

105TH CONGRESS
1ST SESSION

S. 1264

To amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through enhanced enforcement.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 1997

Mr. HARKIN (for himself, Mr. DASCHLE, Mr. LEAHY, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through enhanced enforcement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Food Safety Enforce-
5 ment Enhancement Act of 1997”.

6 **SEC. 2. FOOD SAFETY ENFORCEMENT FOR MEAT AND MEAT**
7 **FOOD PRODUCTS.**

8 (a) IN GENERAL.—The Federal Meat Inspection Act
9 (21 U.S.C. 601 et seq.) is amended—

1 (1) by redesignating section 411 (21 U.S.C.
2 681) as section 414; and

3 (2) by inserting after section 410 (21 U.S.C.
4 679a) the following:

5 **“SEC. 411. NOTIFICATION, NONDISTRIBUTION, AND RECALL**
6 **OF ADULTERATED OR MISBRANDED ARTI-**
7 **CLES.**

8 “(a) NOTIFICATION.—A person (other than a house-
9 hold consumer) that has reason to believe that a carcass,
10 part of a carcass, meat, or meat food product of cattle,
11 sheep, swine, goats, horses, mules, or other equines (re-
12 ferred to in this section as an ‘article’) transported, stored,
13 distributed, or otherwise handled by the person is adulter-
14 ated or misbranded shall immediately notify the Secretary,
15 in such manner and by such means as the Secretary may
16 by regulation promulgate, of the identity and location of
17 the article.

18 “(b) NONDISTRIBUTION AND RECALL.—

19 “(1) VOLUNTARY ACTIONS.—On receiving the
20 notification under subsection (a) or otherwise, if the
21 Secretary finds that an article is adulterated or mis-
22 branded and that there is a reasonable probability
23 that human consumption of the article would present
24 a threat to public health, as determined by the Sec-
25 retary, the Secretary shall provide all appropriate

1 persons, as determined by the Secretary, that trans-
2 ported, stored, distributed, or otherwise handled the
3 article with an opportunity to—

4 “(A) cease distribution of the article;

5 “(B) notify all persons transporting, stor-
6 ing, distributing, or otherwise handling the arti-
7 cle, or to which the article has been trans-
8 ported, sold, distributed, or otherwise handled,
9 to immediately cease distribution of the article;

10 “(C) recall the article; and

11 “(D) in consultation with the Secretary,
12 provide notice to consumers to whom the article
13 is, or may have been, distributed.

14 “(2) MANDATORY ACTIONS.—If the person re-
15 fuses to or does not voluntarily take the actions de-
16 scribed in paragraph (1) with respect to an article
17 within the time and in the manner prescribed by the
18 Secretary, the Secretary shall, by order, require the
19 person to immediately—

20 “(A) cease distribution of the article; and

21 “(B) notify all persons transporting, stor-
22 ing, distributing, or otherwise handling the arti-
23 cle, or to which the article has been trans-
24 ported, sold, distributed, or otherwise handled,
25 to immediately cease distribution of the article.

1 “(3) NOTICE TO CONSUMERS.—The Secretary
2 shall, as the Secretary considers necessary, provide
3 notice to consumers to whom the article was, or may
4 have been, distributed.

5 “(4) NONDISTRIBUTION BY NOTIFIED PER-
6 SONS.—A person transporting, storing, distributing,
7 or otherwise handling the article, or to which the ar-
8 ticle has been transported, sold, distributed, or oth-
9 erwise handled, that is notified under paragraph
10 (1)(B) or (2)(B) shall immediately cease distribution
11 of the article.

12 “(c) INFORMAL HEARING ON ORDER.—

13 “(1) IN GENERAL.—The Secretary shall provide
14 a person subject to an order under subsection (b)
15 with an opportunity for an informal hearing (pursu-
16 ant to such rules or regulations as the Secretary
17 shall prescribe) on the actions required by the order
18 and on why the article that is the subject of the
19 order should not be recalled.

20 “(2) TIMING.—The Secretary shall hold the in-
21 formal hearing as soon as practicable, but not later
22 than 2 days, after the issuance of the order.

23 “(d) RECALL OR OTHER ACTIONS.—

24 “(1) IN GENERAL.—If, after providing an op-
25 portunity for an informal hearing under subsection

1 (c), the Secretary determines that there is a reason-
2 able probability that human consumption of the arti-
3 cle that is the subject of an order under subsection
4 (b) presents a threat to public health, the Secretary
5 may—

6 “(A) amend the order to require recall of
7 the article or other appropriate action;

8 “(B) specify a timetable during which the
9 recall will occur;

10 “(C) require periodic reports to the Sec-
11 retary describing the progress of the recall; and

12 “(D) provide notice to consumers to whom
13 the article is, or may have been, distributed.

14 “(2) VACATION OF ORDER.—If, after providing
15 an opportunity for an informal hearing under sub-
16 section (c), the Secretary determines that adequate
17 grounds do not exist to continue the actions required
18 by the order, the Secretary shall vacate the order.

19 “(e) ADDITIONAL REMEDIES.—The remedies pro-
20 vided in this section shall be in addition to any other rem-
21 edies that may be available.

22 **“SEC. 412. REFUSAL OR WITHDRAWAL OF INSPECTION OF**
23 **ESTABLISHMENTS.**

24 “(a) IN GENERAL.—The Secretary may, for such pe-
25 riod, or indefinitely, as the Secretary considers necessary

1 to carry out this Act, refuse to provide or withdraw inspec-
 2 tion under title I with respect to an establishment if the
 3 Secretary determines, after opportunity for a hearing on
 4 the record is provided to the applicant for, or recipient
 5 of, inspection, that the applicant or recipient, or any per-
 6 son responsibly connected with the applicant or recipient
 7 (within the meaning of section 401), has committed a will-
 8 ful violation or repeated violations of this Act (including
 9 a regulation promulgated under this Act).

10 “(b) DENIAL OR SUSPENSION OF INSPECTION PEND-
 11 ING HEARING.—The Secretary may deny or suspend in-
 12 spection under title I, pending opportunity for an expe-
 13 dited hearing, with respect to an action under subsection
 14 (a), if the Secretary determines that the denial or suspen-
 15 sion is in the public interest to protect the health or wel-
 16 fare of consumers or to ensure the effective performance
 17 of an official duty under this Act.

18 “(c) JUDICIAL REVIEW.—

19 “(1) IN GENERAL.—A determination and order
 20 of the Secretary with respect to the refusal or with-
 21 drawal of inspection under this section shall be final
 22 and conclusive unless, not later than 30 days after
 23 the effective date of the order, the affected applicant
 24 for, or recipient of, inspection—

1 “(A) files a petition for judicial review of
2 the order; and

3 “(B) simultaneously sends a copy of the
4 petition by certified mail to the Secretary.

5 “(2) REFUSAL OR WITHDRAWAL OF INSPEC-
6 TION PENDING REVIEW.—Inspection shall be refused
7 or withdrawn as of the effective date of the order
8 pending any judicial review of the order unless the
9 Secretary directs otherwise.

10 “(3) VENUE; RECORD.—Judicial review of the
11 order shall be—

12 “(A) in—

13 “(i) the United States court of ap-
14 peals for the circuit in which the applicant
15 for, or recipient of, inspection resides or
16 has its principal place of business; or

17 “(ii) the United States Court of Ap-
18 peals for the District of Columbia; and

19 “(B) on the record on which the deter-
20 mination and order are based.

21 “(d) ADDITIONAL REMEDIES.—The remedies pro-
22 vided in this section shall be in addition to any other rem-
23 edies that may be available.

24 **“SEC. 413. CIVIL PENALTIES.**

25 “(a) IN GENERAL.—

1 “(1) ASSESSMENT.—The Secretary may assess
 2 a civil penalty against a person that violates this Act
 3 (including a regulation promulgated or order issued
 4 under this Act) of not more than \$100,000 for each
 5 violation.

6 “(2) SEPARATE OFFENSES.—Each violation
 7 and each day during which a violation continues
 8 shall be a separate offense.

9 “(3) NOTICE AND OPPORTUNITY FOR HEAR-
 10 ING.—The Secretary shall not assess a civil penalty
 11 under this section against a person unless the person
 12 is given notice and opportunity for a hearing on the
 13 record before the Secretary in accordance with sec-
 14 tions 554 and 556 of title 5, United States Code.

15 “(4) AMOUNT.—The amount of a civil penalty
 16 under this section shall be—

17 “(A) assessed by the Secretary by written
 18 order, taking into account—

19 “(i) the gravity of the violation;

20 “(ii) the degree of culpability;

21 “(iii) the size and type of the busi-
 22 ness; and

23 “(iv) any history of prior offenses
 24 under this Act; and

1 “(B) reviewed only in accordance with sub-
 2 section (b).

3 “(b) JUDICIAL REVIEW.—

4 “(1) IN GENERAL.—An order assessing a civil
 5 penalty against a person under subsection (a) shall
 6 be final and conclusive unless the person—

7 “(A) not later than 30 days after the effec-
 8 tive date of the order, files a petition for judi-
 9 cial review in—

10 “(i) the United States court of ap-
 11 peals for the circuit in which the person re-
 12 sides or has its principal place of business;
 13 or

14 “(ii) the United States Court of Ap-
 15 peals for the District of Columbia; and

16 “(B) simultaneously sends a copy of the
 17 petition by certified mail to the Secretary.

18 “(2) RECORD.—The Secretary shall promptly
 19 file in the court a certified copy of the record on
 20 which the violation was found and the civil penalty
 21 assessed.

22 “(c) COLLECTION ACTION FOR FAILURE TO PAY AS-
 23 SESSMENT.—

24 “(1) REFERRAL TO ATTORNEY GENERAL.—If a
 25 person fails to pay a civil penalty after the order as-

1 sessing the civil penalty has become final and
2 unappealable, the Secretary shall refer the matter to
3 the Attorney General.

4 “(2) ACTION BY ATTORNEY GENERAL.—The
5 Attorney General shall bring a civil action to recover
6 the amount of the civil penalty in United States dis-
7 trict court.

8 “(3) SCOPE OF REVIEW.—In the collection ac-
9 tion, the validity and appropriateness of the order of
10 the Secretary imposing the civil penalty shall not be
11 subject to review.

12 “(d) REFUSAL OR WITHDRAWAL OF INSPECTION
13 PENDING PAYMENT.—If a person fails to pay the amount
14 of a civil penalty after the order assessing the civil penalty
15 becomes final and unappealable, the Secretary may refuse
16 to provide or withdraw inspection under title I of the per-
17 son until the civil penalty is paid or until the Secretary
18 directs otherwise.

19 “(e) PENALTIES IN LIEU OF OTHER ACTIONS.—
20 Nothing in this Act requires the Secretary to report for
21 prosecution, or for the institution of an action, a violation
22 of this Act if the Secretary believes that the public interest
23 will be adequately served by assessment of a civil penalty.

1 “(f) ADDITIONAL REMEDIES.—The remedies pro-
 2 vided in this section shall be in addition to any other rem-
 3 edies that may be available.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 1 of the Federal Meat Inspection
 6 Act (21 U.S.C. 601) is amended by adding at the
 7 end the following:

8 “(w) PERSON.—The term ‘person’ means any indi-
 9 vidual, partnership, corporation, association, or other busi-
 10 ness unit.”.

11 (2) The Federal Meat Inspection Act (21
 12 U.S.C. 601 et seq.) is amended—

13 (A) by striking “person, firm, or corpora-
 14 tion” each place it appears and inserting “per-
 15 son”;

16 (B) by striking “persons, firms, and cor-
 17 porations” each place it appears and inserting
 18 “persons”; and

19 (C) by striking “persons, firms, or corpora-
 20 tions” each place it appears and inserting “per-
 21 sons”.

22 **SEC. 3. FOOD SAFETY ENFORCEMENT FOR POULTRY AND**
 23 **POULTRY FOOD PRODUCTS.**

24 The Poultry Products Inspection Act (21 U.S.C. 451
 25 et seq.) is amended—

1 (1) in the first sentence of section 5(c)(1) (21
2 U.S.C. 454(c)(1))—

3 (A) by striking “, by thirty days prior to
4 the expiration of two years after enactment of
5 the Wholesome Poultry Products Act,”; and

6 (B) by striking “sections 1–4, 6–10, and
7 12–22 of this Act” and inserting “sections 1
8 through 4, 6 through 10, 12 through 22, and
9 31 through 33”; and

10 (2) by adding at the end the following:

11 **“SEC. 31. NOTIFICATION, NONDISTRIBUTION, AND RECALL**
12 **OF ADULTERATED OR MISBRANDED ARTI-**
13 **CLES.**

14 “(a) NOTIFICATION.—A person (other than a house-
15 hold consumer) that has reason to believe that any poultry
16 or poultry product (referred to in this section as an ‘arti-
17 cle’) transported, stored, distributed, or otherwise handled
18 by the person is adulterated or misbranded shall imme-
19 diately notify the Secretary, in such manner and by such
20 means as the Secretary may by regulation promulgate, of
21 the identity and location of the article.

22 “(b) NONDISTRIBUTION AND RECALL.—

23 “(1) VOLUNTARY ACTIONS.—On receiving noti-
24 fication under subsection (a) or otherwise, if the
25 Secretary finds that an article is adulterated or mis-

1 branded and that there is a reasonable probability
2 that human consumption of the article would present
3 a threat to public health, as determined by the Sec-
4 retary, the Secretary shall provide all appropriate
5 persons, as determined by the Secretary, that trans-
6 ported, stored, distributed, or otherwise handled the
7 article with an opportunity to—

8 “(A) cease distribution of the article;

9 “(B) notify all persons transporting, stor-
10 ing, distributing, or otherwise handling the arti-
11 cle, or to which the article has been trans-
12 ported, sold, distributed, or otherwise handled,
13 to immediately cease distribution of the article;

14 “(C) recall the article; and

15 “(D) in consultation with the Secretary,
16 provide notice to consumers to whom the article
17 is, or may have been, distributed.

18 “(2) MANDATORY ACTIONS.—If the person re-
19 fuses to or does not voluntarily take the actions de-
20 scribed in paragraph (1) with respect to an article
21 within the time and in the manner prescribed by the
22 Secretary, the Secretary shall, by order, require the
23 person to immediately—

24 “(A) cease distribution of the article; and

1 “(B) notify all persons transporting, stor-
2 ing, distributing, or otherwise handling the arti-
3 cle, or to which the article has been trans-
4 ported, sold, distributed, or otherwise handled,
5 to immediately cease distribution of the article.

6 “(3) NOTICE TO CONSUMERS.—The Secretary
7 shall, as the Secretary considers necessary, provide
8 notice to consumers to whom the article was, or may
9 have been, distributed.

10 “(4) NONDISTRIBUTION BY NOTIFIED PER-
11 SONS.—A person transporting, storing, distributing,
12 or otherwise handling the article, or to which the ar-
13 ticle has been transported, sold, distributed, or oth-
14 erwise handled, that is notified under paragraph
15 (1)(B) or (2)(B) shall immediately cease distribution
16 of the article.

17 “(c) INFORMAL HEARING ON ORDER.—

18 “(1) IN GENERAL.—The Secretary shall provide
19 a person subject to an order under subsection (b)
20 with an opportunity for an informal hearing (pursu-
21 ant to such rules or regulations as the Secretary
22 shall prescribe) on the actions required by the order
23 and on why the article that is the subject of the
24 order should not be recalled.

1 “(2) TIMING.—The Secretary shall hold the in-
2 formal hearing as soon as practicable, but not later
3 than 2 days, after the issuance of the order.

4 “(d) RECALL OR OTHER ACTIONS.—

5 “(1) IN GENERAL.—If, after providing an op-
6 portunity for an informal hearing under subsection
7 (c), the Secretary determines that there is a reason-
8 able probability that human consumption of the arti-
9 cle that is the subject of an order under subsection
10 (b) presents a threat to public health, the Secretary
11 may—

12 “(A) amend the order to require recall of
13 the article or other appropriate action;

14 “(B) specify a timetable during which the
15 recall will occur;

16 “(C) require periodic reports to the Sec-
17 retary describing the progress of the recall; and

18 “(D) provide notice to consumers to whom
19 the article is, or may have been, distributed.

20 “(2) VACATION OF ORDER.—If, after providing
21 an opportunity for an informal hearing under sub-
22 section (c), the Secretary determines that adequate
23 grounds do not exist to continue the actions required
24 by the order, the Secretary shall vacate the order.

1 “(e) ADDITIONAL REMEDIES.—The remedies pro-
2 vided in this section shall be in addition to any other rem-
3 edies that may be available.

4 **“SEC. 32. REFUSAL OR WITHDRAWAL OF INSPECTION OF**
5 **ESTABLISHMENTS.**

6 “(a) IN GENERAL.—The Secretary may, for such pe-
7 riod, or indefinitely, as the Secretary considers necessary
8 to carry out this Act, refuse to provide or withdraw inspec-
9 tion under this Act with respect to an establishment if the
10 Secretary determines, after opportunity for a hearing on
11 the record is provided to the applicant for, or recipient
12 of, inspection, that the applicant or recipient, or any per-
13 son responsibly connected with the applicant or recipient
14 (within the meaning of section 18(a)), has committed a
15 willful violation or repeated violations of this Act (includ-
16 ing a regulation promulgated under this Act).

17 “(b) DENIAL OR SUSPENSION OF INSPECTION PEND-
18 ING HEARING.—The Secretary may deny or suspend in-
19 spection under this Act, pending opportunity for an expe-
20 dited hearing, with respect to an action under subsection
21 (a), if the Secretary determines that the denial or suspen-
22 sion is in the public interest to protect the health or wel-
23 fare of consumers or to ensure the effective performance
24 of an official duty under this Act.

25 “(c) JUDICIAL REVIEW.—

1 “(1) IN GENERAL.—A determination and order
 2 of the Secretary with respect to the refusal or with-
 3 drawal of inspection under this section shall be final
 4 and conclusive unless, not later than 30 days after
 5 the effective date of the order, the affected applicant
 6 for, or recipient of, inspection—

7 “(A) files a petition for judicial review of
 8 the order; and

9 “(B) simultaneously sends a copy of the
 10 petition by certified mail to the Secretary.

11 “(2) REFUSAL OR WITHDRAWAL OF INSPEC-
 12 TION PENDING REVIEW.—Inspection shall be refused
 13 or withdrawn as of the effective date of the order
 14 pending any judicial review of the order unless the
 15 Secretary directs otherwise.

16 “(3) VENUE; RECORD.—Judicial review of the
 17 order shall be—

18 “(A) in—

19 “(i) the United States court of ap-
 20 peals for the circuit in which the applicant
 21 for, or recipient of, inspection resides or
 22 has its principal place of business; or

23 “(ii) the United States Court of Ap-
 24 peals for the District of Columbia; and

1 “(B) on the record on which the deter-
2 mination and order are based.

3 “(d) ADDITIONAL REMEDIES.—The remedies pro-
4 vided in this section shall be in addition to any other rem-
5 edies that may be available.

6 **“SEC. 33. CIVIL PENALTIES.**

7 “(a) IN GENERAL.—

8 “(1) ASSESSMENT.—The Secretary may assess
9 a civil penalty against a person that violates this Act
10 (including a regulation promulgated or order issued
11 under this Act) of not more than \$100,000 for each
12 violation.

13 “(2) SEPARATE OFFENSES.—Each violation
14 and each day during which a violation continues
15 shall be a separate offense.

16 “(3) NOTICE AND OPPORTUNITY FOR HEAR-
17 ING.—The Secretary shall not assess a civil penalty
18 under this section against a person unless the person
19 is given notice and opportunity for a hearing on the
20 record before the Secretary in accordance with sec-
21 tions 554 and 556 of title 5, United States Code.

22 “(4) AMOUNT.—The amount of a civil penalty
23 under this section shall be—

24 “(A) assessed by the Secretary by written
25 order, taking into account—

1 “(i) the gravity of the violation;

2 “(ii) the degree of culpability;

3 “(iii) the size and type of the busi-
4 ness; and

5 “(iv) any history of prior offenses
6 under this Act; and

7 “(B) reviewed only in accordance with sub-
8 section (b).

9 “(b) JUDICIAL REVIEW.—

10 “(1) IN GENERAL.—An order assessing a civil
11 penalty against a person under subsection (a) shall
12 be final and conclusive unless the person—

13 “(A) not later than 30 days after the effec-
14 tive date of the order, files a petition for judi-
15 cial review in—

16 “(i) the United States court of ap-
17 peals for the circuit in which the person re-
18 sides or has its principal place of business;
19 or

20 “(ii) the United States Court of Ap-
21 peals for the District of Columbia; and

22 “(B) simultaneously sends a copy of the
23 petition by certified mail to the Secretary.

24 “(2) RECORD.—The Secretary shall promptly
25 file in the court a certified copy of the record on

1 which the violation was found and the civil penalty
2 assessed.

3 “(c) COLLECTION ACTION FOR FAILURE TO PAY AS-
4 SESSMENT.—

5 “(1) REFERRAL TO ATTORNEY GENERAL.—If a
6 person fails to pay a civil penalty after the order as-
7 sessing the civil penalty has become final and
8 unappealable, the Secretary shall refer the matter to
9 the Attorney General.

10 “(2) ACTION BY ATTORNEY GENERAL.—The
11 Attorney General shall bring a civil action to recover
12 the amount of the civil penalty in United States dis-
13 trict court.

14 “(3) SCOPE OF REVIEW.—In the collection ac-
15 tion, the validity and appropriateness of the order of
16 the Secretary imposing the civil penalty shall not be
17 subject to review.

18 “(d) REFUSAL OR WITHDRAWAL OF INSPECTION
19 PENDING PAYMENT.—If a person fails to pay the amount
20 of a civil penalty after the order assessing the civil penalty
21 becomes final and unappealable, the Secretary may refuse
22 to provide or withdraw inspection under this Act of the
23 person until the civil penalty is paid or until the Secretary
24 directs otherwise.

1 “(e) PENALTIES IN LIEU OF OTHER ACTIONS.—
2 Nothing in this Act requires the Secretary to report for
3 prosecution, or for the institution of an action, a violation
4 of this Act if the Secretary believes that the public interest
5 will be adequately served by assessment of a civil penalty.
6 “(f) ADDITIONAL REMEDIES.—The remedies pro-
7 vided in this section shall be in addition to any other rem-
8 edies that may be available.”.

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