this part is punishable as a Class C misdemeanor. This section does not require the department of agriculture to report violations of this part for criminal prosecution if the department of agriculture believes that the public interest will be adequately served and compliance with this part is obtained by a suitable written notice of warning or application of civil penalty.

53-7-210. Violations – Suspension and revocation.

(a) The commissioner may deny, suspend, or revoke a license issued pursuant to this part if the commissioner finds, after notice and opportunity for a hearing, that the applicant or licensee has violated this part.

(b) Inspection services under this part must not be conducted at any establishment where the commissioner has denied, suspended, or revoked a license.

(c) Upon demonstration that the conditions that led to denial, suspension, or revocation of a license have been cured, persons may submit a new application for a license.

53-7-211. Embargo and condemnation.

(a) Whenever the commissioner has probable cause to believe that a carcass, meat, or meat food product is adulterated, misbranded, or otherwise in violation of this part or that any mark, label, or container is false or misleading, the commissioner may mark the article as embargoed and conduct enforcement resolution procedures consistent with § 53-1-201.

(b) In lieu of condemnation or destruction, articles that may comply with this part upon further reprocessing or relabeling may be ordered held, in the discretion of the commissioner, until such time as the articles are reprocessed or relabeled and found upon reinspection to comply with this part.

53-7-212. Hearings and appeals.

A hearing or appeal held pursuant to this part must be conducted substantially in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

SECTION 2. Tennessee Code Annotated, Title 53, Chapter 7, is amended by addition of the following as a new part:

53-7-401. Part definitions.

As used in this part:

(1) "Federal Poultry Products Act" means the act compiled at 21 U.S.C. § 451 et seq. and its subsequent amendments; and

(2) "USDA" means the United States department of agriculture.

53-7-402. Poultry.

Nothing in this chapter applies to any action subject to regulation under the Federal Poultry Products Act, which remains under the sole jurisdiction of the USDA, food safety inspection service; provided, that state inspectors are not excluded from making routine inspections and from taking samples at federally inspected plants when cooperating with federal authorities for purposes of enforcing federal regulation.

SECTION 3. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4.

(a) For purposes of promulgating rules, hiring of personnel, and taking other administrative actions necessary to implement this act, this act takes effect upon becoming a law, the public welfare requiring it.

(b) For all other purposes, this act takes effect immediately upon thirty (30) days following the commissioner of agriculture's receipt from the United States department of agriculture, food safety and inspection service, that the requirements of the federal Meat

Inspection Act (21 U.S.C. § 601 et seq.) necessary to a cooperative agreement for a state meat inspection program have been met.

(c) The commissioner of agriculture or the commissioner's designee shall notify the executive secretary of the Tennessee code commission upon receipt from the federal food safety and inspection service (FSIS) that Tennessee has met the requirements under the federal Meat Inspection Act (21 U.S.C. § 601 et seq.) to enter into a cooperative agreement with FSIS for a state meat inspection program.