STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 46

By: Muegge of the Senate

and

Pope (Clay) of the House

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 1991, Sections 5-21, 5-21.1, 5-23, 5-25, 5-26 and 5-28, as amended by Section 17, Chapter 278, O.S.L. 1993 (2 O.S. Supp. 1997, Section 5-28), which relate to the sale of eggs; amending definitions; modifying pack date and expiration date; regulating the storage of shell eggs; modifying standards; modifying violations to include restaurants, hotels and other eating establishments to display a sign which states the eggs used are below "A" quality or have not been graded; clarifying language; modifying inspection fees; including out-of-state processes in inspection fee assessment; adding inspection fees for processed eggs sold or used for human consumption; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 5-21, is amended to read as follows:

Section 5-21. As used herein:

~~(a)~~ 1. "Eggs" shall mean raw eggs in the shell that are the product of the domesticated chicken hen~~.~~ or egg products manufactured from raw eggs and intended for human consumption;

~~(b)~~ 2. "Person" shall mean individuals, firms, associations, partnerships, corporations or other legal entities~~.~~;

~~(c)~~ 3. "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)~~ 4. "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)~~ 5. "Containers" shall mean any container in which eggs are dispensed to consumers~~.~~;

~~(f)~~ 6. "Retailer" shall mean and include any person who sells eggs to a consumer~~.~~;

~~(g)~~ 7. "Board" shall mean the State Board of Agriculture~~.~~;

~~(h)~~ 8. "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)~~ 9. "Pack-date" shall mean the date on the container on which the eggs were placed in the container~~.~~;

~~(j)~~ 10. "Expiration date" shall mean the date on the container on which the eggs are to be removed from sale;

11. "Ambient temperature" shall mean the atmospheric temperature surrounding or encircling shell eggs;

12. "Case" shall mean exactly thirty (30) dozen eggs or any container designed to hold exactly thirty (30) dozen eggs; and

13. "Processor" shall mean any person who operates a plant for the purpose of breaking or boiling eggs for liquid, freezing, drying, or commercial food manufacturing.

SECTION 2. AMENDATORY 2 O.S. 1991, Section 5-21.1, is amended to read as follows:

Section 5-21.1 ~~(a)~~ A. A pack-date may be in a three-digit julian date or a calendar date.

~~(b)~~ B. If an expiration date is used on the container, the date shall be preceded by EXP, sell by or use through.

~~(c)~~ C. Eggs removed from sale as a result of the expiration date on the container may be regraded and repacked if such eggs comply with grade standards.

SECTION 3. 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 an ambient temperature of forty-five degrees (45°) Fahrenheit 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 must be held at a temperature in accordance with the USDA standards.

C. Except as provided in this section, eggs intended for sale to the consumer shall be stored and/or transported under refrigeration at an ambient temperature of forty-five degrees (45°) Fahrenheit or lower. The State Board of Agriculture may grant an exception to the refrigeration requirement for transportation by smaller packers delivering within a fifty-mile radius.

D. 1. Eggs being transported or held at retail or dealer locations without proper refrigeration are subject to be destroyed or shipped to an egg processor.

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

3. Packers shall not be responsible for the interior quality of eggs if all recommended handling procedures in this section are not followed by all parties after the sale of the eggs by the packer.

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 4. AMENDATORY 2 O.S. 1991, Section 5-23, is amended to read as follows:

Section 5-23. A. The egg standards of size and quality, of the United States Department of Agriculture shall be used as minimum standards for the State of Oklahoma.

B. Standards for egg products shall be the "Egg Products Inspection Act" (P.L. 91-597, 84 Stat. 1620 et seq.) and Acts amendatory thereof or supplementary thereto.

SECTION 5. AMENDATORY 2 O.S. 1991, 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~~ 1. To sell, display for sale, or offer for sale eggs below the quality of "Oklahoma Grade B" to consumers, or for restaurants, hotels, and other eating places to use eggs below "A" quality or eggs for which quality has not been established, without displaying a placard of heavy cardboard of not less than eight (8) by eleven (11) inches, stating the quality and weight of the eggs used by the establishment in a location where it can easily be seen by the customers, or in lieu thereof, place this information on the menu;

~~(b) to~~ 2. 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~~ 3. 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 or processor by ~~or for~~ whom the eggs were processed, graded, marked, or labeled and if any egg packer or processor 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~~ 4. To falsely or deceptively label, mark, advertise, or invoice eggs;

~~(e) to~~ 5. 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~~ 6. To permit graded eggs, including "Grade B" and above, which are in his possession 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 3 of this act;

~~(g) to~~ 7. 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~~ 8. 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~~ 9. 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~~ 10. 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~~ 11. 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~~ 12. 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~~ 13. 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 6. AMENDATORY 2 O.S. 1991, Section 5-26, is amended to read as follows:

Section 5-26. A. The State Board of Agriculture and inspectors or other authorized agents under its supervision and control shall enforce the provisions of this subarticle. The Board shall ~~adopt~~ promulgate rules ~~and regulations~~ as it deems necessary to carry out the provisions of this subarticle.

~~(a)~~ B. Any authorized inspector or employee or agent of the Board may enter any place of business within the state with or without a formal warrant where any eggs are bought, sold, graded or

held and may take for inspection purposes, representative samples of such eggs and egg containers for the purpose of determining whether or not any provisions of this subarticle have been violated.

~~(b)~~ C. Any authorized inspector or employee or agent of the Board may, while enforcing any provisions of this subarticle, seize and hold as evidence any eggs displayed or offered for sale in violation of any provisions of this subarticle.

SECTION 7. AMENDATORY 2 O.S. 1991, Section 5-28, as amended by Section 17, Chapter 278, O.S.L. 1993 (2 O.S. Supp. 1997, Section 5-28), is amended to read as follows:

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

~~(1)~~ 1. A state egg retailer's license shall be Ten Dollars ($10.00).

~~(2)~~ 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)~~ 3. An egg ~~packer's~~ packer or processor license shall be issued without charge provided such packer or processor pays an inspection fee, as required in this section, on a minimum of six thousand (6,000) dozen eggs or 200 cases annually.

~~(4)~~ 4. Each license issued pursuant to this section except ~~packers~~ a packer's or processor's license 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~~ packer or processor license shall be issued for a period of five (5) years.

~~(5)~~ 5. Each location shall require a separate license.

~~(6)~~ 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, record keeping and audits as are required pursuant to this section.

~~(7)~~ 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~~ B. Each packer or processor shall pay to the Board an inspection fee on all eggs that are processed, graded, packed or repacked which are intended for sale or subsequent resale to consumers in this state at the rate of ~~four mill ($0.004)~~ three mills ($0.003) per dozen.

~~(1)~~ 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)~~ 2. Inspection fee stamps, if used, shall also serve as a label indicating grade, size of egg and the container size.

~~(3)~~ 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)~~ 4. All inspection fees shall be paid either by use of fee stamps or permitted monthly report.

5. There shall be a nine-cent per case (three mill ($0.003) per dozen equivalent) inspection fee on all egg products sold in the State of Oklahoma. In addition, any processor outside the State of Oklahoma shipping egg products into Oklahoma, for wholesale or retail, shall be charged the same assessment.

6. All egg products processors shall be responsible for the inspection fees due on all processed eggs sold or used for human consumption in the State of Oklahoma based on the following formula:

a. Thirty-six (36) pounds of frozen or liquid eggs shall represent a thirty (30) dozen case of shell eggs.

b. Nine (9) pounds of dried eggs shall represent a thirty (30) dozen case of shell eggs.

c. Two (2) containers of boiled eggs weighing twenty (20) to twenty-five (25) pounds each shall represent a thirty (30) dozen case of shell eggs.

d. Fifty (50) pounds of cooked or diced eggs shall represent a thirty (30) dozen case of shell eggs.

7. Additionally, at the discretion of the Board, a dealer/wholesaler selling egg products in the State of Oklahoma shall be held liable for fees due in lieu of an egg products processor provided the processor is unable or refuses to pay the assessed inspection fee.

~~(c)~~ C. 1. Packers, processors 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.

2. 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.

3. The Board shall at least one time a year and whenever it deems necessary audit the records of packers who report and pay fees

monthly. The packer shall be ~~assessed a fee commensurate with the actual cost~~ required to reimburse to the Board ~~of~~ the travel expenses incurred in 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)~~ 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)~~ 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)~~ 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)~~ 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 8. This act shall become effective November 1, 1998.

46-2-11196 KSM