Jeff Grim *Legislative Service Commission*

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123rd General Assembly
(As Passed by the House)

Reps. Vesper, Harris, Terwilleger, Hoops, Widener, Stevens, Hollister, Aslanides, Buchy, Gooding, Grendell, Peterson, Redfern, Willamowski, Distel, Tiberi, Wilson, A. Core, Ogg, Verich, Austria, Barnes, Mead, Roman, Netzley

BILL SUMMARY

Meat and poultry inspection

- Requires the Director of Agriculture to adopt rules that meet or exceed the federal standards for meat and poultry inspection established in federal regulations.

- Requires rules pertaining to sanitary conditions in establishments that slaughter animals or poultry or that prepare them for food purposes to conform with the sanitation standard operating procedures established in federal regulations governing hazard analysis critical control point systems (HACCP).

- Requires the Director to adopt rules specifying that if a meat or poultry slaughter or processing establishment does not have a plan for a particular production process under its HACCP system as required by rules that the Director must adopt, the meat or poultry product of the establishment may be considered to be adulterated.

- Requires an inspector who determines that a licensed meat or poultry slaughter or processing establishment is operating in violation of state law governing meat processing to notify the licensee in writing of the violation, authorizes the inspector to impose progressive enforcement actions, and provides for appeals of the enforcement actions.

- Authorizes the Director, if he determines that a meat or poultry slaughter or processing establishment is not in compliance with its HACCP plan, to

condemn or retain the meat or poultry product on hand and immediately withdraw inspection until compliance is established.

- Requires the Director to adopt rules establishing the rate at which meat or poultry slaughter or processing establishments must reimburse the Division of Meat Inspection in the Department of Agriculture for overtime inspection services.

Pesticides

- Makes financial responsibility requirements applicable to pesticide business application licensees rather than to the individual licensees whom they employ.

- Requires rules adopted under the Pesticides Law to establish deadlines and time periods for the registration of pesticides and the issuance and renewal of licenses under that Law.

- Eliminates the requirement that a custom applicator license be obtained and a license fee be paid for each pesticide application business location from which an individual works.

Agricultural commodity handling

- Specifies that when a licensed agricultural commodity handler dishonors a depositor's demand for settlement of an obligation, the licensed handler must be experiencing failure as defined in current law in order for a depositor to recover his losses resulting from the dishonor of the demand from the Agricultural Commodity Depositors Fund.

- Authorizes the Director of Agriculture to petition the court of common pleas for the appointment of a receiver to operate or liquidate the business of an unlicensed agricultural commodity handler who is insolvent or unable to satisfy the claims of depositors.

- Authorizes the Director to issue electronic warehouse receipts in accordance with guidelines established in rules.

Weights and measures

- Authorizes the Director of Agriculture to require any weighing or measuring instrument or device to be traceable to a national type evaluation program certificate of conformance prior to use for commercial or law enforcement purposes.

Dairy

- Eliminates a provision stating that byproducts created from the manufacture of cheese may be used to manufacture butter and dried whey products.

Ohio Grape Industries Committee

- Authorizes the Ohio Grape Industries Committee to advertise for, post notices seeking, or otherwise solicit applicants to serve as employees who assist the Committee, and requires the Committee to submit a list of recommended applicants to the Director of Agriculture.

- Requires the Director to hire all employees of the Committee from the list of applicants recommended by the Committee, and requires those employees to be paid with moneys from the Ohio Grape Industries Fund.

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CONTENT AND OPERATION

Meat and poultry inspection

Rulemaking: Hazard analysis critical control point systems (HACCP)

Background: What is HACCP? Meat and poultry may be state inspected by the Ohio Department of Agriculture or federally inspected by the United States Department of Agriculture Food Safety and Inspection Service. However, only federally inspected meat and poultry may be sold in interstate and foreign commerce.

Traditional meat and poultry inspections emphasize organoleptic (sight, touch, and smell) methods of inspection. Traditional inspections initially focused on animal diseases and sanitation, but later also incorporated some microbial and chemical residue testing programs.

The United States Department of Agriculture adopted regulations in 1996 entitled "Pathogen Reduction; Hazard Analysis and Critical Control Point Systems" (HACCP) that apply to federally inspected establishments and expand the focus of traditional inspections from merely checking for the absence of food safety problems to also verifying the effective operation of systems designed to prevent those problems. HACCP requires all federally inspected establishments where meat or poultry is slaughtered or otherwise prepared for food purposes to meet sanitation, facility, and operational standards and to implement systems that prevent hazards that can occur in the production of food. Under HACCP, federally inspected establishments must do all of the following: (1) develop and implement a preventative HACCP system, (2) develop and implement Sanitation Standard Operating Procedures, (3) collect and analyze samples of generic *E. coli*, and (4) meet *Salmonella* performance standard requirements. (Title 9 of the Code of Federal Regulations.) As of January 1, 2000, all state inspected establishments must operate under a HACCP system. The bill facilitates the application of the federal HACCP regulations to establishments inspected by the Ohio Department of Agriculture, particularly with respect to enforcement issues.

Adoption of rules. Current law requires the Director of Agriculture to adopt in accordance with the Administrative Procedure Act and enforce rules that are necessary to administer the law governing the processing and inspection of

meat and poultry products (secs. 918.04 and 918.25).[1] The bill requires the rules to meet or exceed the federal standards for meat and poultry inspection established in federal regulations (secs. 918.04 and 918.25).

Rulemaking: Portion of HACCP regarding sanitation standard operating procedures

The bill requires current rules pertaining to sanitary conditions at a meat or poultry slaughter or processing establishment to conform with the sanitation standard operating procedures established in federal HACCP regulations and requires an establishment to be evaluated by determining its compliance with those procedures. In addition, the bill specifies that the rules must require that if an establishment does not have a plan for a particular production process under its HACCP system as required in rules, the meat or poultry product of the process may be considered to be adulterated and must be retained pending a production process review and not allowed to be labeled with an official mark. (Secs. 918.02(G) and 918.25(C) and (G).)

The bill also specifies that the Director must adopt rules requiring that an inspection of the slaughter and processing operations of an establishment that slaughters poultry or otherwise prepares it for food purposes be conducted in accordance with the establishment's HACCP system (sec. 918.25(G)).

Enforcement

Under current law, if the Director of Agriculture determines that a licensed establishment is operating in violation of state statutes governing meat processing and inspection or the rules adopted under them, the Director must notify the licensee in writing of the violation and give the licensee ten days from the date of notice to cease or correct the violation. If the violation continues after the expiration of the ten-day period, the Director may withdraw inspection and order the establishment to cease those operations subject to those statutes. Any such order and the appeal from it is governed by the Administrative Procedure Act. (Sec. 918.08(C).)

Similarly, under current law, if the Director determines that a licensed establishment is operating in violation of state statutes governing poultry slaughtering and processing or a rule adopted or order made under authority of those statutes, the Director must notify the licensee in writing of the violation,

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[1] *"Meat" does not include poultry, which is regulated separately (secs. 918.01 and 918.12(A), not in the bill). Thus, similar requirements frequently appear twice in existing law and in the bill.*

giving the licensee ten days from the date of the notice to correct the conditions causing the violation. If the conditions are not corrected within the ten-day period, the Director may revoke or suspend the license in accordance with the Administrative Procedure Act. (Sec. 918.28(B).)

The bill adds that if an inspector determines that a licensed establishment where animals, including poultry, are slaughtered and prepared for food purposes is operating in violation of state statutes and rules governing meat and poultry processing, the inspector must notify the licensee in writing of the violation. Under the bill, the inspector immediately may impose progressive enforcement actions, including withholding the mark of inspection, suspension of inspection, and suspension of inspection held in abeyance. The bill defines "suspension of inspection held in abeyance" as a period of time during which a suspension of inspection is lifted because an establishment has presented the Director with a corrective action plan that, if implemented properly, would bring the establishment into compliance with the law governing meat and poultry processing and inspection. (Secs. 918.08(D) and 918.28(C).)

Under the bill, the progressive enforcement actions may be taken prior to affording the licensee an opportunity for a hearing. The bill states that as authorized by the Administrative Procedure Act, a decision to impose an enforcement action is immediately appealable to a higher authority within the Department of Agriculture who is classified by the Director as a district supervisor and who is designated by the Director to hear the appeal. If the district supervisor affirms the enforcement action of the inspector, the licensee may appeal the enforcement action in accordance with the Administrative Procedure Act. (Secs. 918.08(D) and 918.28(C).)

Under current law, if in the opinion of the Director an establishment is being operated under such unsanitary conditions as to be a hazard to public health, the Director may condemn or retain the product on hand and immediately withdraw inspection from the establishment until the sanitary conditions are corrected. The bill adds that if the Director determines that an establishment is not in compliance with its hazard analysis critical control point system as required by rules, the Director may condemn or retain the product on hand and immediately withdraw inspection from the establishment until the establishment is in compliance with its HACCP system. (Secs. 918.08(E) and 918.28(D).)

Charges for overtime inspections

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act establishing the rate at which establishments where animals or poultry are slaughtered or otherwise prepared for

food purposes must reimburse the Division of Meat Inspection in the Department of Agriculture for inspection services of more than eight hours in any given day, or more than 40 hours in any given week Sunday through Saturday, or on any state holiday (secs. 918.02(D) and 918.22(B)(5)).

Pesticides

Financial responsibility

Current law prohibits the Director of Agriculture from issuing a *custom applicator license* or *limited commercial applicator license* until the applicant has submitted to the Director either surety bond, an effective liability insurance policy, or any other evidence of financial responsibility that the Director determines necessary.[2] The bill instead prohibits the Director from issuing a *pesticide business application license* until the applicant has submitted an effective liability insurance policy or any other evidence that the Director determines necessary. In doing so, the bill eliminates the provision stating an applicant may submit a surety bond as proof of financial responsibility. (Sec. 921.10.) Current law defines "pesticide application business" as any location that is used for the purpose of engaging in the business of applying pesticides to the property of another for hire, but not any location that is used exclusively to perform administrative or other functions not directly connected with the storage, preparation, handling, or distribution of the pesticides to be applied (sec. 921.01(MM), not in the bill). Current law requires a pesticide application business to be licensed and to employ at least one custom applicator for each of the business' locations (sec. 921.021, not in the bill). The bill, in effect, shifts the proof of financial responsibility

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[2] *A "custom applicator" means any individual who applies pesticides in this state for hire, but does not include any of the following: (1) a private applicator (a certified individual who uses or directly supervises the use of any restricted use pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person (sec. 921.01(J), not in the bill)), (2) a public applicator, (3) a trained serviceman (an employee of a commercial applicator or limited commercial applicator whom the commercial applicator has instructed in the proper use of the equipment and all pesticides with which the employee is to work (sec. 921.01(VV), not in the bill)), or (4) a limited commercial applicator (an individual other than a private applicator who limits his pesticide application activities including direct supervision of the use of pesticides to his own property or to that of his principal employer and who has been certified or licensed as competent by the Director to apply restricted use pesticides or general use pesticides in those certain categories and in the manner specified in his certification or licensure (sec. 921.01(L), not in the bill)). (Sec. 921.01(N).)*

requirements from the individual applicator to the pesticide application business that employs the individual.

The bill eliminates current law that specifies that the employer of a limited commercial applicator, or the limited commercial applicator himself if he is self-employed, is subject to the current law financial responsibility requirements that are described above. The bill also eliminates current law that requires the Director to determine by rule the financial responsibility requirements for each category of licensure as a limited commercial applicator independently of those for custom applicators and authorizes the Director to waive those requirements for any or all categories. (Sec. 921.12(D).)

Registration and licensure

Overview of changes. Current law requires the Director of Agriculture to adopt rules necessary for the effective enforcement and administration of the Pesticides Law and specifies certain topics to which the rules may relate. The bill adds that the rules must establish the deadlines and time periods for the registration of pesticides distributed in this state and registration renewal and the deadlines and time periods for the issuance and renewal of pesticide application business licenses, custom applicator licenses, custom operator licenses, public operator licenses, limited commercial applicator licenses, and pesticide dealer licenses and the deadlines for certification as a private applicator of restricted use pesticides. (Sec. 921.16(A).)

Pesticide registration. Current law requires each pesticide that is distributed within Ohio to be registered with the Director of Agriculture. Under current law, the holder of the registration must renew his registration annually prior to the first day of January, and each registration expires on December 31. The bill instead requires registrations to be issued for a period of time established by rule and to be renewed in accordance with deadlines established by rule. (Sec. 921.02(A) and (F).)

Licensure of pesticide application business. Current law prohibits any person from owning or operating a pesticide application business without obtaining a license from the Director for each location that is owned or operated by the person in Ohio. Under current law, the license must be renewed annually prior to the first day of March and expires on the last day of February. The bill instead requires licenses to be issued for a period of time established by rule and to be renewed in accordance with deadlines established by rule. (Sec. 921.021(A).)

Licensure of custom applicator, custom operator, public operator, and limited commercial applicator. Current law generally prohibits an individual from acting or holding oneself out to the public as being any of the following: (1)

a custom applicator without a custom applicator license issued by the Director for each pesticide application business location for which the individual is the commercial applicator of record or from which the individual works, (2) a custom operator without having a custom operator license issued by the Director (this prohibition does not apply to a licensed custom applicator), (3) a public operator without a public operator license issued by the Director, or (4) a limited commercial applicator without a limited commercial applicator license issued by the Director.[3] Currently, each type of license expires annually on the last day of February. The bill instead specifies that each type of license must be issued for a period of time established by rule and must be renewed in accordance with deadlines established by rule. (Secs. 921.06(A) and (C), 921.07(A) and (C), 921.08(B) and (D), and 921.12(A) and (C).)

In addition, current law generally requires each application for a custom applicator license, custom operator license, or limited commercial applicator license to state the applicant's qualifications and proposed operation, license category or categories for which the applicant is applying, and any other information that the Director determines is essential to the administration of the Pesticides Law. In each case, the bill eliminates the requirement that an application state the applicant's qualifications and proposed operation. (Secs. 921.06(B), 921.07(B), and 921.12(B).)

Under current law, a custom applicator license is required for each pesticide application business location for which an individual is the commercial applicator of record or from which the individual works. The bill eliminates the requirement that a custom applicator license be obtained for each pesticide application business location from which an individual works, but still requires an individual to obtain a custom applicator license. In addition to that license, the bill specifies that an individual must obtain an additional license for each pesticide application business location for which he is the commercial applicator of record. Accordingly, the bill eliminates current law that requires an individual to pay a license fee for each pesticide application business location for which the individual works and instead

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[3] *Current law defines "custom operator" as an individual, other than a trained serviceman, who may directly supervise a trained serviceman in activities that include recommending control, handling, mixing, and applying pesticides and the disposal of waste, excess materials, or containers and "public operator" as an individual who himself applies, or directly supervises the application of pesticides by a trained serviceman, while acting as an employee of the United States government, a state county, township, or municipal governmental agency, or of a park district, port authority, or sanitary district (sec. 921.01(O) and (PP), not in the bill).*

requires an individual to pay an additional license fee for each pesticide business location for which he is the commercial applicator of record. (Sec. 921.06(A).)

Licensure of pesticide dealer. Current law requires any person who is acting in the capacity of a pesticide dealer or who advertises or assumes to act as a pesticide dealer at any time to obtain a pesticide dealer license from the Director.[4] An application for a pesticide dealer license must be filed prior to the last day of February of each year. The bill specifies that licenses must be issued for a period of time established by rule and must be renewed in accordance with deadlines established by rule. (Sec. 921.13(A).)

License renewal. Under current law, each application for renewal of a custom applicator license, a custom operator license, a public operator license, or a limited commercial applicator license must be filed prior to March 1 of any year. The bill changes these filing deadlines to a deadline established by rule. (Sec. 921.09(B).)

Agricultural commodity handling

Background: definitions

Under current law, "agricultural commodity" means barley, corn, oats, rye, grain sorghum, soybeans, wheat, sunflower, speltz, or any other agricultural crop that the Director of Agriculture may designate by rule, but does not include any grain that is purchased for sale as seed (sec. 926.01(A), not in the bill).

"Agricultural commodity handling" means any of the following:

(1) Engaging in or participating in the business of purchasing an agricultural commodity for sale, resale, processing, or any other use in the following volumes:

(a) In the case of purchases from producers, who are persons who grow agricultural commodities on land that they own or lease, more than 30,000 bushels annually;

(b) In the case of purchases from agricultural commodity handlers, more than 100,000 bushels annually; or

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[4] *Current law defines "pesticide dealer" as any person who distributes restricted use pesticides or pesticides whose uses or distribution are further restricted by the Director of Agriculture to the ultimate user or to a commercial applicator who is employed by that pesticide dealer (sec. 921.01(LL), not in the bill).*

(c) In the case of total purchases from producers combined with total purchases from handlers, more than 100,000 bushels annually.

(2) Operating a warehouse as a bailee for the receiving, storing, shipping, or conditioning of an agricultural commodity. A bailee is a person to whom an agricultural commodity is delivered in trust for storage in a warehouse with title remaining in the name of the depositor;

(3) Receiving into a warehouse an agricultural commodity purchased under a delayed price agreement, which is a written executory contract executed by and between a licensed handler and a depositor that covers the sale and transfer of title of an agricultural commodity and states in its written terms the service charges and the method for pricing the commodity at a later date; or

(4) Providing marketing functions, including storage, delayed price marketing, deferred payment, feed agreements, or any other marketing transactions whereby control is exerted over the monetary proceeds of a producer's agricultural commodities by a person other than the producer (sec. 926.01(B), (K), (O), and (R), not in the bill).

"Agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling, but does not include a person who does not handle agricultural commodities as a bailee and who purchases agricultural commodities in the following volumes:

(1) 30,000 or fewer bushels annually from producers; or

(2) 100,000 or fewer bushels annually from agricultural commodity handlers.

However, a person who does not handle agricultural commodities as a bailee and who annually purchases 30,000 or fewer bushels of agricultural commodities from producers and 100,000 or fewer bushels of agricultural commodities from agricultural commodity handlers is considered to be an agricultural commodity handler if the combined annual volume of purchases from the producers and the agricultural commodity handlers exceeds 100,000 bushels. (Sec. 926.01(C), not in the bill.)

"Depositor" means any of the following:

(1) Any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale;

(2) Any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity; or

(3) Any licensed handler storing an agricultural commodity that the licensed handler owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensed handler or any other licensed handler (sec. 926.01(D), not in the bill).

Depositor's claim upon handler's dishonor of demand

Current law establishes the Agricultural Commodity Depositors Fund, which consists of a per-bushel fee remitted by licensed handlers and certain other moneys (sec. 926.16, not in the bill). The Fund is an indemnity fund that is used to reimburse depositors for losses that they incur when they make a demand to a licensed handler for settlement of an obligation concerning an agricultural commodity on which the handler paid the per-bushel fee and the licensed handler fails to honor the demand. The bill specifies that in order for a depositor to recover his losses from the Fund, the licensed handler who dishonored the depositor's demand must be experiencing failure (sec. 926.18(A)). Current law defines "failure" as any of the following involving an agricultural commodity handler: (1) an inability to satisfy claimants financially, (2) a public declaration of insolvency, (3) a revocation, suspension, or conditional suspension of license with outstanding indebtedness to claimants, (4) nonpayment in the ordinary course of business where a good faith dispute does not exist, (5) no application for license renewal, (6) denial of license renewal, or (7) voluntarily surrendering a license (sec. 926.021(A)(2), not in the bill).

Appointment of a receiver

Current law provides that if the Director of Agriculture has evidence that a *licensed* agricultural commodity handler is insolvent or is unable to satisfy the claims of all depositors, the Director may petition the court of common pleas for the appointment of a receiver to operate or liquidate the business of the licensed handler (sec. 926.14(E), not in the bill). The bill extends this provision regarding the appointment of a receiver to *unlicensed* agricultural commodity handlers (sec. 926.141). In addition, the bill makes applicable to unlicensed handlers a current law provision stating that all necessary expenses incurred by the Director or an appointed receiver may be recovered from the licensed handler in a separate civil action brought by the Director in the court of common pleas or recovered at the same time and as part of the receivership action. The bill also makes applicable to unlicensed handlers a provision stating that as a part of the expenses so incurred, the cost of adequate liability insurance necessary to protect the Director, the

receiver, and others engaged in carrying out the new receivership statute may be included. (Secs. 926.14(G), not in the bill, and 926.141.)

Electronic warehouse receipts

Current law states that, upon the request of a depositor, a licensed handler must issue a receipt for any agricultural commodity that the handler has received from the depositor for storage under a bailment agreement (sec. 926.20(A)). Current law requires the Director of Agriculture to cause receipt forms to be printed on distinctive paper by a bonded printer. The receipt must contain spaces for certain information. The Director must cause receipt forms to be distributed to handlers at cost (sec. 926.20(B)). The bill requires the Director to provide and print on distinctive paper, paper warehouse receipts. However, the bill also provides that if the Director considers it necessary, the Director may authorize electronic warehouse receipts in accordance with guidelines established in rules. (Sec. 926.20(B).) To facilitate the use of electronic warehouse receipts, the bill requires "negotiable" or "nonnegotiable" to be conspicuously *indicated* on the receipt rather than requiring it to be *printed or stamped* on the receipt as required under current law (sec. 926.20(B)(5)).

Weights and measures

Current law requires the Director of Agriculture, in conjunction with the National Institute of Standards and Technology, to operate a type evaluation program for certification of weighing and measuring devices as part of the national type evaluation program. The bill authorizes the Director to require any weighing or measuring instrument or device to be traceable to a national type evaluation program certificate of conformance prior to use for commercial or law enforcement purposes. (Sec. 1327.50(S).) In making this change, the bill codifies an existing rule (O.A.C. 901: 6-2-01).

Dairy

Under current law, with respect to cooling and storage of manufacture milk, a manufacture milk producer must do one of the following:

(1) In the case of manufacture milk that is stored in cans on the manufacture milk producer's farm, cool the milk to and store it at a temperature of 60 degrees Fahrenheit, 16 degrees Celsius, or lower within two hours after completion of the milking; or

(2) In the case of all other manufacture milk that is stored on the manufacture milk producer's farm, cool the milk and store it in accordance with rules.

Current law requires manufacture milk stored in accordance with (1), above, to be used exclusively in the manufacture of cheese and states that the byproducts created from the manufacture of cheese may be used to manufacture butter and dried whey products. The bill eliminates the provision stating that the byproducts may be used to manufacture butter and dried whey products. (Sec. 917.23(B).)

Ohio Grape Industries Committee

Current law creates the Ohio Grape Industries Committee, consisting of nine members who must promote the sale of grapes and grape products for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for grapes and grape products and inform the public of the uses and benefits of grapes and grape products (secs. 924.51, not in the bill, and 924.52). The bill authorizes the Committee to advertise for, post notices seeking, or otherwise solicit applicants to serve in administrative positions in the Department of Agriculture as employees who support the administrative functions of the Committee. Applications must be submitted to the Committee. Under the bill, the Committee must select applicants that it wishes to recommend for employment and must submit a list of the recommended applicants to the Director of Agriculture. (Sec. 924.52(A)(6).)

The bill then requires the Director to hire all employees of the Committee. The Director must select the employees from the list of recommended applicants submitted by the Committee. The bill requires employees of the Committee to be paid with moneys from the Ohio Grape Industries Fund that is created under current law. (Sec. 924.521.)

HISTORY

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Introduced	04-11-00	p.	1796
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