

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1317

BY: BATES

AS INTRODUCED

AN ACT RELATING TO AGRICULTURE; AMENDING 2 O.S. 1981, SECTIONS 5-21, AS AMENDED BY SECTION 1, CHAPTER 74, O.S.L. 1985, 5-25, AS AMENDED BY SECTION 3, CHAPTER 74, O.S.L. 1985, AND 5-28, AS LAST AMENDED BY SECTION 1, CHAPTER 133, O.S.L. 1988 (2 O.S. SUPP. 1990, SECTIONS 5-21, 5-25 AND 5-28), WHICH RELATE TO EGGS; ADDING TO TERMS; DESIGNATING CERTAIN TEMPERATURE REQUIREMENTS FOR CERTAIN EGGS; MODIFYING CERTAIN TEMPERATURE REQUIREMENTS; REQUIRING CERTAIN REPORTS FROM EGG DEALERS; INCREASING CERTAIN INSPECTION FEES; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 1981, Section 5-21, as amended by Section 1, Chapter 74, O.S.L. 1985 (2 O.S. Supp. 1990, Section 5-21), is amended to read as follows:

Section 5-21. As used herein:

(a) "Eggs" shall mean raw eggs in the shell that are the product of the domesticated chicken hen.

(b) "Person" shall mean individuals, firms, associations, partnerships, corporations or other legal entities.

(c) "Dealer" shall mean and include any person engaged in the wholesale marketing of eggs. Such person may also sell eggs to the consumer but shall not be considered a retailer.

(d) "Consumer" shall mean any person using eggs for food and shall include restaurants, hotels, cafeterias, hospitals, state institutions or any other establishment serving food to be consumed on the premises, but shall not include the armed forces or any other federal agency or institution where federal egg grade certificates are issued.

(e) "Containers" shall mean any container in which eggs are dispensed to consumers.

(f) "Retailer" shall mean and include any person who sells eggs to a consumer.

(g) "Board" shall mean the State Board of Agriculture.

(h) "Packer" shall mean any person who grades, regrades, packs or repacks eggs for sale or subsequent resale to dealers, retailers or consumers within this state. Such person may sell eggs to consumers but shall not be considered as a dealer.

(i) "Pack-date" shall mean the date on the container on which the eggs were placed in the container.

(j) "Expiration date" shall mean the date on the container on which the eggs are to be removed from sale.

(k) "Case" means any quantity of eggs equaling exactly thirty (30) dozen eggs or any container designed to hold exactly thirty (30) dozen eggs.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-21.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

(a) Eggs at the retail level shall be refrigerated at a temperature of forty-five degrees Fahrenheit (45° F) or lower. Eggs shall not be allowed to freeze.

(b) Eggs stored at the packer's facility that are intended for sale to the consumer shall be held at a temperature in accordance with United States Department of Agriculture standards.

(c) Except as provided in this section, eggs intended for sale to the consumer shall be stored and/or transported under refrigeration at a temperature of fifty degrees Fahrenheit (50° F) or lower. The Board may grant an exception to the refrigeration requirement for transportation by smaller packers delivering locally.

(d) (1) Eggs being held without proper refrigeration at retail or dealer locations shall be destroyed or shipped to an egg processor. This shall be done at no cost to the packer.

(2) Eggs being transported without proper refrigeration shall be destroyed or shipped to an egg processor. Cost shall be at the expense of the transporter.

(3) Destruction or shipment of eggs as required by this subsection shall be under the supervision of an authorized agent of the Board of Agriculture.

(e) At retail locations a sign stating the proper procedure for storage and handling of eggs will be permanently displayed at a location easily seen by egg-handling employees.

SECTION 3. AMENDATORY 2 O.S. 1981, Section 5-25, as amended by Section 3, Chapter 74, O.S.L. 1985 (2 O.S. Supp. 1990, Section 5-25), is amended to read as follows:

Section 5-25. It shall be a violation of this subarticle for any person other than those exempted in Section 5-29 of this title:

(a) to sell, display for sale, or offer for sale eggs below the quality of "Oklahoma Grade B" to consumers;

(b) to sell, display for sale, or offer for sale eggs to consumers unless the container, or label attached to the container, shows the pack-date the eggs were placed in such container and indicates the correct size and grade of the eggs contained therein, in boldface legible letters with no other descriptive wording, except that additional descriptive wording pertaining to eggs is permitted provided such eggs are not below the quality of "Oklahoma Grade A"; further provided that such descriptive wording is not false or misleading;

(c) to sell, display for sale, or offer for sale eggs to consumers unless there is indicated on the container the name and address of the packer by or for whom the eggs were graded, marked, or labeled and if any egg packer operates on the basis of a permit, as optionally provided for in Section 5-28 of this title, such packer's permit number shall also appear on such container;

(d) to falsely or deceptively label, mark, advertise, or invoice eggs;

(e) to advertise eggs for sale with any descriptive wording in connection therewith (except official grade designations) unless such eggs meet the quality requirements of "Oklahoma Grade A" or "Oklahoma Grade AA", or to state a price when advertising eggs without also designating the full, correct, and unabbreviated grade and size as provided herein;

(f) to permit graded eggs, including "Grade B" and above, which are in his possession intended for sale or resale to consumers, to be stored at a an ambient temperature higher than ~~sixty (60) or lower than twenty-nine (29) degrees Fahrenheit~~ those specified in Section 2 of this act;

(g) to sell, display for sale, or offer for sale eggs to consumers in a container which does not bear an inspection fee stamp, issued by the Board or the permit number of the packer,

showing that the inspection fee has been paid thereon, as provided for in Section 5-28 of this title;

(h) to use an inspection fee stamp more than one time or to use a counterfeit thereof or to use a container bearing a packer's license number more than one time;

(i) to do business as a packer, retailer, or dealer of eggs without first obtaining a license from the Board as required in Section 5-28 of this title;

(j) to fail or neglect to pay any license or inspection fee due under the requirements of Section 5-28 of this title, or to fail or neglect to file the monthly inspection fee report when same is required under the provisions of Section 5-28 of this title, or to file a false monthly report of the quantity of eggs packed for sale during any month;

(k) to refuse entry of any authorized inspector or employee of the Board for the purpose of making inspections under the provisions of this subarticle;

(l) to sell, display for sale, or offer for sale eggs to consumers below Grade "A" with any descriptive wording other than the correct grade as recognized by the United States Department of Agriculture standards for shell eggs; or

(m) for any packer or dealer to sell eggs intended for sale in Oklahoma to another packer, dealer or retailer unless such packer, dealer or retailer holds an appropriate Oklahoma license.

SECTION 4. AMENDATORY 2 O.S. 1981, Section 5-28, as last amended by Section 1, Chapter 133, O.S.L. 1988 (2 O.S. Supp. 1990, Section 5-28), is amended to read as follows:

Section 5-28. (a) No person shall be issued a license to handle eggs commercially unless such person has properly filed with the Board an application on a form provided by the Board, and paid such annual license fees as are required by this section. Such license shall not be transferable.

(1) A state egg retailer's license shall be Five Dollars (\$5.00).

(2) State egg dealer's license fees for dealers shall be determined on the basis of cases of eggs sold in the shell in any one (1) month as follows:

- a. 1 to 500 cases -----\$5.00
- b. 501 to 2,000 cases -----\$12.50
- c. 2,001 to 5,000 cases -----\$25.00
- d. More than 5,000 cases -----\$50.00

(3) An egg packer's license shall be issued without charge provided such packer pays an inspection fee, as required in this section, on a minimum of six thousand (6,000) dozen eggs annually.

(4) Each license issued pursuant to this section except packers shall expire annually on the last day of the anniversary month in which the license was first issued. The Board shall have the authority to adjust the initial anniversary date to provide for efficient administration. A packer's license shall be issued for a period of five (5) years.

(5) Each location shall require a separate license.

(6) Packers residing within the state who package eggs intended solely for distribution sale or resale outside the state shall obtain a license as required pursuant to this section except the packer shall be exempt from all fee and reporting requirements. A packer shall be subject to all inspections, recordkeeping and audits as are required pursuant to this section.

(7) If a license expires and is not renewed within thirty (30) days of its expiration, the applicant for renewal shall pay a penalty. Such penalty shall be an amount equal and in addition to the license applied for.

(b) Packers shall pay to the Board an inspection fee on all eggs that are graded, packed or repacked which are intended for sale

or subsequent resale to consumers in this state at the rate of ~~two mill (\$0.002)~~ three mill (\$0.003) per dozen.

(1) Inspection fee stamps will be provided by the Board for those packers desiring to use them. Cost to the packer for these stamps will be the cost to the Board for printing, mailing and handling plus the per dozen fee rate as specified in this section.

(2) Inspection fee stamps, if used, shall also serve as a label indicating grade, size of egg and the container size.

(3) Packers whose monthly production is six thousand (6,000) dozen or more, in lieu of using inspection fee stamps, may file an application with the Board, on a form prescribed by the Board, for a permit to report and pay the fees monthly.

(4) All inspection fees shall be paid either by use of fee stamps or permitted monthly report.

(c) Packers and dealers shall keep such records concerning eggs graded, packed, distributed or sold as the Board shall deem necessary to properly administer the provisions of Sections 5-21 through 5-30 of this title. Such records shall be maintained for a period of three (3) years. Any applicant for a license required pursuant to this section authorizes the Board or its duly authorized representative permission and access to such records as are required herein. The Board shall at least one time a year and whenever it deems necessary audit the records of dealers and of the packers who report and pay fees monthly. The packer and dealer shall be assessed a fee commensurate with the actual cost to the Board of conducting the required annual audit. The costs of any additional audits deemed necessary by the Board throughout the year shall be borne by the Board.

(d) (1) Packers permitted to pay required inspection fees on a monthly basis shall prepare a sworn and notarized report of all fees due and payable on the last day of each month. The report shall be

filed and the fee paid not later than the fifteenth day of the month following the due date.

(2) Reports shall contain the quantity of eggs packed and intended for sale or resale in the state, the names of the dealers for whom the eggs were packed or to whom the eggs were sold or delivered, and such other information as the Board may require to administer the provisions of Sections 5-21 through 5-30 of this title.

(3) Reports provided to the Board pursuant to this section shall not be considered as public information and may be used only for administration of the provisions of Sections 5-21 through 5-30 of this title. Statistical information may be taken from such reports by the Board if the Board does not identify specific packers either by name or implication.

(4) If a report is not filed and the fees paid within thirty (30) days of the due date, the packer shall pay a penalty of two percent (2%) of the fees due for each additional day the fees are late. If the report is not filed and the fees paid within sixty (60) days of the due date, the amount of the penalty shall be an amount equal and in addition to the amount of the fees due.

SECTION 5. This act shall become effective July 1, 1991.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-5808

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