

HOUSE BILL 61

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 53,
Chapter 1; Section 53-7-202 and Section 53-7-
220, relative to food, drug, and cosmetic safety.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

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

§ 53-1-201.

(a) Whenever an agent of the commissioner has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent, the agent shall mark the article as "detained" or "embargoed". It is a violation of this chapter for any person to remove or dispose of the detained or embargoed article by sale or otherwise without permission of the agent or the court.

(b) When an article detained or embargoed under subsection (a) has been found by the agent to be adulterated or misbranded, the agent shall petition the judge of a circuit or chancery court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If, however, the agent subsequently finds that an article so detained or embargoed is not adulterated or misbranded, or if the agent fails to petition for an order of condemnation within fifteen (15) days of the detainer or embargo, the agent shall remove the marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, the article must, after entry of the decree, be destroyed at the expense of the claimant of the detained or embargoed article, under the supervision of the agent, and all court costs and fees, and storage and other proper expenses, shall be taxed

against the claimant of the article, unless the adulteration or misbranding can be corrected by proper labeling or processing of the article, in which case the court, after entry of the decree, and after the costs, fees, and expenses have been paid, may, by order, direct that the article be delivered to the claimant of the article for the labeling or processing under the supervision of an agent of the commissioner, with the expense of the supervision to be paid by the claimant.

(d) Whenever the commissioner or any of the commissioner's authorized agents find, in any room, building, vehicle of transportation, or other structure, any meat, seafood, poultry, vegetable, fruit, or other perishable articles that are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the meat, seafood, poultry, vegetable, fruit, or other perishable articles being declared to be a nuisance, the commissioner or the commissioner's authorized agent shall immediately condemn or destroy the meat, seafood, poultry, vegetable, fruit, or other perishable articles or in any other manner render the meat, seafood, poultry, vegetable, fruit, or other perishable articles unsalable as human food.

(e) In addition to the remedies provided elsewhere in this chapter, the commissioner is authorized to apply to a court of competent jurisdiction, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating § 53-1-103(a), regardless of whether or not there exists an adequate remedy at law.

§ 53-1-202.

The commissioner may promulgate rules for the efficient enforcement of this chapter. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 53-1-203.

(a) The commissioner or the commissioner's agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose of inspection and securing samples.

(b) Carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding those articles, shall permit an agent of the commissioner, at reasonable times, to access and copy all records showing, during or after the movement in intrastate commerce, the quantity, shipper, and consignee of the food, drug, device, or cosmetic.

(c) Carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers.

§ 53-1-204.

(a)

(1) Except as provided in subsection (c), no person shall manufacture, process, pack, or hold food for introduction into commerce unless the person holds a valid license issued by the commissioner.

(2)

(A) Applicants for licensure shall apply for the license on forms provided by the commissioner.

(B) The commissioner may issue a license to an applicant only upon receipt of the proper license fee and an inspection of the applicant's

facility that indicates the applicant is in compliance with the requirements of this chapter and the rules promulgated thereunder.

(C) Licenses issued under this section expire on July 1 of each year, or as the commissioner may otherwise provide by rule.

(D) The commissioner shall set annual fees for licenses issued under this section by rule pursuant to § 43-1-703.

(b) The commissioner shall set, by rule under § 43-1-703, a fee for a certificate of free sale.

(c) No license shall be required under this section for any person who manufactures, processes, packs, or holds food for introduction into commerce, if:

(1) The food is not potentially hazardous, as defined by departmental regulation;

(2) The person is not subject to any license or permit requirements under § 53-3-105, § 53-3-106, § 53-7-216, or § 53-8-206;

(3) The person introduces food into commerce only through direct retail sales to end consumers in this state;

(4) The person employs no regular, full-time employees for the manufacturing, processing, packing, or holding of food; and

(5) Prior to introducing the food into commerce, the person labels the food in accordance with this chapter and the regulations promulgated by the commissioner.

(d) Exemption from licensure requirements under this section does not exempt any person from any other regulations applicable to the manufacturing, processing, packing, or holding of food for introduction into commerce, including, but not limited to,

requirements regarding recordkeeping, sanitary operation, and availability for inspection by agencies charged with enforcing food safety laws.

SECTION 2. Tennessee Code Annotated, Section 53-1-103(a)(4), is amended by deleting the language "§ 53-1-110, § 53-1-206, § 53-1-208, § 53-1-209" and substituting instead the language "§ 53-1-110, § 53-1-201, § 53-1-203, § 53-1-204".

SECTION 3. Tennessee Code Annotated, Section 53-1-103(a)(6)(A), is amended by deleting the language "§ 53-1-208" and substituting instead the language "§ 53-1-203".

SECTION 4. Tennessee Code Annotated, Section 53-1-103(a)(6)(B), is amended by deleting the language "§ 53-1-209" and substituting instead the language "§ 53-1-203".

SECTION 5. Tennessee Code Annotated, Section 53-1-103(a)(8), is amended by deleting the language "§ 53-1-202" and substituting instead the language "§ 53-1-201".

SECTION 6. Tennessee Code Annotated, Section 53-1-105(a), is amended by deleting subdivisions (7) and (8).

SECTION 7. Tennessee Code Annotated, Section 53-1-304, is amended by deleting the section.

SECTION 8. This act takes effect upon becoming a law, the public welfare requiring it.