

CHAPTER 713

S.B. No. 565

AN ACT

relating to the licensure of food manufacturers and wholesale food distributors.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subchapter J, Chapter 431, Health and Safety Code, is amended to read as follows:

SUBCHAPTER J. FOOD MANUFACTURERS AND FOOD WHOLESALERS

Sec. 431.221. *DEFINITIONS* [~~APPLICABILITY TO CERTAIN PERSONS~~]. [(a)] In this subchapter:

(1) "Place of business" means each location where a person manufactures food or where food for wholesale is distributed.

(2) "Food manufacturer" means a person who combines, purifies, processes, or packages food for sale through a wholesale outlet. The term also includes a retail outlet that packages or labels food before sale and a person that represents itself as responsible for the purity and proper labeling of an article of food by labeling the food with the person's name and address.

(3) "Food wholesaler" means a person who distributes food for resale, either through a retail outlet owned by that person or through sales to another person. The term "food wholesaler" shall not include a commissary which distributes food primarily intended for immediate consumption on the premises of a retail outlet under common ownership.

(4) "Manufacture" [chapter, "manufacture"] means the process of combining or purify- ing food and packaging food for sale to a consumer at wholesale or retail.

Sec. 431.2211. APPLICATION OF SUBCHAPTER. ~~[(b) Any person, firm, or corpora- tion that represents itself as responsible for the purity and the proper labeling of any article of food by placing or having placed its name and address on the label of any food shall be deemed a manufacturer and shall be included within the meaning of this section.~~

[e] This subchapter does not apply to a person, firm, or corporation that harvests, packages, washes, or ships raw fruits or vegetables.

Sec. 431.222. LICENSE [REGISTRATION] REQUIRED; LICENSING FEES. (a) A food manufacturer ~~[of food]~~ in this state must apply for and obtain from ~~[shall register annually with]~~ the department each year a license for each place of business ~~[establishment]~~ that the manufacturer operates in this state. The food manufacturer must ~~[and]~~ pay a licensing fee for each establishment.

(b) A food wholesaler in this state must apply for and obtain from the department each year a license for each place of business that the wholesaler operates in this state. The food wholesaler must pay a licensing fee for each place of business ~~[The registration statement must be signed and verified and filed on a form furnished by the department].~~

(c) For the purposes of collecting licensing fees under this section, the department shall require a food manufacturer that distributes only food manufactured by that firm to obtain only a license as a food manufacturer. A person that does not manufacture food and serves only as a wholesale distributor must obtain only a wholesale distributor's license. A person that distributes both its own manufactured food and food it does not manufacture must obtain only a food manufacturer's license.

Sec. 431.223. CONTENTS OF LICENSE APPLICATION ~~[REGISTRATION STATE- MENT]~~. (a) The person applying for a license under this subchapter must provide, at a minimum, the following information in a license application ~~[registration statement must contain]:~~

(1) the name under which the food manufacturer or wholesale distributor conducts business ~~[is conducted];~~

(2) the address of each place of business in this state that is licensed ~~[registered];~~

(3) if the food manufacturer or wholesale distributor is an individual, a partnership, or an association, the name or names of:

(A) the proprietor, if the business is a sole proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) if the food manufacturer or wholesale distributor is a corporation, the date and place of incorporation and the name and address of its registered agent in this state, ~~[if the business is a corporation]; [and]~~

(5) the names and residences of the individuals in an administrative capacity, showing:

(A) the managing proprietor, if the business is a sole proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of a person in charge of each place of business.

(b) *The license application must be signed, verified, and filed on a form furnished by the department according to the rules adopted by the board.*

Sec. 431.224. FEES. (a) The board shall collect fees for:

(1) a license [registration] that is filed or[, renewed[, or amended]; [and]

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.2251; and

(3) an inspection performed to enforce this subchapter and rules adopted under this subchapter.

(b) The board may charge annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover at least 50 percent of the annual expenditures of state funds by the department in:

(1) reviewing and acting on a license [registration];

(2) amending and renewing a license [registration];

(3) inspecting a licensed [registered] facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license [registration] issued under this subchapter.

(d) The department shall use not less than one-half of license [registration] fees collected for inspecting a licensed place of business [registered facility] or enforcing this subchapter, and the remainder for the administration of this subchapter.

(e) All license [registration] fees received by the department under this subchapter shall be deposited in the state treasury to the credit of the food and drug license [registration] fee fund.

Sec. 431.225. EXPIRATION DATE. (a) The board by rule may provide that licenses [registrations] expire on different dates during the year.

(b) For the year in which the license [registration] expiration date is changed, license [registration] fees payable on or before September 1 shall be prorated so that each license holder [registrant] pays only that portion of the license [registration] fee allocable to the number of months during which the license [registration] is valid. On renewal of the license [registration] on the new expiration date, the total license [registration] renewal fee is payable.

Sec. 431.2251. CHANGE IN LOCATION OF PLACE OF BUSINESS. *Not later than the 31st day before the date of the change, the license holder shall notify in writing the commissioner or the commissioner's designee of the license holder's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the place of business. Not later than the 10th day after the completion of the change of location, the license holder shall forward to the commissioner or the commissioner's designee the name and residence address of the individual in charge of the new place of business. Notice is considered adequate if the license holder provides the intent and verification notices to the commissioner or the commissioner's designee by certified mail, return receipt requested, mailed to the central office of the department.*

Sec. 431.226. REFUSAL TO GRANT LICENSE [REGISTER]; SUSPENSION OR REVOCATION OF LICENSE [REGISTRATION]. (a) The commissioner may refuse an application for a license [to register,] or may suspend or revoke a license [registration].

(b) The board by rule shall establish minimum standards for granting and maintaining a license [registration].

(c) The refusal or the suspension or revocation of a license [registration] by the commissioner and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 2. This Act takes effect September 1, 1993.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 13, 1993, by a viva-voce vote; passed the House on May 26, 1993, by a non-record vote.

Approved June 16, 1993.

Effective Sept. 1, 1993.