

SUBJECT: Providing penalties for meat and poultry inspection violations

COMMITTEE: Public Health — favorable, with amendment

VOTE: 8 ayes — Gray, Coleman, Capelo, Delisi, Longoria, Maxey, Uresti, Wohlgemuth
0 nays
1 absent — Glaze

SENATE VOTE: On final passage, April 5 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — None
Against — None
On — Susan Tennyson, Texas Department of Health; Bobby G. Blackwell

BACKGROUND: Health and Safety Code, chapter 433 requires the Texas Department of Health (TDH) to regulate the processing and packaging of meat and poultry products.

In 1999, the 76th Legislature enacted HB 2085 by McCall, et al., the TDH sunset bill. The bill required TDH, with the assistance of the state auditor, to conduct a comprehensive examination of all TDH regulatory programs and to report to the Legislature by November 1, 2000. One finding was that current law provides no authority for an emergency suspension or closure of a meat or poultry processing or packaging plant because of an imminent threat to the public's health and safety or to an inspector's personal safety. Also, Health and Safety Code, chapter 433 does not authorize TDH to seek injunctive relief or civil penalties.

DIGEST: SB 766 would establish criminal penalties for interfering with a livestock inspector's performance of a health inspection; authorize TDH, along with the attorney general, to file civil actions to stop health violations at meat and poultry plants; and allow emergency withdrawals of inspections.

Interfering with inspection. SB 766 would make it a Class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) to act with criminal negligence to interrupt, disrupt, impede, or otherwise interfere with a TDH inspector performing a health inspection. A person accused of such an action could raise the defense to prosecution that the offense consisted of speech only.

Civil remedies against violations. The health commissioner could ask the attorney general or the district or county attorney to file a civil action against anyone alleged to have violated the meat and poultry inspection laws or regulations. The suit could seek an order to enjoin the violation or a permanent or temporary injunction, restraining order, or other legal remedy. Venue for such a suit would be either in the county where the violation was alleged to have occurred or in Travis County. The commissioner or the attorney general could file legal action to recover reasonable expenses of the original civil action, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

Emergency withdrawal of inspections. SB 766 would allow the emergency withdrawal of an inspection mark, which is required to sell meat and poultry products, or suspension of an inspection if the processing or packaging plant committed a violation that posed an immediate threat to public health and safety. The bill would allow a similar withdrawal of inspection marks or suspension of inspection if an employee of the processing establishment threatened an inspector or otherwise impeded the inspection process.

The owner of the processing plant or the employee could appeal the withdrawal of the inspection mark or suspension of inspection to the health commissioner or another person designated by the commissioner.

Low-volume processing establishments. SB 766 would exempt a low-volume processing plant from the inspection and regulatory provisions of Health and Safety Code, chapter 433 if the facility also was exempt from federal inspection. Such a facility would have to register with TDH and to develop its own sanitary operation procedures plan.

The health commissioner could ask the attorney general or the district or county attorney to initiate legal action against a low-volume processing plant

if contaminated livestock reasonably could be traced to that facility. The suit could seek to enjoin the plant's operation until the commissioner determined that the plant had been sanitized and was operating safely.

The bill would take effect September 1, 2001, and would apply only to violations that occurred on or after that date.

**SUPPORTERS
SAY:**

SB 766 would rectify the lack of regulatory authority that was demonstrated dramatically in late 2000, when TDH could not suspend inspections after a packing plant employee threatened two inspectors at gunpoint. The inspectors found that the plant had been selling goat meat that had not been inspected during slaughtering and processing. After being confronted by the armed man and ordered to leave, the inspectors called law enforcement officers to investigate. However, the law did not allow TDH to detain the goat meat or to withdraw its inspectors from the plant pending a hearing.

SB 766 would grant TDH the necessary enforcement tools to protect the public's food supply. It would grant additional authority to prevent future use of contaminated equipment used to process meat and poultry. It also would authorize the department to suspend inspections of plants that used inhumane slaughtering equipment or methods. TDH should be able to respond quickly to remedy these potential threats to public health and safety.

Creating a Class B misdemeanor for interfering with a TDH inspection would mirror the penalty for resisting or interfering with peace officers conducting their official duties. TDH inspectors protect the health and safety of the public, and they should have the same legal protections as do all law enforcement officers.

SB 766 properly would exclude small and low-volume livestock producers that have been exempted from federal inspections since 1968. Rescinding this exemption would require smaller establishments to spend thousands of dollars to comply with state requirements. Most of these firms cannot afford these costs and would be forced out of business. TDH has reported no problems with these small facilities. SB 766 would allow the department to take action in cases of future violations that would threaten public health and safety.

SB 766
House Research Organization
page 4

OPPONENTS
SAY:

SB 766 could create more legal and bureaucratic obstacles for meat and poultry processing and packaging plants. While it is necessary to protect the personal safety of TDH inspectors, SB 766 could shift the burden too far in favor of the department. A plant could lose thousands of dollars while appealing an arbitrary or capricious decision to withhold an inspection mark or to suspend inspections.

NOTES:

The committee amendment would add to the Senate-passed version the section that would exempt low-volume processors from TDH inspections.