



State of Tennessee

PUBLIC CHAPTER NO. 485

SENATE BILL NO. 321

By Norris

Substituted for: House Bill No. 290

By McCormick, Kevin Brooks, McDaniel

AN ACT to amend Tennessee Code Annotated, Title 43; Title 44; Title 47; Title 53 and Title 62, relative to fees and penalties for permits and licenses issued by the department of agriculture.

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

SECTION 1. Tennessee Code Annotated, Section 43-1-701, is amended by deleting the section and substituting instead the following:

(a) There is established within the general fund a special agency account to be known as the Tennessee agricultural regulatory fund, referred to in this part as "the fund."

(b) Notwithstanding any law to the contrary, there shall be deposited in the fund all moneys collected pursuant to the following:

- (1) The Tennessee Plant Pest Act, compiled in chapter 6, part 1, of this title;
- (2) The Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled in chapter 8, parts 1 and 2, of this title;
- (3) Chapter 8, part 3, of this title, relative to the aerial application of pesticides;
- (4) The Tennessee Seed Law of 1986, compiled in chapter 10 of this title;
- (5) The Tennessee Commercial Fertilizer Law of 1969, compiled in chapter 11, part 1, of this title;
- (6) The Tennessee Agricultural Liming Materials Act, compiled in chapter 11, part 4, of this title;
- (7) Section 43-26-103(e), relative to industrial hemp;
- (8) The Tennessee Commercial Feed Law of 1972, compiled in title 44, chapter 6;
- (9) Title 44, chapter 7, relative to marks, brands, registration, and certification;
- (10) The Tennessee Livestock Dealer Act, compiled in title 44, chapter 10, part 2;
- (11) Title 44, chapter 11, relative to livestock sales;
- (12) Title 44, chapter 16, relative to baby chicks;
- (13) Title 47, chapter 26, relative to weights and measures;
- (14) The Tennessee Food, Drug and Cosmetic Act, compiled in title 53, chapter 1;

- (15) The Tennessee Egg Law, compiled in title 53, chapter 2;
- (16) The Dairy Law of the State of Tennessee, compiled in title 53, chapter 3;
- (17) Title 53, chapter 7, relative to meat and poultry inspections;
- (18) The Tennessee Retail Food Safety Act, compiled in title 53, chapter 8, part 2;
- (19) Title 53, chapter 12, relative to vending machines; and
- (20) Tennessee Application of Pesticides Act of 1978, compiled in title 62, chapter 21.

(c) Any unencumbered moneys and any unexpended balance of the fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward and maintained until expended in accordance with this part.

(d) Moneys in the fund shall be invested by the state treasurer for the benefit of the fund pursuant to § 9-4-603. Interest accruing on investments and deposits of the fund shall be returned to the fund and remain a part of the fund. The fund shall be administered by the commissioner.

(e) Moneys in the fund may be expended only in accordance with annual appropriations approved by the general assembly. Subject to the foregoing requirement, moneys in the fund shall be expended at the direction of the commissioner only to defray the costs associated with implementing and effectuating the purposes of the statutes specified in subsection (b).

SECTION 2. Tennessee Code Annotated, Section 43-1-703, is amended by deleting the section and substituting instead the following:

(a) In order to facilitate the proper administration of each statute listed in § 43-1-701(b), the commissioner of the department of agriculture shall establish fees through the promulgation of rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the various services and functions it performs under each of those statutes including, but not limited to, permit processing fees, license fees, registration fees, plans review fees, facility inspection fees, charter fees, and costs of the department.

(b) Until fees are established in accordance with subsection (a), all fees in existence prior to January 1, 2015, under the statutes specified in § 43-1-701(b), shall remain in full force and effect.

(c) It is the intent of the general assembly that the fees established pursuant to subsection (a) shall be used only to provide funding for implementation of, or improvement of the performance of the department in carrying out its duties under, the statutes specified in § 43-1-701(b), and the fees shall be graduated so that the fees are fairly apportioned to the extent practicable.

(d) No permit or renewal of a permit shall be issued to an applicant for a permit under the foregoing authorities until all fees required by this part are paid in full.

(e)(1) If any part of a fee imposed under this part is not paid within fifteen (15) days of the due date, a late charge as provided by this part shall at once accrue and be added to the amount due.

(2) In addition to other powers and authority provided in this part, the commissioner is authorized to seek injunctive relief in the chancery court of Davidson County or any court of competent jurisdiction for a judgment in the amount owed the state under this part.

(3) Any person required to pay the fees set forth under this part who disagrees with the calculation or applicability of the fee may petition the commissioner for a hearing. To perfect a hearing, a petition for a hearing, together with the total amount of the fee due shall be received by the commissioner not later than fifteen (15) days after the due date. The hearing shall be in accordance with contested case provisions set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If it is determined that the amount in dispute was improperly assessed, the commissioner shall return the amount determined to be improperly assessed.

(f) The fees of the department shall be assessed according to the following designated tiers:

(1) Tier 1. The cost for a tier 1 license, permit, or fee shall be twenty-five dollars (\$25.00). The late charge for this tier shall be twelve dollars (\$12.00);

(2) Tier 2. The cost for a tier 2 license, permit, or fee shall be fifty dollars (\$50.00). The late charge for this tier shall be twenty-five dollars (\$25.00);

(3) Tier 3. The cost for a tier 3 license, permit, or fee shall be one hundred dollars (\$100). The late charge for this tier shall be fifty dollars (\$50.00);

(4) Tier 4. The cost for a tier 4 license, permit, or fee shall be one hundred fifty dollars (\$150). The late charge for this tier shall be seventy-five dollars (\$75.00);

(5) Tier 5. The cost for a tier 5 license, permit, or fee shall be two hundred dollars (\$200). The late charge for this tier shall be one hundred dollars (\$100);

(6) Tier 6. The cost for a tier 6 license, permit, or fee shall be two hundred fifty dollars (\$250). The late charge for this tier shall be one hundred twenty-five dollars (\$125);

(7) Tier 7. The cost for a tier 7 license, permit, or fee shall be three hundred dollars (\$300). The late charge for this tier shall be one hundred fifty dollars (\$150);

(8) Tier 8. The cost for a tier 8 license, permit, or fee shall be three hundred fifty dollars (\$350). The late charge for this tier shall be one hundred seventy-five dollars (\$175);

(9) Tier 9. The cost for a tier 9 license, permit, or fee shall be four hundred dollars (\$400). The late charge for this tier shall be two hundred dollars (\$200);

(10) Tier 10. The cost for a tier 10 license, permit, or fee shall be five hundred dollars (\$500). The late charge for this tier shall be two hundred fifty dollars (\$250);

(11) Tier 11. The cost for a tier 11 license, permit, or fee shall be seven hundred fifty dollars (\$750). The late charge for this tier shall be three hundred seventy-five dollars (\$375); and

(12) Tier 12. The cost for a tier 12 license, permit, or fee shall be one thousand dollars (\$1,000). The late charge for this tier shall be five hundred dollars (\$500).

SECTION 3. Tennessee Code Annotated, Section 43-1-704, is amended by deleting the section and substituting instead the following:

(a) Notwithstanding § 4-5-229, rules establishing fees promulgated pursuant to this chapter before July 1, 2016, shall take effect following expiration of the ninety (90) days as provided in § 4-5-207.

(b) Beginning in 2020 and at least every five (5) years thereafter, the commissioner shall evaluate fees associated with the statutes specified in § 43-1-701(b) and may make adjustments through the rule-making process. Individual fees shall not be adjusted more than once every five (5) years.

(c) After the initial adjustment under subsection (b), the percentage increase of any subsequent adjustment shall not exceed the percentage of increase in the average consumer price index, all items-city average, as published by the United States department of labor, bureau of labor statistics, between the dates of one (1) adjustment and the immediately subsequent adjustment. Individual fee adjustment amounts may be rounded up to the next tier amount provided in § 43-1-703(f).

(d) Fees established under § 43-1-703(a) and the statutes specified in § 43-1-701(b) shall not be increased in any year when the fund's fiscal year ending balance exceeds one hundred fifty percent (150%) of the fees collected in the previous year.

SECTION 4. Tennessee Code Annotated, Title 43, Chapter 6, Part 1, is amended by adding the following new section:

(a) A nematode sample analysis fee shall be set by rule pursuant to § 43-1-703.

(b) Nursery stock or other plant material plant dealer certificate fees shall be set by rule pursuant to § 43-1-703.

(c) Florist certificate fees shall be set by rule pursuant to § 43-1-703.

(d) The fee for phytosanitary certificates shall be equivalent to United States department of agriculture, animal and plant health inspection service fees.

(e) The department shall have no authority under this section to assess the greenhouse plant certification fee, or any other license fee or plant certification fee established by this part against:

(1) Any person engaged in the production of tobacco seedlings; or

(2) Any farmer who produces and sells plants or seedlings in connection with the person's farming operations, but who is not primarily engaged in the business of producing and selling plants or seedlings, as determined by the commissioner.

SECTION 5. Tennessee Code Annotated, Section 43-8-201, is amended by adding the following new subsection:

(c) Pesticide dealer license fee shall be set by rule pursuant to § 43-1-703.

SECTION 6. Tennessee Code Annotated, Section 43-8-104, is amended by adding the following new subsection:

(h) Pesticide product registration fees shall be set by rule pursuant to § 43-1-703.

SECTION 7. Tennessee Code Annotated, Section 43-8-113, is amended by deleting the section and substituting instead the following:

(a) Commercial pesticide applicator certification fee shall be set by rule pursuant to § 43-1-703.

(b) Private pesticide applicator certification fee shall be set by rule pursuant to § 43-1-703.

(c) Solicitor/technician card fee shall be set by rule pursuant to § 43-1-703.

(d) Special local need (24-C) fee shall be set by rule pursuant to § 43-1-703.

SECTION 8. Tennessee Code Annotated, Section 43-8-304, is amended by adding the following new subsections:

(g) Aerial applicator license fee shall be set by rule pursuant to § 43-1-703.

(h) Aerial decal fees shall be set by rule pursuant to § 43-1-703.

SECTION 9. Tennessee Code Annotated, Section 43-10-118, is amended by deleting the section and substituting instead the following:

Each seed seller who sells, offers for sale, exposes for sale, distributes, or solicits orders for the sale of any agricultural or vegetable seeds to farmers, retailers, wholesalers, or any others who use or plant agricultural or vegetable seeds in the state shall obtain a license from the commissioner annually on or before July 1 of each calendar year. Seed sellers shall obtain an application form and pay the appropriate fee set by rule pursuant to § 43-1-703.

SECTION 10. Tennessee Code Annotated, Section 43-10-119, is amended by deleting the section in its entirety.

SECTION 11. Tennessee Code Annotated, Section 43-11-104, is amended by deleting the section and substituting instead the following:

Every person who distributes commercial fertilizer in this state shall pay an annual license fee set by rule pursuant to § 43-1-703.

SECTION 12. Tennessee Code Annotated, Section 43-11-106, is amended by deleting the section in its entirety.

SECTION 13. Tennessee Code Annotated, Section 43-11-107, is amended by deleting the section in its entirety.

SECTION 14. Tennessee Code Annotated, Section 43-11-405, is amended by deleting the section and substituting instead the following:

(a) Every manufacturer who distributes liming materials in this state shall submit an application for a license to the commissioner on or before July 1 of each year, or prior to the manufacture or distribution of the liming material. All applications shall be submitted on forms furnished by the commissioner.

(b) All license applications must be accompanied by payment of a fee set by rule pursuant to § 43-1-703. All licenses expire on June 30 of the following year.

SECTION 15. Tennessee Code Annotated, Section 43-11-406, is amended by deleting the section in its entirety.

SECTION 16. Tennessee Code Annotated, Section 44-6-104, is amended by deleting the section and substituting instead the following:

(a) Any person who manufactures a commercial feed within the state, who distributes a commercial feed in or into the state, or whose name appears on the label of a commercial feed as guarantor shall obtain a license for each facility from which commercial feed is distributed in or into the state, authorizing the person to manufacture or distribute commercial feed before engaging in the activity. Any person who makes only retail sales of commercial feed that bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor is not required to obtain a license.

(b) Any person who is required to obtain a license shall submit an application on a form provided by or approved by the commissioner, accompanied by payment in the amount set by rule pursuant to § 43-1-703 for each facility. Each license shall expire on July 1 of the year for which it is issued.

(c) The form and content of the commercial feed license application shall be established by rules promulgated by the commissioner.

(d) The commissioner is empowered to refuse to issue a license to any person not in compliance with this chapter and to cancel the license of any licensee subsequently found not to be in compliance with any provision of this chapter; provided, that no license shall be refused or canceled unless the applicant or licensee has been given an opportunity to be heard before the commissioner and to amend the applicant's or licensee's application in order to comply with the requirements of this chapter.

SECTION 17. Tennessee Code Annotated, Section 44-6-109, is amended by deleting the section in its entirety.

SECTION 18. Tennessee Code Annotated, Section 44-7-202, is amended by deleting the section and substituting instead the following:

(a) Any owner who uses a brand to identify cattle, hogs, sheep, goats, horses, and other animals belonging to that owner must submit an application to the department to register the owner's brand.

(b) The application shall be made on forms prescribed and furnished by the department and shall be accompanied by payment of a fee set by rule pursuant to § 43-1-703 and a facsimile of the brand to be registered. If the brand described in the application closely resembles another brand previously registered by another owner, the commissioner may reject the application for registration, but in the event the brand does not closely resemble another brand previously registered, the commissioner shall issue to the applicant a certificate of registration.

(c) A person having a brand duly registered with the department may transfer the brand to another person by notifying the department of the transfer and giving the date of transfer and the name of the transferee. Upon receipt of the notice, the department shall note the brand transfer and the name of the transferee in its register of brands. The transferee shall not use the transferred brand until the department notifies the transferee that the brand transfer has been noted on the department's register.

SECTION 19. Tennessee Code Annotated, Section 44-7-204, is amended by deleting the section and substituting instead the following:

Every five (5) years, all brands shall be reregistered with the department. At least ninety (90) days prior to the date for reregistration of all brands, the department shall notify all persons having brands registered as to the date by which the brand must be reregistered. On or before the reregistration date, the person in whose name the brand is registered shall furnish any additional information as the department may require on forms furnished by the department. If any person having a registered brand fails to reregister the brand in that person's name, the brand shall be forfeited and shall be available for registration in the name of another person.

SECTION 20. Tennessee Code Annotated, Section 44-7-403, is amended by deleting the section and substituting instead the following:

(a) Animal diagnostic laboratory service fees, including, but not limited to, biopsy, necropsy, cytology, parasitology, virology, bacteriology, toxicology, and immunology, shall be set by rule pursuant to § 43-1-703.

(b) The commissioner shall establish grading fees for livestock graded by employees or agents of the department of agriculture by rule pursuant to § 43-1-703. The livestock market where the animal was graded and sold shall be responsible for payment of the fees to the department.

SECTION 21. Tennessee Code Annotated, Section 44-10-203, is amended by deleting the section and substituting instead the following:

Any person doing business as a livestock dealer must procure from the commissioner an annual license. Application for the annual license or its renewal shall be made on forms provided by the commissioner and accompanied by payment of a license fee set by rule pursuant to § 43-1-703. Upon a determination that the applicant is qualified, the commissioner shall issue a license to the applicant, and all annual licenses shall terminate and become void on June 30 in the calendar year following issuance of the license or renewal.

SECTION 22. Tennessee Code Annotated, Section 44-11-104(a), is amended by deleting the subsection and substituting instead the following:

(a) The annual license fee to operate a livestock market shall be set by rule pursuant to § 43-1-703.

SECTION 23. Tennessee Code Annotated, Section 44-16-202, is amended by deleting the section in its entirety.

SECTION 24. Tennessee Code Annotated, Section 47-26-806, is amended by deleting the section and substituting instead the following:

The annual cost for a certified public weigher license shall be set by rule pursuant to § 43-1-703.

SECTION 25. Tennessee Code Annotated, Section 47-26-807, is amended by deleting the section in its entirety.

SECTION 26. Tennessee Code Annotated, Section 47-26-909(19), is amended by deleting the subdivision and substituting instead the following:

(19) Charge fees for services provided by the metrology laboratory pursuant to rules promulgated by the commissioner for tolerance testing, calibration, and certifying any standards and testing equipment as performed by the department of agriculture that is used in the performance of service and testing functions with respect to weighing and measuring devices pursuant to the requirements of this chapter.

SECTION 27. Tennessee Code Annotated, Section 47-26-909(20), is amended by deleting the subdivision and substituting instead the following:

(20) Require a fee for commercial weighing and measuring equipment pursuant to the requirements of this part; the fee shall be set by rule pursuant to § 43-1-703.

SECTION 28. Tennessee Code Annotated, Section 47-26-1008, is amended by deleting the section and substituting instead the following:

The annual cost for a public weighmaster license shall be set by rule pursuant to § 43-1-703.

SECTION 29. Tennessee Code Annotated, Section 47-26-1110, is amended by deleting the section and substituting instead the following:

The annual cost to register a serviceperson shall be set by rule pursuant to § 43-1-703. For each service agency employing more than two (2) registered servicepersons, the annual fee shall be set by rule pursuant to § 43-1-703. The service agency registration fee shall not exempt the agency or individual from paying the required serviceperson registration fee. If an agency has more than one (1) office or branch, each office or branch shall be licensed in accordance with this section.

SECTION 30. Tennessee Code Annotated, Section 53-1-208(b), is amended by deleting the subsection and substituting instead the following:

(b) The commissioner shall require that a factory, warehouse, or establishment where foods are manufactured, processed, packed, or held for introduction into commerce have a license where the factory, warehouse, or establishment is not otherwise required to be licensed pursuant to this chapter. An annual license fee shall be set by rule pursuant to § 43-1-703.

SECTION 31. Tennessee Code Annotated, Section 53-1-208(c), is amended by deleting the subsection and substituting instead the following:

(c) The commissioner shall set by rule pursuant to § 43-1-703 a fee for a certificate of free sale.

SECTION 32. Tennessee Code Annotated, Section 53-2-109(c), is amended by deleting the subsection and substituting instead the following:

(c)(1) The annual license fee for a wholesaler of eggs shall be set by rule pursuant to § 43-1-703.

(2) The annual license fee for a processor of eggs shall be set by rule pursuant to § 43-1-703.

(3) The annual license fee for a person who is both a wholesaler and a processor of eggs shall be set by rule pursuant to § 43-1-703.

SECTION 33. Tennessee Code Annotated, Section 53-3-105, is amended by deleting the section and substituting instead the following:

(a) Samplers License and Fee. Every person receiving or buying milk or cream on the basis of its chemical or physical constituents shall be, or have in the person's employ, in or on each milk transport tank truck, a licensed milk sampler or tester. Application to become a licensed sampler shall be made to the commissioner on forms the commissioner may prescribe. The license shall expire on July 1 of each succeeding year. In order to qualify for a license, the applicant shall satisfy to the commissioner, either by a written examination or otherwise, that the applicant is honest and competent to do sampling work. An identification card stating the applicant's name and address and bearing the same number as the applicant's license shall be issued to the applicant at the time the applicant's license is issued and shall be carried on the applicant's person at all times while on duty. The annual license fee for a sampler shall be set by rule pursuant to § 43-1-703.

(b) Milk Testers License and Fee. Every person receiving or buying milk or cream on the basis of its chemical or physical constituents shall be, or have in the person's employ, a licensed milk tester to make the official analysis; and no other person shall be allowed to make the tests in any creamery, cheese factory, milk depot, milk plant, ice cream factory, cream station, milk condensery, or similar plant where milk or cream is bought or received on a basis of its chemical or physical constituents. Application to become a licensed milk tester shall be made to the commissioner on forms the commissioner may prescribe. If the applicant is found upon examination to be qualified and competent, the commissioner shall issue a license to the applicant. Licenses issued in accordance with this section shall be posted conspicuously in the tester's place of business. Licensed testers are also qualified and permitted to act as samplers. The annual license fee for a tester shall be set by rule pursuant to § 43-1-703.

SECTION 34. Tennessee Code Annotated, Section 53-3-106(a), is amended by deleting the subsection and substituting instead the following:

(a)(1) Frozen Dessert Manufacturer's License. For purposes of licensing under this chapter, a dairy products plant that manufactures or packages frozen desserts, such

as ice cream, ice cream mix, ice milk, ice milk mix, ice, or ice sherbets, or any trade product made in semblance of these products or that may be used as a substitute for these products, shall be licensed as a frozen dessert manufacturer. Any person making frozen dessert for sale shall be required to procure from the commissioner an annual frozen dessert manufacturer's license for each location or plant where frozen dessert is manufactured. The license fee for a frozen dessert manufacturer's license shall be set by rule pursuant to § 43-1-703.

(2) Dairy Plant or Trade Products Plant License, or Both. A dairy products plant or trade products plant that manufactures, processes, or packages any dairy products or trade products other than those listed as frozen desserts in subdivision (a)(1) shall be required to have a dairy plant license. Every person buying or receiving milk, cream, or dairy products from another for manufacturing, processing, or packaging shall be required to procure from the commissioner an annual dairy plant or trade products plant license for each location where milk, cream, dairy products, or trade products are received for the purpose of manufacturing, processing, or packaging. The license fees for a plant license shall be set by rule pursuant to § 43-1-703.

(3) Receiving Plant License. Any plant where fluid milk or cream not in consumer packages is received on consignment or otherwise, stored, or transported, but where packaging, processing, or manufacturing does not occur, shall be required to have an annual receiving plant license for each location or plant where milk or cream is received. The license fee for a receiving plant license shall be set by rule pursuant to § 43-1-703.

(4) Distributor's License. Every person buying or receiving from another person dairy products or frozen desserts or trade products, as defined in this chapter for the purpose of resale, shall be required to procure from the commissioner an annual distributor's license; provided, that no distributor's license shall be required of any license holder, licensed under this section, that delivers or distributes its own products. No distributor's license shall be required of any person who sells dairy products or trade products in hotels, restaurants, retail stores, or supermarkets if the dairy products or trade products have been delivered to the location of the hotel, restaurant, retail store, or supermarket by a licensed frozen dessert manufacturer, licensed dairy plant or trade product plant operator, or licensed distributor. No distributor's license shall be required of a receiving plant. The license fee for a distributor's license shall be set by rule pursuant to § 43-1-703.

SECTION 35. Tennessee Code Annotated, Section 53-3-107, is amended by deleting the section in its entirety.

SECTION 36. Tennessee Code Annotated, Section 53-7-219, is amended by deleting the section and substituting instead the following:

The fee for licenses and inspection issued pursuant to this part shall be set by rule pursuant to § 43-1-703.

SECTION 37. Tennessee Code Annotated, Section 53-7-220(c), is amended by deleting the subsection and substituting instead the following:

(c) The department shall collect from each custom slaughterer or deer processor an annual license fee set by rule pursuant to § 43-1-703.

SECTION 38. Tennessee Code Annotated, Section 53-8-213, is amended by deleting the section and substituting instead the following:

The permit fee to operate a food establishment shall be set by rule pursuant to § 43-1-703.

SECTION 39. Tennessee Code Annotated, Section 53-12-104(b), is amended by deleting the subsection in its entirety.

SECTION 40. Tennessee Code Annotated, Section 62-21-111, is amended by deleting the section and substituting instead the following:

(a) The cost for a charter shall be set by rule pursuant to § 43-1-703.

(b) The cost for a license shall be set by rule pursuant to § 43-1-703, applicable for each category in which a license is requested.

(c) The cost for a registration of all nonclerical employees shall be set by rule pursuant to § 43-1-703.

(d) The cost for a consultant's license shall be set by rule pursuant to § 43-1-703.

SECTION 41. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, Sections 1—37 and Sections 39 and 40 shall take effect July 1, 2015, the public welfare requiring it. Section 38 shall take effect at 12:01 a.m. on July 1, 2015, the public welfare requiring it.

SENATE BILL NO. 321

PASSED: April 22, 2015



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 20th day of May 2015



BILL HASLAM, GOVERNOR