



State of Tennessee

PUBLIC CHAPTER NO. 182

SENATE BILL NO. 172

By Norris, Watson, Ketron

Substituted for: House Bill No. 166

By McCormick, Alexander

AN ACT to amend Tennessee Code Annotated, Title 53, Chapter 8 and Title 68, Chapter 14, relative to food safety.

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

SECTION 1. Tennessee Code Annotated, Section 53-8-201, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-201. This part shall be known as the Tennessee Retail Food Safety Act.

SECTION 2. Tennessee Code Annotated, Section 53-8-202, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-202. It is the purpose of this part to ensure that foods offered for public consumption in Tennessee are safe as prepared, processed, served, packaged, and delivered. Food service establishments that are located within retail food stores are subject to this part and exempt from regulation in accordance with title 68, chapter 14, part 7.

SECTION 3. Tennessee Code Annotated, Section 53-8-203, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-203. As used in this part:

(1) "Alteration" shall be defined by rule, but shall not mean function replacement that equals or makes better the existing operation of the facility;

(2) "Commissioner" means the commissioner of agriculture, the commissioner's duly authorized representative, and in the event of the commissioner's absence or vacancy in the office of commissioner, the deputy commissioner;

(3) "Department" means the department of agriculture;

(4) "Demonstration of knowledge" means the ability to demonstrate knowledge of food safety principles as applicable to establishments regulated in accordance with this part. For the purposes of this part, "demonstration of knowledge" may be accomplished by one (1) or more of the following means:

(A) Completing an inspection that reflects no priority item violation;

(B) Employing at least one (1) person certified as a food protection manager who has shown proficiency of food protection information through passing a test that is part of a certification program that is evaluated and listed by an accrediting agency recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs; or

(C) Responding correctly to food protection questions related to the specific food operation. A person responding to the questions may be aided by the utilization of food safety procedures posted prominently for employees who may use the procedures as reference guides. The commissioner shall assist establishments that request information relative to risks associated with

the establishments' specific food operation, which may be posed as questions during the inspection;

(5) "Employee" means a person:

- (A) In charge of a food establishment;
- (B) Engaged in the preparation of food or drink;
- (C) Engaged in service of food to the establishment's clientele; or
- (D) Engaged in ware washing;

(6) "Extensive remodeling" means the repair, construction, alteration or installation of new equipment, modification of existing equipment or fixtures, changes in floor plan layout, addition of new processes, expansion to new space, or significant changes to use of space or equipment;

(7) "Food Code" means the 2009 Food Code as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration;

(8) "Food establishments" means retail food stores, and food service establishments located within retail food stores. The term "food establishments" is to be used throughout this part when a provision is applicable to both retail food stores and food service establishments located within retail food stores;

(9)(A) "Food service establishment" means any establishment, place or location, whether permanent, temporary, seasonal, or itinerant, where food is prepared and the public is offered to be served or is served food, including, but not limited to, foods, vegetables, or beverages not in an original package or container, food and beverages dispensed at soda fountains and delicatessens, sliced watermelon, ice balls, or water mixtures;

(B) "Food service establishment" includes places identified in subdivision (A), regardless of whether there is a charge for the food;

(C) "Food service establishment" does not include private homes where food is prepared or served and not offered for sale, retail food store operations other than delicatessens, the location of vending machines or supply vehicles;

(D) "Food service establishment" does not include churches, temples, synagogues or other religious institutions, civic, fraternal, or veteran's organizations where food is prepared, served, transported, or stored by volunteer personnel only on non-consecutive days; however, the storage of unopened, commercially canned food, packaged bulk food that is not potentially hazardous as defined by department rules and regulations, and dry goods shall not apply for these purposes;

(E) "Food service establishment" does not include grocery stores that may, incidentally, make infrequent casual sales of uncooked foods for consumption on the premises, or any establishment whose primary business is other than food service, that may, incidentally, make infrequent casual sales of coffee or prepackaged foods, or both, for consumption on the premises. For the purposes of this subdivision, "infrequent casual sales" means sales not in excess of one hundred fifty dollars (\$150) per day on any particular day;

(F) "Food service establishment" does not include a location from which casual, occasional food sales are conducted solely in connection with youth-related amateur athletic or recreational activities or primary or secondary school-related clubs by volunteer personnel and that are in operation for twenty-four (24) consecutive hours or less;

(G) "Food service establishment" does not include a catering business that employs no regular, full-time employees, the food preparation for such business is solely performed within the confines of the principal residence of the proprietor, and the catering business makes only "occasional sales" during any thirty-day period; and

(H) "Food service establishment" does not include a house or other residential structure where seriously ill or injured children and their families are provided temporary accommodations in proximity to their treatment hospitals and where food is prepared, served, transported or stored by volunteer personnel; provided, that the house or structure is supported by a § 501(c)(3) organization, as defined in 26 U.S.C. § 501(c)(3), that has as a component of its mission the support of programs that directly improve the health and well-being of children;

(10) "Imminent health hazard" means any condition, deficiency, or practice that, if not corrected, is very likely to result in illness, injury, or loss of life to any person;

(11) "Person" means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, or the federal government and its agencies and departments;

(12) "Person in charge" means an individual present at a food establishment who is responsible for the operation at the time of inspection. A "person in charge" shall be present at the establishment during food preparation and handling, and may put instructions in place for cleaning and preparing the establishment prior to the preparation of any food or beverage; and

(13) "Retail food store" means any establishment or a section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. "Retail food store" does not include establishments that handle only prepackaged, non-potentially hazardous foods, as defined by department rules and regulations; roadside markets that offer only fresh fruits and fresh vegetables; food and beverage vending machines; food service establishments not located within a retail food store; or a person who makes infrequent casual sales of honey or who packs or sells less than one hundred fifty (150) gallons of honey per year.

SECTION 4. Tennessee Code Annotated, Section 53-8-204, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-204. The commissioner is authorized to:

(1) Carry out or cause to be carried out all provisions of this part;

(2) Collect all fees established pursuant to this part and apply the fees in accordance with the procedures of the department of finance and administration to the necessary and incidental costs of the administration of this part. Nothing in this subdivision (2) shall be construed to prohibit the department from receiving, by way of general appropriation, such sums as may be required to fund adequately the implementation of this part, as recommended in the annual budget by the governor to the general assembly;

(3) Prescribe rules and regulations, including emergency rules, governing the alteration, construction, sanitation, safety of food, and operation of food establishments as may be necessary to protect the health and safety of the public, and require food establishments to comply with these rules and regulations. A non-elected body of any municipality, county, or metropolitan government shall not enact any ordinance or issue any rule or regulation pertaining to food safety or the provision of nutritional information related to food or drink, or otherwise regulate menus at food establishments. If, upon the effective date of this act, the federal government takes action regarding the provision of food nutritional information at food establishments, and the federal action specifically authorizes state agencies to enforce such action, then the department of agriculture shall be the department that is primarily responsible for the implementation and supervision of any new requirements and shall have the authority to promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to effectuate the purposes of such requirements. The commissioner shall not prescribe any such rules and regulations that are in conflict with the minimum statewide building construction standards established by the state fire marshal pursuant to § 68-120-101. The rules with respect to food temperature shall be specific with respect to the types of food prepared and the risks presented by those foods. Except as specifically provided herein, the commissioner may, by the promulgation of rules and regulations, adopt all or part of the Food Code;

(4) Inspect or cause to be inspected as often as the commissioner, in the commissioner's discretion may deem necessary, every food establishment in the state as authorized by this part, to determine compliance with this part and with rules and regulations;

(5) Issue or cause to be issued, suspend, and revoke permits to operate food establishments as provided in this part;

(6) Notify the owner, proprietor, or agent of any food establishment of such changes or alterations as may be necessary, to effect complete compliance with this part and with rules and regulations governing the construction, alteration, and operation of the facilities, and close the facilities for failure to comply within specified times as provided in this part and in rules and regulations;

(7) Enter into agreements or contracts with the Shelby, Davidson, and Knox county health departments for the health departments to implement this part in their areas of jurisdiction, if the commissioner deems it appropriate; provided, that the following conditions shall apply:

(A) State reporting requirements shall be met by the county health department or departments;

(B) The county health department program standards shall be identical to those of the state law, and to rules and regulations;

(C) The commissioner shall retain the right to exercise oversight and evaluation of performance of the county health department or departments and terminate the agreement or contract for cause immediately, or otherwise upon reasonable notice;

(D) The commissioner may set such other fiscal, administrative, or program requirements as the commissioner deems necessary to maintain consistency and integrity of the statewide program;

(E) Staffing and resources shall be adequate to implement and enforce the program in the local jurisdiction;

(F) Contract county health departments that collect the applicable permit fees from food establishments located within the county shall retain one hundred percent (100%) of the permit fees and penalty fees. Contract counties that utilize the services of the department for the collection of permit fees shall receive ninety-five percent (95%) of permit fees collected within a contract county pursuant to §§ 53-8-204 – 53-8-206. This amount shall be calculated based upon fees collected in the contract county during the state's fiscal year multiplied by ninety-five percent (95%).

(8)(A) Upon the application of a food establishment for a variance based on a showing of good cause and an affirmative demonstration that the risks to the public attendant to the limited activities have been mitigated, the commissioner shall grant the establishment a variance from the limitations in the Food Code regarding restrictions pertaining to bare hand contact. A request for a variance shall be granted or denied within sixty (60) days of the commissioner's receipt of the application for variance. A request for a variance shall include the following:

(i) A listing of the specific ready-to-eat foods that are touched by bare hands;

(ii) Diagrams and other information showing that hand washing facilities are located and equipped as prescribed by the applicable provisions of the Food Code;

(iii) An employee health policy documenting that the food service establishment complies with:

(a) The person in charge requirements; and

(b) Requirements for monitoring the health of food service employees;

(iv) Documentation that food service employees have received training on the:

- (a) Risks of contacting ready-to-eat foods with bare hands;
- (b) Practice of proper hand washing;
- (c) Proper fingernail maintenance;
- (d) Prohibition on jewelry; and
- (e) Good hygienic practices;

(v) Documentation that food employees contacting ready-to-eat foods with bare hands used two (2) or more of the following control measures:

- (a) Double hand washing;
- (b) Nail brushes;
- (c) A hand antiseptic after hand washing;
- (d) Incentive programs that assist or encourage food service employees not to work when they are ill; or
- (e) Other control measures approved by the commissioner.

(B) Notwithstanding any provisions of the Food Code to the contrary, the commissioner shall not require any further documentation for the granting of a variance other than those contained in this section.

SECTION 5. Tennessee Code Annotated, Section 53-8-205, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-205. All monies coming into the state treasury pursuant to this part from fees, fines, and penalties shall be appropriated to the department for the payment of necessary expenses incident to the administration of this part, as determined by the commissioner. Any unexpended balance of the fund in any fiscal year shall be retained by the department to be used to provide or expand training for food service operators and the department's food safety staff.

SECTION 6. Tennessee Code Annotated, Section 53-8-206, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-206.

(a) No person shall operate a food establishment who does not hold a valid permit issued to the person by the commissioner on or before July 1 of each year, or as the commissioner may otherwise provide by rule and regulation.

(b) Every person now engaged in the business of operating a food establishment, and every person who, upon the effective date of this act, engages in such a business, shall procure a permit from the commissioner for each food establishment so operated or proposed to be operated.

(c) Each permit for food establishments shall expire on June 30 following its issuance or as the commissioner may otherwise provide by rule and regulation.

(d) No permit shall be transferred from one location or person to another.

(e) The permit shall be kept and displayed in a conspicuous manner, and visible to the public in the food establishment for which it is issued.

SECTION 7. Tennessee Code Annotated, Section 53-8-207, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-207.

(a) Any person planning to operate a food establishment shall first submit an application for a permit on forms provided by the commissioner. The application shall be completed and submitted to the commissioner with the proper permit fee.

(b) Prior to the approval of the application for a permit, the commissioner shall inspect the proposed facility to determine if the person applying for the permit is in compliance with the requirements of this part and with applicable rules and regulations. The commissioner shall issue a permit to the applicant if the inspection reveals that the facility is in compliance with such requirements.

(c) Applications for renewal of permits for existing food establishments will be issued to the operators prior to the expiration date of the permit. When completed applications and the proper permit fees are returned to the commissioner, the commissioner shall issue new permits to applicants.

SECTION 8. Tennessee Code Annotated, Section 53-8-208, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-208.

(a) The commissioner has the authority to suspend any permit to operate a food establishment issued pursuant to this part if the commissioner has reasonable cause to believe that the permittee is not in compliance with this part; provided, that the permittee shall be given the opportunity to correct violations as provided in § 53-8-215.

(b) Suspension of permits, other than those for temporary food service establishments, shall be of the following two (2) types:

(1) A Class 1 suspension, which provides an opportunity for a hearing prior to the effective date of the suspension; and

(2) A Class 2 suspension, which provides an opportunity for a hearing after the effective date of the suspension and is effective immediately.

(c) Notice of either type of suspension may be given by the inspector on the inspector's regular inspection form or by written notification from the commissioner. When a permit suspension is effective, all food establishment operations shall cease. Class 2 suspensions shall only be issued if an imminent health hazard exists.

(d) A written request for a hearing on either type of suspension shall be filed by the permittee within ten (10) days of the receipt of notice. This ten-day period may run concurrently with the ten-day period set forth in § 53-8-215. If a hearing is requested, it shall be commenced within a reasonable time of the request. If no request for a hearing is made within ten (10) days of receipt of notice, the suspension becomes final and is not subject to review.

(e) The commissioner may end the suspension at any time if the reasons for the suspension no longer exist.

SECTION 9. Tennessee Code Annotated, Section 53-8-209, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-209.

(a) The commissioner may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of the requirements of this part or for interference with the commissioner in the performance of the commissioner's duty.

(b) Prior to revocation, the commissioner shall notify the permittee, in writing, of the specific reason or reasons for which the permit is being revoked at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed with the commissioner within the ten-day period. If no request for a hearing is filed within the ten-day period, the revocation of the permit becomes final.

SECTION 10. Tennessee Code Annotated, Section 53-8-210, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-210. A notice provided for in this part is properly served when it is delivered to the permittee or person in charge, or when it is sent by certified mail, return receipt requested, to the last known address of the permittee. A copy of the notice shall be filed in the records of the commissioner.

SECTION 11. Tennessee Code Annotated, Section 53-8-211, is amended by deleting the section in its entirety and substituting instead the following:

53-8-211.

(a) The hearings provided for in this part shall be conducted by the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Appeals from any final decision after a hearing shall be pursued in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Subsections (a) and (b) shall not apply in a county where the health department is operating a program pursuant to § 53-8-204(7) that meets the minimum requirements of due process; provided, that appeals from final decisions made under such programs may be made to the commissioner, for the limited purpose of determining whether a material error of law was made at the county level. The appeal to the commissioner shall not be de novo, but shall be limited to a review of the record of the hearing at the county level.

SECTION 12. Tennessee Code Annotated, Section 53-8-212, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-212. Whenever revocation of a permit becomes final, upon demonstration that the conditions which led to the revocation have been cured, the holder of the revoked permit may make written application for a new permit.

SECTION 13. Tennessee Code Annotated, Section 53-8-213, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-213.

(a) The permit fee to operate a food establishment shall be in accordance with the following schedule:

(1) Retail food stores that contain within the premises a food service establishment that prepares potentially hazardous food, as defined by department rules and regulations, shall pay a permit fee as follows:

<u>No. of Seats</u>	<u>Fee Amount</u>
0-50	\$210
51 or more seats	\$360

(2) Retail food stores that contain within the premises a food service establishment that offers self-service foods and does not prepare potentially hazardous foods, as defined by department rules and regulations, shall pay a permit fee of thirty-five dollars (\$35.00); and

(3) In addition to the fees in subdivision (a)(1) or (a)(2), all retail food stores shall pay an annual permit fee of fifty dollars (\$50.00).

(b) If the permit fee is delinquent for more than thirty (30) calendar days, a penalty fee of one half (1/2) the permit fee shall be assessed, in addition to the permit fee. If a check is returned for any reason, a penalty fee of one half (1/2) the permit fee shall be assessed, in addition to the permit fee. The permit fee, plus any penalty fee, must be paid before the permit is issued.

(c) When application is made for a permit to operate any food establishment after January 1 of any year, or such other date as the commissioner may establish by regulation, the fee charged for the permit shall be one half (1/2) the annual rate; however, where the establishment was subject to permit requirements prior to January 1 or such other date as the commissioner may establish by rule and regulation, of any year, no such fractional rate shall be allowed.

SECTION 14. Tennessee Code Annotated, Section 53-8-214, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-214.

(a) Inspection results for food establishments shall be recorded on standard departmental forms that summarize the requirements of the law and rules and regulations.

(b) A copy of the completed inspection report shall be furnished to the person in charge of the facility at the conclusion of the inspection.

(c) The most current inspection report furnished to the operator or person in charge of the establishment shall be made available at the facility for public disclosure to any person who requests to review it.

SECTION 15. Tennessee Code Annotated, Section 53-8-215, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-215.

(a) The completed inspection report shall specify a reasonable period of time for correction of violations found.

(b) Corrections of violations shall be accomplished within the period specified in accordance with the following:

(1) If an imminent health hazard exists, the facility shall immediately cease operations until authorized to reopen by the commissioner;

(2) All violations of priority items shall be corrected as soon as possible and in any event within ten (10) days following inspection. Within fifteen (15) days after inspection, the permittee shall notify the commissioner stating that priority item violations have been corrected. A follow-up inspection may be made for confirmation;

(3) All other items shall be corrected as soon as possible, but no later than the time of the next routine inspection.

(c) The inspection report shall state that failure to comply with any time limits specified by the commissioner for correction may result in cessation of operations. An opportunity for a hearing on the ordered corrective action shall be provided, if a written request is filed with the commissioner within ten (10) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within a reasonable time after receipt of the request.

(d) Whenever a facility is required under this section to cease operations, it shall not resume operations until it has shown on reinspection that the conditions that led to the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

SECTION 16. Tennessee Code Annotated, Section 53-8-216, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-216. Food may be examined or sampled by the commissioner as deemed necessary for the enforcement of this part. The commissioner may place a hold order on any food that the commissioner believes is in violation of this part or rules and regulations, upon written notice to the operator specifying particular reasons for the hold order. The commissioner shall tag, label, or otherwise identify any food subject to a hold order. No food subject to a hold order shall be used, served, sold, or moved from the establishment. The hold order may state that the food be held while confirmation is obtained that the condition violates this part or rules and regulations. The hold order may also order the operator to destroy food that violates this part or rules and regulations. The commissioner shall permit storage of the food under the conditions specified in the hold order, unless storage is not possible without risk to the health of the public, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for a hearing may be filed within ten (10) days. If a request for a hearing is received, the hearing shall be held within a reasonable time after receipt of the request. On the basis of evidence produced at the hearing, the hold order may be rescinded, or the owner or person in charge may be

directed by written order to denature or destroy such food or to bring it into compliance with this part.

SECTION 17. Tennessee Code Annotated, Section 53-8-217, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-217. Whenever a food establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food establishment, plans and specifications shall be submitted to the commissioner for review and approval before construction, remodeling, or conversion begins. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials and work areas, and the type and model of proposed fixed equipment and facilities. The commissioner shall approve the plans and specifications, if they meet the requirements of this part and rules and regulations. No food establishment shall be constructed, extensively remodeled or converted, except in accordance with plans and specifications approved by the commissioner. Any deviation from the submitted plans and specifications previously approved by the commissioner discovered during an inspection that would not compromise the safety of food products shall not delay the issuance of a permit to operate a food establishment.

SECTION 18. Tennessee Code Annotated, Section 53-8-218, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-218.

(a) When the commissioner has reasonable cause to suspect possible disease transmission by an employee of the facility, the commissioner may secure information about any recent illness of the employee or make other investigations as may be indicated. The commissioner may require any of the following:

(1) The immediate exclusion of the employee from employment in the food establishment;

(2) The immediate closing of the facility until, in the commissioner's opinion, no further danger of disease outbreak exists;

(3) Restricting the employee's service to some area of the facility where there would be little likelihood of transmitting disease; or

(4) Adequate medical and laboratory examinations of the employee and of other employees.

(b) A person in charge, having been provided by the employee with written documentation from a person who practices in a medical profession in accordance with title 63 that the employee has been diagnosed with a condition set forth in Chapter 2, § 2-201.11(B)(2) of the Food Code shall have an affirmative duty to notify the commissioner or the commissioner's designee. A person in charge shall not be required to obtain medical records from a prospective employee prior to hiring such individual as an employee.

SECTION 19. Tennessee Code Annotated, Section 53-8-219, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-219. Any person operating a food establishment who fails or refuses to comply with any provision of this part or of rules and regulations, or obstructs or hinders the regulatory authority in the discharge of the regulatory authority's duties, or otherwise operates a food establishment in violation of this part or of rules and regulations commits a Class C misdemeanor. Each day of operation after notice of non-compliance of violation has been given and such violation has not been corrected constitutes a separate offense.

SECTION 20. Tennessee Code Annotated, Section 53-8-220, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-220. When the commissioner has reason to believe that a person is causing, is about to cause, or has caused a violation of this part or of the rules and regulations promulgated under this part, the commissioner may initiate proceedings in either the chancery court of Davidson County or the chancery court of the county where the violation is occurring, for injunctive relief to prevent the continuance of the violation or to correct the conditions resulting in, or about to result in, the violation.

SECTION 21. Tennessee Code Annotated, Section 53-8-221, is amended by deleting the section in its entirety and substituting instead the following language:

53-8-221. Notwithstanding this part to the contrary, children eighteen (18) years of age or less do not need a license or permit to sell bakery goods, homemade or otherwise, soft drinks, or other similar food commodities at public events.

SECTION 22. Tennessee Code Annotated, Section 68-14-301, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-301. This part shall be known and cited as the "Hotel and Public Swimming Pool Inspection Act".

SECTION 23. Tennessee Code Annotated, Section 68-14-302, is amended by deleting the section in its entirety and by substituting instead the following new language:

68-14-302. As used in this part, unless the context otherwise requires:

(1) "Alteration" shall be defined by rule, but shall not mean function replacement that equals or makes better the existing operation of the facility;

(2) "Commissioner" means the commissioner of health, the commissioner's duly authorized representative, and in the event of the commissioner's absence or vacancy in the office of commissioner, the deputy commissioner;

(3) "Critical items" means those aspects of operation or conditions of facilities or equipment that, if in violation, constitute the greatest hazards to health and safety, including imminent health hazards. Critical items shall include, but are not limited to, the following:

(A) Restriction of employees with infection - (hotels, pools);

(B) Proper cleanliness and good hygiene practices of employees - (hotels);

(C) Proper sanitizing of utensils and equipment - (hotels);

(D) Approved water supply, hot and cold running water under pressure - (hotels, pools);

(E) Sewage, liquid waste disposal - (hotels, pools);

(F) No cross connection, backsiphonage - (hotels, pools);

(G) Toilet and hand washing facilities for employees - (hotels);

(H) Insects and rodents - (hotels);

(I) Toxic items properly stored and labeled - (hotels);

(J) Fire safety - (hotels);

(K) Safety - (pools);

(L) Excessive turbidity - (pools);

(M) Total absence of approved sanitizing residuals - (pools);

(N) Failure or lack of filtration, sanitizing and cleaning equipment and chemicals - (pools); and

(O) Absence or lack of required supervisory personnel - (pools).

(4) "Department" means the department of health;

(5) "Homeowners' association" means a nonprofit corporation that manages or contracts for the management of the common areas of a residential multi-family housing development. A homeowners' association is governed by a board of directors elected by a majority vote of the individual homeowners;

(6) "Hotel" means any building or establishment kept, used, or maintained as, or advertised as, or offered to the public to be, a place where sleeping accommodations are furnished for pay to transients or travelers, whether or not meals are served to transients or travelers;

(7) "Imminent health hazard" means any condition, deficiency, or practice that, if not corrected, is very likely to result in illness, injury, or loss of life to any person;

(8) "Multi-family residential housing" means condominiums, subdivisions, and individual residential housing developments that share common grounds, parking facilities, tennis courts, swimming pools and similar recreational facilities that are operated by a homeowners' association;

(9) "Multi-family residential housing swimming pool" means a private swimming pool maintained by a homeowners' association solely for the use and benefit of the members of the homeowners' association and their guests;

(10) "Person" means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, or the federal government and its agencies and departments; and

(11) "Public swimming pools" means a structure of man-made materials, located either indoors or outdoors, used for bathing or swimming, or for instructional purposes in swimming, diving, or other aquatic activities by humans, together with buildings, appurtenances, and equipment used in connection with the structure. "Public swimming pools" also includes spa-type, wading, special purpose pools or water recreation attractions including, but not limited to, those operated at or in camps, child care facilities, cities, clubs, subdivisions, apartment buildings, counties, institutions, schools, motels, hotels, and mobile home parks to which admission may be gained with or without payment of a fee.

SECTION 24. Tennessee Code Annotated, Section 68-14-303, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-303. The commissioner is authorized to:

(1) Carry out or cause to be carried out this part;

(2) Collect all fees established in this part and apply the fees in accordance with the procedures of the department of finance and administration to the necessary and incidental costs of administration of this part. Nothing in this subdivision (2) shall be construed to prohibit the department from receiving by way of general appropriation such sums as may be required to fund adequately the implementation of this part, as recommended in the annual budget by the governor to the general assembly;

(3) Prescribe rules and regulations governing the alteration, construction, sanitation, safety and operation of hotels, and public swimming pools, as may be necessary to protect the health and safety of the public, and enforce compliance with these rules and regulations by every hotel and public swimming pool, and grant variances and waivers for public swimming pools from the requirements of this part or applicable rules and regulations; provided, that such variance or waiver shall not constitute a health or safety hazard as determined by the commissioner. The commissioner shall not prescribe any such rules and regulations that are in conflict with the minimum statewide building construction standards established by the state fire marshal pursuant to § 68-120-101;

(4) Inspect or cause to be inspected at least once every six (6) months, and as often as the commissioner may deem necessary, every hotel in the state, and inspect or cause to be inspected at least once per month, and as often as the commissioner deems necessary, every public swimming pool in the state to determine compliance with this part and with rules and regulations;

(5) Issue or cause to be issued, suspend and revoke permits to operate hotels, and public swimming pools as provided in this part;

(6) Notify the owner, proprietor, or agent in charge of any hotel, or public swimming pool of such changes or alterations as may be necessary to effect compliance with this part and with rules and regulations governing the construction,

alteration, and operation of the facilities, and close the facilities for failure to comply within specified times as provided in this part and in rules and regulations;

(7) Enter into an agreement or contract with county health departments whereby the departments would implement this part or its equivalent in their respective areas of jurisdiction, if the commissioner deems it to be appropriate; provided, that the following conditions shall apply:

(A) State reporting requirements shall be met by the county health department or departments;

(B) The county health department program standards shall be at least as stringent as those of state law and of rules and regulations;

(C) The commissioner shall retain the right to exercise oversight and evaluation of performance of the county health department or departments and terminate the agreement or contract for cause immediately or otherwise upon reasonable notice;

(D) The commissioner may set such other fiscal, administrative, or program requirements as the commissioner deems necessary to maintain consistency and integrity of the statewide program;

(E) Staffing and resources shall be adequate to implement and enforce the program in the local jurisdiction;

(F) All permit fees, fines, and penalties shall be deposited directly into the state treasury;

(G) Beginning with fiscal year 2004-2005, all fees under this chapter shall be reviewed biennially to determine the appropriateness and amount relative to the overall cost of the program; and

(H)(i) Ninety-five percent (95%) of permit fees collected within a contract county pursuant to §§ 68-14-312 – 68-14-314 shall be conveyed by contract to the respective county health department to assist the county health department in implementing the program in the local jurisdiction. This amount shall be calculated based upon fees collected in the contract county during the state's fiscal year multiplied by ninety-five percent (95%);

(ii) No contract county shall charge a local permit fee. By July 30 of each year, each contract county shall provide a report to the commissioner for the preceding fiscal year documenting the total cost relative to carrying out the provisions of the contract and the amount of state and local permit fees collected. The report shall be on a form provided by the commissioner.

SECTION 25. Tennessee Code Annotated, Section 68-14-305, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-305.

(a) No person shall operate a hotel who does not hold a valid permit issued to the person by the commissioner on or before July 1 of each year.

(b) No person shall operate a public swimming pool who does not hold a valid permit issued to the person by the commissioner on or before April 1 of each year.

(c) Every person now engaged in the business of operating a hotel, or public swimming pool, and every person who, upon the effective date of this act, shall engage in such a business, shall procure a permit from the commissioner for each hotel, or public swimming pool so operated or proposed to be operated.

(d) Each permit for hotels shall expire on June 30 next following its issuance.

(e) Each permit for public swimming pools shall expire on March 31 next following its issuance.

(f) No permit shall be transferred from one (1) location or person to another.

(g) Permits shall be posted in a conspicuous manner.

SECTION 26. Tennessee Code Annotated, Section 68-14-306, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-306.

(a)(1) Any person planning to operate a hotel or public swimming pool shall first make written application for a permit on forms provided by the commissioner. The application shall be completed and returned to the commissioner with the proper permit fee.

(2) Prior to the approval of the application for a permit, the commissioner shall inspect the proposed facility to determine if the person applying for the permit is in compliance with the requirements of this part, and with applicable rules and regulations. The commissioner shall issue a permit to the applicant if the inspection reveals that the facility is in compliance with such requirements.

(b) Applications for renewal of permits for existing hotels will be issued to operators prior to July 1 of each year. Applications for renewal of permits for existing public swimming pools shall be issued to operators prior to April 1 of each year. When completed applications and the proper permit fees are returned to the commission, the commissioner shall issue new permits to applicants.

SECTION 27. Tennessee Code Annotated, Section 68-14-307, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-307.

(a) The commissioner has the authority to suspend any permit to operate a hotel or public swimming pool issued pursuant to this part, if the commissioner has reasonable cause to believe that the permittee is not in compliance with this part; provided, that the permittee shall be given the opportunity to correct violations as provided in § 68-14-317.

(b) There shall be two (2) types of suspensions as follows:

(1) A Class 1 suspension with an opportunity for a hearing prior to the effective date of the suspension; and

(2) A Class 2 suspension to be effective immediately with an opportunity for a hearing after the effective date of the suspension.

(c) Notice of either type of suspension may be given by the inspector on the inspector's regular inspection form or by written notification from the commissioner. When a permit suspension is effective, all operations shall cease. Such suspensions may only be made if an imminent health hazard exists.

(d) A written request for a hearing on either type of suspension shall be filed by the permittee within ten (10) days of the receipt of notice. This ten-day period may run concurrently with the ten-day period set forth in § 68-14-317(b). If a hearing is requested, it shall commence within a reasonable time of the request. If no request for a hearing is made within ten (10) days of the receipt of notice, the suspension becomes final and is not subject to review.

(e) The commissioner may end the suspension at any time if reasons for the suspension no longer exist.

SECTION 28. Tennessee Code Annotated, Section 68-14-311, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-311. Whenever revocation of a permit becomes final, upon demonstration that the conditions which led to the revocation have been cured, the holder of the revoked permit may make written application for a new permit.

SECTION 29. Tennessee Code Annotated, Section 68-14-313, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-313.

(a)(1) The permit fee to operate a public swimming pool shall be three hundred forty dollars (\$340).

(2) If the permit fee is delinquent for more than thirty (30) calendar days, a penalty of one half (1/2) the permit fee shall be assessed in addition to the permit fee. If a check is returned for any reason, a penalty of one half (1/2) the permit fee shall be assessed in addition to the permit fee. The permit fee, plus any penalty, shall be paid to the commissioner before the permit is issued.

(b) The permit shall be kept and displayed in a conspicuous manner, properly framed, at the pool for which it was issued. The permit fee shall not be collected by the commissioner if the permit is not issued in the calendar year in which the swimming pool is operated.

SECTION 30. Tennessee Code Annotated, Section 68-14-314, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-314. Institutions and organizations that have received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(19), of the Internal Revenue Code, and that are currently operating under such exemption shall be exempt from the payment of the permit fees required for a public swimming pool. The exemption is expressly limited to the payment of fees and does not exempt these organizations from any other provisions of this part.

SECTION 31. Tennessee Code Annotated, Section 68-14-315, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-315.

(a) When application is made for a permit to operate any hotel after January 1 of any year, the fee charged for the permit shall be one half (1/2) the annual rate.

(b) When application is made for a permit to operate any public swimming pool after October 1 of any year, the fee charged for the permit shall be one half (1/2) the annual rate.

(c) When the hotel was subject to permit requirements prior to January 1 of any year, or where the public swimming pool was subject to permit requirements prior to April 1 of any year, no such fractional rate shall be allowed.

SECTION 32. Tennessee Code Annotated, Section 68-14-316, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-316.

(a) Inspection results for hotels and swimming pools shall be recorded on standard departmental forms that summarize the requirements of the law and of rules and regulations.

(b)(1) The scoring system for inspections shall include a weighted point value for each requirement in which critical requirements are assigned values of four (4) and five (5) points, with less critical items having assigned values of one (1) and two (2) points.

(2) The rating score of the facilities shall be the total of the weighted point values for all violations subtracted from one hundred (100).

(c) A copy of the completed inspection report shall be furnished to the person in charge of the facility at the conclusion of the inspection.

SECTION 33. Tennessee Code Annotated, Section 68-14-317, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-317.

(a)(1) The completed inspection report shall specify a reasonable period of time for correction of violations found.

(2) If, after the first reinspection, the item or items noted in violation remain in violation, according to the inspection report, the department shall provide for the supervisor of the employee making the prior inspections to accompany the employee for the second and any subsequent reinspections required for the same continuing item or items in violation.

(3) The correction of violations shall be accomplished within the time periods specified below:

(A) If an imminent health hazard exists, sewage back-up into the facility, or contaminated water supply, the facility shall immediately cease operations until authorized to reopen by the commissioner;

(B) All violations of critical items shall be corrected as soon as possible and in any event within ten (10) days following inspection. A follow-up inspection may be made for confirmation;

(C) All other items shall be corrected as soon as possible, but no later than the time of the next routine inspection;

(D) When the overall rating score of any facility is less than seventy (70) on forms prepared pursuant to § 68-14-316, the facility shall initiate corrective action on all identified violations within forty-eight (48) hours. One (1) or more inspections shall be conducted at reasonable intervals to assure correction.

(b) The inspection report shall state that failure to comply with any time limits specified by the commissioner for correction may result in cessation of operations. An opportunity for a hearing on the ordered corrective action shall be provided if a written request is filed with the commissioner within ten (10) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within a reasonable time after receipt of the request.

(c) Whenever a facility is required under this section to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

SECTION 34. Tennessee Code Annotated, Section 68-14-318, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-318. Whenever a hotel or swimming pool is constructed or extensively remodeled, or whenever an existing structure is converted to use as a hotel, plans and specifications shall be submitted to the commissioner for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials and work areas, and the type and model of proposed fixed equipment and facilities. The commissioner shall approve the plans and specifications, if they meet the requirements of this part and rules and regulations. No hotel or swimming pool shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the commissioner.

SECTION 35. Tennessee Code Annotated, Section 68-14-319, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-319. When the commissioner has reasonable cause to suspect possible disease transmission by an employee of the facility, the commissioner may obtain information about any recent illness of the employee or make other investigations as may be indicated. The commissioner may require any of the following:

(1) The immediate exclusion of the employee from employment in the hotel or public pool;

(2) The immediate closing of the facility until, in the commissioner's opinion, no further danger of disease outbreak exists;

(3) Restricting the employee's service to some area of the facility where there would be little likelihood of transmitting disease; or

(4) Adequate medical and laboratory examinations of the employee and of other employees.

SECTION 36. Tennessee Code Annotated, Section 68-14-320, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-320. Any person operating a hotel or public swimming pool who fails or refuses to comply with any provision of this part or with rules and regulations, obstructs or hinders the regulatory authority in the discharge of the regulatory authority's duties, or otherwise operates a hotel or swimming pool in violation of this part or of rules and regulations commits a Class C misdemeanor. Each day of operation after notice of non-compliance of violation has been given and such violation has not been corrected constitutes a separate offense.

SECTION 37. Tennessee Code Annotated, Section 68-14-321, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-321. When the commissioner has reason to believe that a person is causing, is about to cause, or has caused a violation of this part or of the rules and regulations promulgated under this part, the commissioner may initiate proceedings in either the chancery court of Davidson County or the chancery court of the county where the violation is occurring for injunctive relief to prevent the continuance of the violation or to correct the conditions resulting in, or about to result in, the violation.

SECTION 38. Tennessee Code Annotated, Section 68-14-322, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-322. This part shall not apply to privately owned swimming facilities that are constructed upon private property by a group of not more than twenty (20) households.

SECTION 39. Tennessee Code Annotated, Section 68-14-323, is amended by deleting the section in its entirety and substituting instead the following language:

68-14-323. The commissioner may grant waivers from rules and regulations governing public swimming pools in excess of fifty thousand square feet (50,000 sq. ft.), or may promulgate additional rules and regulations governing such pools. Waivers or regulations shall be designed to protect the health, safety, and welfare of patrons when adequate standards do not exist to provide sufficient guidance regarding preventive maintenance, pool structure, operating systems, water turnover, circulatory systems, or innovative designs due to the size of the public swimming pools or due to the source of water supply for such pools.

SECTION 40. Tennessee Code Annotated, Section 68-14-324, is amended by deleting the section in its entirety.

SECTION 41. Tennessee Code Annotated, Section 68-14-325, is amended by deleting the section in its entirety.

SECTION 42. Tennessee Code Annotated, Section 68-14-326, is amended by deleting the section in its entirety.

SECTION 43. Tennessee Code Annotated, Section 68-14-701, is amended by deleting the section in its entirety and by substituting instead the following new language:

68-14-701. This part shall be known and may be cited as the Tennessee Food Safety Act.

SECTION 44. Tennessee Code Annotated, Section 68-14-702, is amended by deleting the section in its entirety and substituting instead the following:

68-14-702. It is the purpose of this part to ensure that foods served for public consumption in Tennessee are safe as prepared, served and delivered.

SECTION 45. Tennessee Code Annotated, Section 68-14-703, is amended by deleting the section in its entirety and substituting instead the following:

68-14-703. As used in this part:

(1) "Alteration" shall be defined by rule, but shall not mean function replacement that equals or makes better the existing operation of the facility;

(2) "Auxiliary food service operation" means a designated area located within or adjacent to a food service establishment sharing common ownership or management, and whose primary purpose is serving beverages. For determining the amount of the permit fee for the food service establishment associated with the auxiliary food service operation, all seating in the auxiliary food service operation shall be included in the seating count of the primary food service establishment;

(3) "Commissioner" means the commissioner of health, the commissioner's duly authorized representative, and in the event of the commissioner's absence or vacancy in the office of commissioner, the deputy commissioner;

(4) "Department" means the department of health;

(5) "Demonstration of knowledge" means the ability to demonstrate knowledge of food safety principles as applicable to establishments regulated in accordance with this part. For the purposes of this part, "demonstration of knowledge" may be accomplished by one (1) or more of the following means:

(A) Completing an inspection that reflects no priority item violation;

(B) Employing at least one (1) person certified as a food protection manager who has shown proficiency of food protection information through passing a test that is part of a certification program evaluated and listed by an accrediting agency recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs; or

(C) Responding correctly to food protection questions related to the specific food operation. A person responding to the questions may be aided by the utilization of food safety procedures posted prominently for employees who may use the procedures as reference guides. The commissioner shall assist establishments that request information relative to risks associated to their specific food operation, which may be posed as questions during the inspection.

(6) "Employee" means a person:

(A) In charge of a food establishment;

(B) Engaged in the preparation of food or drink;

(C) Engaged in service of food to the establishment's guests or clientele; or

(D) Engaged in ware washing;

(7) "Extensive remodeling" means the repair, construction, alteration or installation of new equipment, modification of existing equipment or fixtures, changes in floor plan layout, addition of new processes, expansion to new space, or significant changes to use of space or equipment.

(8) "Food Code" means the 2009 Food Code as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

(9)(A) "Food service establishment" means any establishment, place or location, whether permanent, temporary, seasonal or itinerant, other than retail food stores, where food is prepared and the public is offered to be served or is served food, including, but not limited to, foods, vegetables, or beverages not in an original package or container, food and beverages dispensed at soda fountains and delicatessens, sliced watermelon, ice balls, or water mixtures;

(B) "Food service establishment" includes places identified above in (A) regardless of whether there is a charge for the food;

(C) "Food service establishment" does not include private homes where food is prepared or served and not offered for sale, retail food store operations, food service establishments located within a retail food store, the location of vending machines, and supply vehicles;

(D) "Food service establishment" does not include churches, temples, synagogues or other religious institutions, civic, fraternal, or veteran's organizations where food is prepared, served, transported, or stored by volunteer personnel only on non-consecutive days. However, the storage of unopened, commercially canned food, packaged bulk food that is not potentially hazardous, and dry goods shall not apply for these purposes;

(E) "Food service establishment" does not include grocery stores that may, incidentally, make infrequent casual sales of uncooked foods for consumption on the premises, or any establishment whose primary business is other than food service, that may, incidentally, make infrequent casual sales of coffee or prepackaged foods, or both, for consumption on the premises. For the purposes of this subdivision, "infrequent casual sales" means sales not in excess of one hundred fifty dollars (\$150) per day on any particular day;

(F) "Food service establishment" does not include a location from which casual, occasional food sales are conducted solely in connection with youth-related amateur athletic or recreational activities or primary or secondary school-related clubs by volunteer personnel and that are in operation for twenty-four (24) consecutive hours or less;

(G) "Food service establishment" does not include a catering business that employs no regular, full-time employees, the food preparation for such business is solely performed within the confines of the principal residence of the proprietor, and the catering business makes only "occasional sales" during any thirty-day period; and

(H) "Food service establishment" does not include a house or other residential structure where seriously ill or injured children and their families are provided temporary accommodations in proximity to their treatment hospitals and where food is prepared, served, transported or stored by volunteer personnel; provided, that the house or structure is supported by a § 501(c)(3) organization, as defined in 26 U.S.C. § 501(c)(3), that has as a component of its mission the support of programs that directly improve the health and well-being of children;

(10) "Imminent health hazard" means any condition, deficiency, or practice that, if not corrected, is very likely to result in illness, injury, or loss of life to any person;

(11) "Person" means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, or the federal government and its agencies and departments;

(12) "Person in charge" means an individual present at a food service establishment who is responsible for the operation at the time of inspection. A person in charge shall be present at the establishment during food preparation and handling, and may put instructions in place for cleaning or preparing the establishment prior to the preparation of any food or beverage;

(13) "Quick fast food establishment" means those food establishments that only prepare food to be eaten off premises and that provide delivery services for such food but provide no set up, serving, or clean-up services; and

(14) "Temporary food service establishment" means a food service establishment that operates at a fixed location for a period of time of not more than fourteen (14) consecutive days.

SECTION 46. Tennessee Code Annotated, Section 68-14-704, is amended by deleting the section in its entirety and by substituting instead the following new language:

68-14-704. The commissioner is authorized to:

(1) Carry out or cause to be carried out all provisions of this part;

(2) Collect all fees established pursuant to this part and apply the fees in accordance with the procedures of the department of finance and administration to the necessary and incidental costs of the administration of this part. Nothing in this subdivision (2) shall be construed to prohibit the department from receiving by way of general appropriation such sums as may be required to fund adequately the

implementation of this part, as recommended in the annual budget by the governor to the general assembly;

(3) Prescribe rules and regulations, including emergency rules, governing the alteration, construction, sanitation, safety of food and operation of food service establishments as may be necessary to protect the health and safety of the public, and require food service establishments to comply with these rules and regulations. A non-elected body of any municipality, county, or metropolitan government shall not enact any ordinance or issue any rule or regulation pertaining to food safety or the provision of nutritional information related to food or drink, or otherwise regulate menus at food service establishments. If, upon the effective date of this act, the federal government takes action regarding the provision of food nutritional information at food service establishments, and the federal action specifically authorizes state agencies to enforce such action, then the department of health shall be the department that is primarily responsible for the implementation and supervision of any new requirements and shall have the authority to promulgate rules and regulations, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are necessary to effectuate the purposes of such requirements. The rules and regulations prohibiting live animals in the presence of dining facilities shall be waived if an adequately engineered forced air exhaust system is installed for the permitted facility. The rules and regulations requiring that food be obtained from sources that comply with all laws relating to food and food labeling shall be waived for churches, temples, synagogues and other religious institutions, civic, fraternal or veterans' organizations, if the food is served only to the homeless and the food is prepared in a church, temple, synagogue or other religious institution, civic, fraternal, or veterans' organization or in a private home or homes by persons who have successfully completed a training course of at least two (2) hours, conducted by the department, and the consumer is informed by a clearly visible placard, readily understandable to the average person, stating that the food may have been prepared in a facility that is not subject to regulation or inspection by the department. The commissioner shall not prescribe any such rules and regulations in conflict with the minimum statewide building construction standards established by the state fire marshal pursuant to § 68-120-101. The rules with respect to food temperature shall be specific with respect to the types of food prepared and the risks presented by those foods. Except as specifically provided herein, the commissioner may adopt, by rule and regulation, all or part of the Food Code;

(4) Inspect or cause to be inspected as often as the commissioner, in the commissioner's discretion, may deem necessary, every food service establishment in the state as authorized by this part, with the exception of those food service establishments licensed by the department of mental health, to determine compliance with this part and with rules and regulations;

(5) Issue or cause to be issued, suspend, and revoke permits to operate food service establishments as provided in this part;

(6) Notify the owner, proprietor, or agent of any food service establishment of such changes or alterations as may be necessary to effect complete compliance with this part and with rules and regulations governing the construction, alteration, and operation of the facilities, and close the facilities for failure to comply within specified times as provided in this part and rules and regulations;

(7) Enter into agreements or contracts with county health departments for the departments to implement this part or its equivalent in their areas of jurisdiction, if the commissioner deems it to be appropriate; provided, that the following conditions shall apply:

(A) State reporting requirements shall be met by the county health department or departments;

(B) The county health department program standards shall be identical to those of the state law and to rules and regulations;

(C) The commissioner shall retain the right to exercise oversight and evaluation of performance of the county health department or departments and terminate the agreement or contract for cause immediately or otherwise upon reasonable notice;

(D) The commissioner may set such other fiscal, administrative, or program requirements as the commissioner deems necessary to maintain consistency and integrity of the statewide program;

(E) Staffing and resources shall be adequate to implement and enforce the program in the local jurisdiction; and

(F) Contract county health departments that collect the applicable permit fees from food establishments located within the county shall retain one hundred percent (100%) of the permit fees and penalty fees. Contract counties that utilize the services of the department for the collection of permit fees shall receive ninety-five percent (95%) of permit fees collected within a contract county pursuant to §§ 68-14-705 through 68-14-707. This amount shall be calculated based upon fees collected in the contract county during the state's fiscal year multiplied by ninety-five percent (95%).

(8)(A) Upon the application of a food service establishment for a variance based on a showing of good cause and an affirmative demonstration that the risks to the public attendant to the limited activities have been mitigated, the commissioner shall grant the establishment a variance from the limitations in the Food Code regarding restrictions pertaining to bare hand contact. A request for a variance shall be granted or denied within sixty (60) days of the commissioner's receipt of the application for variance. A request for a variance shall include the following information:

(i) A listing of the specific ready-to-eat foods that are touched by bare hands;

(ii) Diagrams and other information showing that hand washing facilities are located and equipped as prescribed by the applicable provisions of the Food Code;

(iii) An employee health policy documenting that the food service establishment complies with:

(a) The person in charge requirements; and

(b) Requirements for monitoring the health of food service employees;

(iv) Documentation that food service employees have received training on the:

(a) Risks of contacting ready-to-eat foods with bare hands;

(b) Proper hand washing;

(c) Proper fingernail maintenance;

(d) Prohibition on jewelry;

(e) Good hygienic practices; and

(B) Documentation that food employees contacting ready-to-eat foods with bare hands used two (2) or more of the following control measures:

(i) Double hand washing;

(ii) Nail brushes;

(iii) A hand antiseptic after hand washing;

(iv) Incentive programs that assist or encourage food service employees not to work when they are ill; or

(v) Other control measures approved by the commissioner; and

(C) Notwithstanding any provision of the Food Code to the contrary, the commissioner shall not require any further documentation for the granting of a variance other than those contained in this section.

SECTION 47. Tennessee Code Annotated, Section 68-14-705, is amended by deleting the section in its entirety and by substituting instead the following new language:

68-14-705. All monies coming into the state treasury pursuant to this part from fees, fines, and penalties shall be appropriated to the department of health for the payment of necessary expenses incident to the administration of this part, as determined by the commissioner. Any unexpended balance of the fund in any fiscal year shall be retained by the department to be used to provide or expand training for food service operators and the department's environmentalists.

SECTION 48. Tennessee Code Annotated, is amended by adding the following language as new sections:

68-14-706.

(a) No person shall operate a food service establishment who does not hold a valid permit issued to the person by the commissioner on or before July 1 of each year or as the commissioner may otherwise provide by rule and regulation.

(b) Every person now engaged in the business of operating a food service establishment, and every person who, upon the effective date of this act engages in such a business, shall procure a permit from the commissioner for each food service establishment so operated or proposed to be operated.

(c) Each permit for food service establishments shall expire on June 30 next following its issuance or as the commissioner may otherwise provide by rule.

(d) No permit shall be transferred from one location or person to another.

(e) The permit shall be kept and displayed in a conspicuous manner and visible to the public in the food service establishment for which it is issued.

68-14-707.

(a)(1) Any person planning to operate a food service establishment shall first submit an application for a permit on forms provided by the commissioner. The application shall be completed and submitted to the commissioner with the proper permit fee.

(2) Prior to the approval of the application for a permit, the commissioner shall inspect the proposed facility to determine if the person applying for the permit is in compliance with the requirements of this part and with applicable rules and regulations. The commissioner shall issue a permit to the applicant if the inspection reveals that the facility is in compliance with such requirements.

(b) Applications for renewal of permits for existing food service establishments will be issued to the operators prior to July 1 of each year or as the commissioner may provide by rule. When completed applications and the proper permit fees are returned to the commissioner, the commissioner shall issue new permits to applicants.

68-14-708.

(a) The commissioner has the authority to suspend any permit to operate a food service establishment issued pursuant to this part if the commissioner has reasonable cause to believe that the permittee is not in compliance with this part; provided, that the permittee shall be given the opportunity to correct violations as provided in § 68-14-709.

(b) Suspension of permits, other than those for temporary food service establishments shall be of two (2) types:

(1) A Class 1 suspension, which provides an opportunity for a hearing prior to the effective date of the suspension; and

(2) A Class 2 suspension, which provides an opportunity for a hearing after the effective date of the suspension, and is effective immediately.

(c) Notice of either type of suspension may be given by the inspector on the inspector's regular inspection form or by written notification from the commissioner. When a permit suspension is effective, all operations shall cease. Class 2 suspensions shall only be issued if an imminent health hazard exists.

(d) A written request for a hearing on either type of suspension shall be filed by the permittee within ten (10) days of the receipt of notice. This ten-day period may run concurrently with the ten-day period set forth in § 68-14-709. If a hearing is requested, it shall be commenced within a reasonable time of the request. If no request for a hearing is made within ten (10) days of the receipt of notice, the suspension becomes final and is not subject to review.

(e) The commissioner may end the suspension at any time if reasons for suspension no longer exist.

68-14-709.

(a) The commissioner may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of requirements of this part or for interference with the commissioner in the performance of the commissioner's duty.

(b) Prior to revocation, the commissioner shall notify, in writing, the permittee of the specific reason or reasons for which the permit is to be revoked, and that the permit shall be revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the commissioner within the ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

68-14-710. A notice provided for in this part is properly served when it is delivered to the permittee or person in charge, or when it is sent by certified mail, return receipt requested, to the last known address of the permittee. A copy of the notice shall be filed in the records of the commissioner.

68-14-711.

(a) The hearings provided for in this part shall be conducted by the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Appeals from any final decision after a hearing shall be pursued in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(c) Subsections (a) and (b) shall not apply in a county in which the health department is operating a program pursuant to § 68-14-704(7) that meets the minimum requirements of due process; provided, that appeals from final decisions made under such programs may be made to the commissioner, for the limited purpose of determining whether a material error of law was made at the county level. Such appeal to the commissioner shall not be de novo, but shall be limited to a review of the record of the hearing at the county level.

68-14-712. Whenever the revocation of a permit becomes final, upon demonstration that the conditions that led to the revocation have been cured, the holder of the revoked permit may make written application for a new permit.

68-14-713.

(a)(1) The permit fee to operate a food service establishment shall be in accordance with the following schedule:

<u>No. of Seats</u>	<u>Fee Amount</u>
0-50	\$210
51 or more seats	\$360

(2) Auxiliary food service operations shall pay a permit fee of one hundred dollars (\$100);

(3) Temporary food service establishments shall pay a permit fee of thirty dollars (\$30.00);

(4) Child care center food service establishments and congregate meal sites funded through the commission on aging and disability that are food service establishments shall pay according to the following schedule:

<u>No. of Seats</u>	<u>Fee Amount</u>
0-50	\$50.00
51 or more seats	\$80.00

(5) School food services establishments shall pay a permit fee of eighty dollars (\$80.00).

(b) This section shall not apply to family child care homes, as defined in § 71-3-501.

(c) If the permit fee is delinquent for more than thirty (30) calendar days, a penalty fee of one half (1/2) the permit fee shall be assessed, in addition to the permit fee. If a check is returned for any reason, a penalty fee of one half (1/2) the permit fee shall be assessed in addition to the permit fee. The permit fee, plus any penalty, shall be paid before the permit is issued.

(d) When an institution operates several group homes within close proximity to each other, the permit fee established in this section shall be assessed only against the institution and not against each individual group home.

(e) This section shall not apply to a blind vendor subject to § 71-4-501.

68-14-714.

(a) Churches, schools, civic, fraternal or veterans' organizations serving food are exempt from the payment of food service establishment permit fees; provided, that food is served on no more than fifty-two (52) separate days in one (1) fiscal year. The exemption is expressly limited to the payment of fees and shall not exempt these organizations from any other provisions of this part.

(b) In addition to the exemption established in subsection (a), churches involved in the sale of food at a four-day, multi-regional event sponsored by a local chamber of commerce, whose primary purpose is to generate economic interest in the regions, shall further be exempt from the payment of food service establishment permit fees for the event.

(c) A bona fide charitable or nonprofit organization that operates a food bank and an on-site feeding program for the free distribution of food to combat poverty and hunger shall be exempt from the payment of food service establishment permit fees.

(d) When application is made for a permit to operate any food service establishment after January 1 of any year, or such other date as the commissioner may establish by rule and regulation, the fee charged for the permit shall be one half (1/2) the annual rate; however, where the establishment was subject to permit requirements prior to January 1 or such other date as the commissioner may establish by rule and regulation, of any year, no such fractional rate shall be allowed.

68-14-715.

(a) Inspection results for food service establishments shall be recorded on standard departmental forms that summarize the requirements of the law and rules and regulations.

(b) A copy of the completed inspection report shall be furnished in a manner prescribed by the commissioner to the person in charge of the facility at the conclusion of the inspection.

(c) The most current inspection report furnished to the operator or person in charge of the establishment shall be posted in a conspicuous manner. If any violation noted on the report is required to be corrected within ten (10) days of the issuance of the report and the department determines that the violation has been corrected within the period of time, then a final report without notation of the violation shall be

furnished to the operator or person in charge of the food service establishment and the report shall be posted in lieu of the original report.

68-14-716.

(a) The completed inspection report shall specify a reasonable period of time for correction of violations found.

(b) Corrections of violations shall be accomplished within the following periods:

(1) If an imminent health hazard exists, the facility shall immediately cease operations until authorized to reopen by the commissioner;

(2) All violations of priority items shall be corrected as soon as possible and in any event within ten (10) days following inspection. A follow-up inspection may be made for confirmation;

(3) All other items should be corrected as soon as possible, but in any event by the time of the next routine inspection; and

(4) In the case of temporary food service establishments, all violations shall be corrected within twenty-four (24) hours. If violations are not corrected within twenty-four (24) hours, the establishment shall immediately cease food service operations until authorized to resume by the commissioner.

(c) The inspection report shall state that failure to comply with any time limits specified by the commissioner for correction may result in cessation of operations. An opportunity for a hearing on the ordered corrective action shall be provided if a written request is filed with the commissioner within ten (10) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within a reasonable time after receipt of the request.

(d) Whenever a facility is required under this section to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

68-14-717. Food may be examined or sampled by the commissioner as deemed necessary for the enforcement of this part. The commissioner may place a hold order on any food that the commissioner believes is in violation of this part or of rules and regulations, upon written notice to the operator specifying particular reasons for the hold order. The commissioner shall tag, label, or otherwise identify any food subject to a hold order. No food subject to a hold order shall be used, served, sold, or moved from the establishment. The hold order may state that the food be held while confirmation is obtained that the condition violates this part or rules or regulations. The hold order may also order the operator to destroy food that violates this part or rules or regulations. The commissioner shall permit storage of the food under the conditions specified in the hold order, unless storage is not possible without risk to the health of the public, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for a hearing may be filed within ten (10) days. If a request for a hearing is received, the hearing shall be held within a reasonable time after receipt of the request. On the basis of evidence produced at the hearing, the hold order may be rescinded, or the owner or person in charge may be directed by written order to denature or destroy such food or to bring it into compliance with this part.

68-14-718. Whenever a food service establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food service establishment, plans and specifications shall be submitted to the commissioner for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials and work areas, and the type and model of proposed fixed equipment and facilities. The commissioner shall approve the plans and specifications if they meet the requirements of this part and of rules and regulations. No food service establishment shall be constructed, extensively remodeled, or converted, except in accordance with plans and specifications approved by the commissioner. Any deviation from the submitted plans and specifications previously approved by the commissioner discovered during an inspection that would not compromise the safety of food products shall not delay the issuance of a permit to operate a food service establishment.

68-14-719.

(a) When the commissioner has reasonable cause to suspect possible disease transmission by an employee of the facility, the commissioner may obtain information about any recent illness of the employee or make other investigations as may be indicated. The commissioner may require any of the following:

(1) The immediate exclusion of the employee from employment in the food service establishment;

(2) The immediate closing of the facility until, in the commissioner's opinion, no further danger of disease outbreak exists;

(3) Restricting the employee's service to some area of the facility where there would be little likelihood of transmitting disease; or

(4) Adequate medical and laboratory examinations of the employee and of other employees.

(b) A person in charge, having been provided by the employee with written documentation from a person who practices in a medical profession in accordance with title 63 that the employee has been diagnosed with a condition set forth in Chapter 2, § 2-201.11(B)(2) of the Food Code shall have an affirmative duty to notify the commissioner or the commissioner's designee. A person in charge shall not be required to obtain medical records from a prospective employee prior to hiring such individual as an employee.

68-14-720. Any person operating a food service establishment who fails or refuses to comply with any of this part or with rules and regulations, obstructs or hinders the regulatory authority in the discharge of the regulatory authority's duties, or otherwise operates a food service establishment in violation of this part or rules and regulations commits a Class C misdemeanor. Each day of operation after notice of non-compliance of violation has been given and such violation has not been corrected constitutes a separate offense.

68-14-721. When the commissioner has reason to believe that a person is causing, is about to cause, or has caused a violation of this part or of the rules and regulations promulgated under this part, the commissioner may initiate proceedings in either the chancery court of Davidson County or the chancery court of the county where the violation is occurring, for injunctive relief to prevent the continuance of the violation or to correct the conditions resulting in, or about to result in, the violation.

68-14-722. Notwithstanding provisions of this part to the contrary, children eighteen (18) years of age or less do not need a license or permit to sell bakery goods, homemade or otherwise, soft drinks, or other similar food commodities at public events.

68-14-723.

(a) Every quick fast food establishment delivery vehicle, whether owned by the establishment or not, that is used in the delivery of prepared food shall be clearly marked with the name and logo of the quick fast food establishment.

(b) If the quick fast food establishment or one (1) of its delivery employees reasonably believes that providing delivery services to an address would expose delivery personnel to a risk of harm, the name or logo may be temporarily removed.

68-14-724. All vehicles owned by a quick fast food establishment used in the delivery of its products shall meet the requirements for proof of financial responsibility in accordance with § 55-12-102(12)(C).

68-14-725.

(a) Every quick fast food establishment shall maintain accurate and current files on each employee hired to provide delivery services that verify the employee has met the requirements of this part. Such files shall be open for inspection by the commissioner of health or the commissioner's authorized agent.

(b) A fine not to exceed two hundred fifty dollars (\$250) for each violation as defined in subsection (a) shall be assessed by the commissioner or the commissioner's authorized agent after providing an opportunity for a hearing; provided, that in addition to assessing such fines, the commissioner or the

commissioner's authorized agent may revoke a permit for repeated violations of the requirements of this part or for interference with the commissioner or the commissioner's agent in the performance of the official's duty.

68-14-726. The files required to be maintained in accordance with this part shall be kept by all quick fast food establishments that employ drivers or that contract with drivers or contract with companies that provide drivers for the delivery of food. If a quick fast food service establishment contracts with a company that provides drivers for the delivery of food, the company shall provide to the food service establishment proof of financial responsibility for each of the company's employees providing the driving services under the contract.

SECTION 49. Tennessee Code Annotated, Section 53-8-111, is amended by deleting subsections (b)-(f).

SECTION 50. For rulemaking purposes, this act shall become effective upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2015, the public welfare requiring it.

SENATE BILL NO. 172

PASSED: April 3, 2013

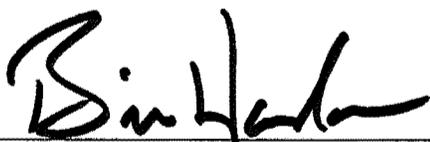


RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 23rd day of April 2013



BILL HASLAM, GOVERNOR