~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

March 24, 2010

**H. 4563**

Introduced by Rep. Vick

S. Printed 3/24/10--H.

Read the first time February 17, 2010.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 39‑25‑115 SO AS TO REQUIRE THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE TO PROMULGATE REGULATIONS RELATING TO PRESCRIBED CONDITIONS FOR THE ISSUANCE OF PERMITS FOR THE MANUFACTURE, PROCESSING, OR PACKAGING OF FOODS UNDER CERTAIN CONDITIONS, AND TO ALLOW AN OFFICER OR EMPLOYEE OF THE COMMISSIONER TO HAVE ACCESS TO A FACTORY OR ESTABLISHMENT OWNED BY A PERMIT HOLDER TO ASCERTAIN COMPLIANCE WITH THE PERMIT CONDITIONS; BY ADDING SECTION 39‑25‑210 SO AS TO REQUIRE A PERSON ENGAGED IN MANUFACTURING, PROCESSING, OR PACKAGING FOODS TO FIRST OBTAIN A PERMIT FROM THE DEPARTMENT OF AGRICULTURE, TO PROVIDE FOR THE RENEWAL OF PERMITS, AND TO PROVIDE PENALTIES FOR FAILURE TO OBTAIN A PERMIT; TO AMEND SECTION 39‑25‑30, RELATING TO PROHIBITED ACTS, SO AS TO INCLUDE OPERATING WITHOUT A VALID PERMIT; TO AMEND SECTION 39‑25‑180, RELATING TO PROMULGATION OF REGULATIONS BY THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE, SO AS TO INCLUDE REGULATIONS RELATING TO GOOD MANUFACTURING PRACTICE, THERMALLY PROCESSED LOW‑ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS, ACIDIFIED FOODS, FISH AND FISHERY PRODUCTS, HAZARD ANALYSIS AND CRITICAL CONTROL POINT SYSTEMS, AND FOOD ALLERGEN AND LABELING; AND TO AMEND SECTION 39‑25‑190, RELATING TO AUTHORITY TO ENTER AND INSPECT A PREMISES, SO AS TO PROVIDE THAT THE DEPARTMENT OF AGRICULTURE MAY PERFORM LABORATORY SERVICES, AND TO PROVIDE FOR THE PAYMENT OF FEES FOR THOSE SERVICES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 25, Title 39 of the 1976 Code is amended by adding:

“Section 39‑25‑115. (A) When the commissioner finds, upon investigation, that the distribution in South Carolina of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packaging in any locality, be injurious to human health and that the injurious nature cannot be adequately traced back after the articles have entered commerce, he shall promulgate regulations providing for the issuance to manufacturers, processors, or packagers of the class of food in the locality of permits to which must be attached the conditions governing the manufacture, processing, or packaging of the class of food, for the temporary period of time as may be necessary to protect the public health. After the effective date of the regulations and during the temporary period, a person may not introduce or deliver for introduction into commerce any food manufactured, processed, or packaged by any manufacturer, processor, or packager unless the manufacturer, processor, or packager holds a permit issued by the commissioner as provided by the regulations.

(B) An officer or employee duly designated by the commissioner shall have access to a factory or establishment, the operator of which holds a permit from the Department of Agriculture, for the purpose of ascertaining whether or not the conditions of the permit are being complied with. Denial of access for the inspection is grounds for suspension of the permit until the access is freely given by the owner or operator.”

SECTION 2. Chapter 25, Title 39 of the 1976 Code is amended by adding:

“Section 39-25-210. (A) A person subject to inspection pursuant to this chapter may not engage in the business of manufacturing, processing, warehousing, or packaging food in any manner without first registering with the department. This section shall not apply to facilities inspected and regulated by the United States Department of Agriculture (USDA) or the Clemson Livestock-Poultry Health Meat Inspection Division. Registration is required beginning January 1, 2011, and must be renewed annually thereafter on or before the first day of January on forms provided by the department. The department may establish and retain by regulation a registration fee to cover the cost of administering this program.

(B) A person who willfully violates the provisions of this section is subject to a civil penalty of up to one thousand dollars for each violation as determined by the department. Any person violating this section is also guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than thirty days. ”

SECTION 3. Section 39‑25‑30 of the 1976 Code is amended to read:

“Section 39‑25‑30. The following acts ~~and the causing thereof~~ within the State of South Carolina are ~~hereby~~ prohibited:

~~(a)~~(1) the manufacture, sale, or delivery, holding, or offering for sale of any food or cosmetic that is adulterated or misbranded~~.~~;

~~(b)~~(2) the adulteration or misbranding of any food or cosmetic~~.~~;

~~(c)~~(3) the receipt in commerce of any food or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery ~~thereof~~ of it for pay or otherwise~~.~~;

~~(d)~~(4) the distribution in commerce of a consumer commodity, as defined in this chapter, if ~~such~~ the commodity is contained in package, or if there is affixed to that commodity a label, ~~which~~ that does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter; provided, however, that this prohibition ~~shall~~ does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that ~~such~~ persons ~~(1) are~~ engaged in packaging or labeling of ~~such~~ the commodities~~,~~ or ~~(2)~~ prescribe or specify by any means the manner in which such commodities are packaged or labeled~~.~~;

~~(e)~~(5) the dissemination of any false advertisement~~.~~ regarding any food or cosmetic;

~~(f)~~(6) the refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by Section 39‑25‑190~~.~~;

~~(g)~~(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State ~~of South Carolina~~ from whom he received in good faith the food or cosmetic~~.~~;

~~(h)~~(8) the removal or disposal of a detained or embargoed article in violation of Section 39‑25‑60~~.~~;

~~(i)~~(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food or cosmetic if ~~such~~ the act is done while ~~such~~ the article is held for sale and results in ~~such~~ the article being adulterated or misbranded~~.~~;

~~(j)~~(10) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated ~~under~~ pursuant to the provisions of this chapter or of the federal act~~.~~;

~~(k)~~(11) the using by any person to his own advantage, or revealing, other than to the commissioner or his authorized representative or to the courts when relevant in any judicial proceeding ~~under~~ pursuant to this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection~~.~~; and

(12) operating without registering pursuant to Section 46-3-20.”

SECTION 4. Section 39‑25‑180 of the 1976 Code is amended to read:

“Section 39‑25‑180. ~~(a)~~(A) The authority to promulgate regulations for the efficient enforcement of this chapter is ~~hereby~~ vested in the commissioner. The commissioner is ~~hereby~~ authorized to make the regulations promulgated ~~under~~ pursuant to this chapter conform, insofar as practicable, with those promulgated under the federal act.

~~(b)~~(B) Hearings authorized or required by this chapter ~~shall~~ must be conducted by the commissioner or ~~such~~ the officer, agent, or employee ~~as~~ the commissioner may designate for the purpose.

~~(c)~~(C) ~~All~~ Pesticide chemical regulations and their amendments now or hereafter adopted ~~under~~ pursuant to authority of the federal Food, Drug, and Cosmetic Act are the pesticide chemical regulations in this State. However, the commissioner may adopt a regulation ~~which~~ that prescribes tolerances for pesticides in finished foods in this State whether or not in accordance with regulations promulgated ~~under~~ pursuant to the federal act.

~~(d)~~(D) ~~All~~ Food additive regulations and their amendments now or hereafter adopted ~~under~~ pursuant to authority of the federal Food, Drug, and Cosmetic Act are the food additive regulations in this State. However, the commissioner may adopt a regulation ~~which~~ that prescribes conditions under which a food additive may be used in this State whether or not in accordance with regulations promulgated ~~under~~ pursuant to the federal act.

~~(e)~~(E) ~~All~~ Color additive regulations and their amendments now or hereafter adopted ~~under~~ pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the color additive regulations in this State. However, the commissioner may adopt a regulation ~~which~~ that prescribes conditions under which a color additive may be used in this State whether or not in accordance with regulations promulgated under the federal act.

~~(f)~~(F) ~~All~~ Special dietary use regulations and their amendments now or hereafter adopted ~~under~~ pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the special dietary use regulations in this State. However, the commissioner may, if he finds it necessary to inform purchasers of the value of a food for special dietary use, prescribe special dietary use regulations whether or not in accordance with regulations promulgated ~~under~~ pursuant to the federal act.

~~(g)~~(G) ~~All~~ Regulations and their amendments now or hereafter adopted under the Fair Packaging and Labeling Act ~~shall be~~ are the regulations ~~in~~ of this State. However, the commissioner may, if he finds it necessary in the interest of consumers, prescribe packaging and labeling regulations for consumer commodities, whether or not in accordance with regulations promulgated ~~under~~ pursuant to the federal act; provided, that no ~~such regulations shall~~ regulation may be promulgated ~~which are~~ that is contrary to the labeling requirements for the net quantity of contents required pursuant to section ~~4~~ of the Fair Packaging and Labeling Act and the regulations promulgated ~~thereunder~~ pursuant to it.

(H) Good manufacturing practice regulations and their amendments now or hereafter adopted pursuant to the authority of the federal Food, Drug and Cosmetic Act are the good manufacturing regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which good manufacturing processes may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(I) Regulations and their amendments adopted referencing thermally processed low‑acid foods packaged in hermetically sealed containers pursuant to the authority of the federal Food, Drug and Cosmetic Act are the low‑acid food regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which thermally processed low‑acid foods packaged in hermetically sealed containers may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(J) Regulations and their amendments adopted referencing acidified foods pursuant to the authority of the federal Food, Drug and Cosmetic Act are the acidified food regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which acidified foods may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(K) Regulations and their amendments adopted with regard to fish and fishery products pursuant to the authority of the federal Food, Drug and Cosmetic Act are the fish and fishery products regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which fish and fishery products may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(L) Regulations and their amendments now or hereafter adopted with regard to Hazard Analysis and Critical Control Point (HACCP) Systems pursuant to the authority of the federal Food, Drug and Cosmetic Act as they are used to monitor various food products, including juice, for biological, chemical, and physical contaminants.

(M) Food allergen and labeling regulations and their amendments now or hereafter adopted by the Food Allergen Labeling and Consumer Protection Act pursuant to the authority of the federal Food, Drug and Cosmetic Act are the food allergen and labeling regulations of this State.

~~(h)~~(N) A federal regulation automatically adopted pursuant to this chapter takes effect in this State on the date it becomes effective as a federal regulation. The commissioner shall publish all other proposed regulations in the official state newspaper or publication prescribed by the commissioner. A person who may be adversely affected by a regulation may, within thirty days after a federal regulation is automatically adopted, or within thirty days after publication of any other regulation, file objections with the commissioner, in writing, and a request for a hearing. The timely filing of substantial objections to a federal regulation automatically adopted stays the effect of the regulation in the State of South Carolina.

(O) If no substantial objections are received and no hearing is requested within thirty days after publication of a proposed regulation, ~~it shall take~~ the regulation takes effect on a date set by the commissioner. The effective date shall be at least sixty days after the time for filing objections has expired.

(P) If timely substantial objections are made to a federal regulation within thirty days after it is automatically adopted or to a proposed regulation within thirty days after it is published, the commissioner, after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections. Any interested person or his representative may be heard. The commissioner shall act upon objections by order and shall mail the order to objectors by certified mail as soon after the hearing as practicable. The order ~~shall~~ must be based on substantial evidence in the record of the hearing. If the order concerns a federal regulation, it may reinstate, rescind, or modify it. If the order concerns a proposed regulation, it may withdraw it or set an effective date for the regulation as published or as modified by the order. The effective date ~~shall~~ must be at least sixty days after publication of the order.”

SECTION 5. Section 39‑25‑190 of the 1976 Code is amended to read:

“Section 39‑25‑190. ~~(a)~~(A) For purposes of enforcement of this chapter, the commissioner~~,~~ or any of his authorized agents~~, is authorized~~ upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(1) ~~to~~ enter at reasonable times any factory, warehouse, or establishment in which food or cosmetics are manufactured, processed, ~~packed~~ packaged, or held for introduction into commerce or after ~~such~~ introduction or ~~to~~ enter any vehicle being used to transport or hold ~~such~~ this food or cosmetics in commerce; ~~and~~

(2) ~~to~~ inspect at reasonable times and within reasonable limits and in a reasonable manner ~~such~~ the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling ~~therein,~~ and to obtain samples necessary for the enforcement of this chapter; and

(3) ~~to~~ have access to and to copy all records of carriers in commerce showing the movement in commerce of any food or cosmetic, or the holding ~~thereof~~ of it during or after ~~such~~ movement, and the quantity, shipper, and consignee ~~thereof; provided, that~~ of it. Evidence obtained ~~under~~ pursuant to this subsection ~~shall~~ may not be used in a criminal prosecution of the person from whom obtained~~; and provided, further, that~~. Carriers ~~shall~~ are not ~~be~~ subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food or cosmetics in the usual course of business as carriers.

~~(b)~~(B) Upon completion of ~~any such~~ an inspection of a factory, warehouse, or other establishment, and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food or cosmetic in ~~such~~ the establishment ~~(1)~~ consists in whole or in part of any filthy, putrid, or decomposed substance or ~~(2)~~ has been prepared, ~~packed~~ packaged, or held under ~~insanitary~~ unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health. A copy of ~~such~~ the report ~~shall~~ must be sent promptly to the commissioner.

~~(c)~~(C) If the authorized agent making ~~any such~~ an inspection of a factory, warehouse, or other establishment has obtained ~~any~~ a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

~~(d)~~(D) When in the course of ~~any such~~ an inspection of a factory or other establishment ~~where~~ in which food is manufactured, processed, or ~~packed~~ packaged, the officer or employee making the inspection obtains a sample of ~~any such~~ the food and analysis is made of such sample for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid or decomposed substance or is otherwise unfit for food, a copy of the results of ~~such~~ the analysis ~~shall~~ must be furnished promptly to the owner, operator, or agent in charge.

(E) The analytical work necessary for the proper enforcement of this chapter and regulations adopted by the department in regard to food must be undertaken by the department or under the direction of the department.

(F) The department may perform laboratory services relating to, or having potential impact on, food safety or the compliance of food with the requirements of this chapter for any person or public agency.

(G) The department, by regulation, may establish fees for the laboratory services performed pursuant to subsection (F) or to recover the cost of verifying compliance with the provisions of this chapter or regulations promulgated pursuant to it. These fees must be deposited into the State Treasurer’s account for agriculture and must be used solely for the recovery of costs for the services provided. ”

SECTION 6. This act takes effect upon approval by the Governor.

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