

HOUSE BILL No. 2500

By Committee on Appropriations

2-13

AN ACT concerning inspection of certain food service premises; relating to food processing plants and retail food stores; authorizing the secretary of health and environment to fix, charge and collect certain fees; amending K.S.A. 36-503 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 36-503 is hereby amended to read as follows: 36-503. (a) It shall be unlawful for any person to engage in the business of conducting a food service establishment unless such person shall have in effect a valid license therefor issued by the secretary of health and environment, except that any food service establishment providing only a device for the convenience and operation by a customer for the purpose of heating prepackaged food with no provision for consumption of food on the premises, or any food service establishment licensed by the secretary pursuant to any other law and maintained in connection with any premises licensed by the secretary pursuant to any other law shall not be required to obtain a license under this section, nor shall any person engaged only in the serving of food on railway dining cars or in the occasional sale or serving of food be required to obtain a license hereunder. For the purpose of this section, the sale or serving of food in the same location less than seven days in any calendar year shall be construed as the occasional sale or serving of food. Nothing in this act shall prevent the secretary of health and environment from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of health and environment or any authorized agent thereof except that no provision of this act shall be construed to authorize the secretary of health and environment to inspect or cause to be inspected under the provisions of this act any food service establishment licensed by the secretary of health and environment pursuant to any other law or maintained in connection with any premises licensed by the secretary pursuant to any other law which food service establishment is not required to obtain a license under this section.

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee, each of which shall be established in

1 an amount fixed by rules and regulations adopted by the secretary of
2 health and environment. Application fees may be adjusted in accordance
3 with the type of establishment or based on other criteria as determined
4 by the secretary, but in no event shall any application fee exceed \$100.
5 Such license fee shall not exceed \$100 and shall be fixed in an amount
6 which, together with the application fee, is sufficient to defray the cost
7 of administering the food service establishment inspection and licensure
8 activities of the secretary. Prior to the issuance of any such license, the
9 secretary shall inspect or cause to be inspected the food service estab-
10 lishment designated in the application, to determine that it complies with
11 the standards for food service establishments promulgated pursuant to
12 this act. If such food service establishment is found to be in compliance,
13 the secretary shall issue the license. If the application for license is denied,
14 the secretary shall give written notice thereof to the applicant, stating also
15 that the applicant is entitled to a hearing thereon if a written request
16 therefor is filed with the secretary within 20 days of the date such notice
17 is sent. Such hearing shall be held in accordance with the provisions of
18 the Kansas administrative procedure act.

19 (c) Every license issued hereunder shall be displayed conspicuously
20 in the food service establishment for which it is issued, and no such license
21 shall be transferable to any other person or location. Whenever any such
22 license is lost, destroyed or mutilated, a duplicate license shall be issued
23 to any otherwise qualified licensee upon application therefor and the pay-
24 ment of a fee in the amount of \$3.

25 (d) Any person who, on the effective date of this act, has a valid
26 license to operate a restaurant shall be a licensee under the provisions of
27 this act, and any such license is hereby deemed to be a license to operate
28 a food service establishment issued under the provisions of this act.

29 (e) *A premises where prepackaged individual meals are distributed*
30 *to persons eligible under the federal older Americans act shall not pay*
31 *any fee prescribed under subsection (b).*

32 New Sec. 2. (a) As used in sections 2 through 4, and amendments
33 thereto:

34 (1) “Retail food store” means any establishment or section of an es-
35 tablishment where food and food products are offered to the consumer
36 and intended for off-premises consumption. The term includes delica-
37 tessens that offer prepared food in bulk quantities only. The term does
38 not include roadside markets that offer only fresh fruits and vegetables
39 for sale, food service establishments or food and beverage vending
40 machines.

41 (2) “Food processing plant” means a commercial operation that man-
42 ufactures, packages, labels or stores food for human consumption and
43 does not provide food directly to the consumer.

1 (3) "Secretary" means the secretary of health and environment.

2 (b) In order to reimburse the state of Kansas for inspections by the
3 secretary of health and environment of retail food stores and food proc-
4 essing plants, the secretary of health and environment shall adopt rules
5 and regulations fixing an inspection fee to cover all of the cost of inspec-
6 tion of retail food stores and food processing plants which shall not exceed
7 \$100 per calendar year for each retail food store and food processing
8 plant location plus a fee not to exceed \$25 for each separate and distinct
9 food preparation area within the retail food store or food processing plant
10 location other than the first such area. Whenever the secretary deter-
11 mines that the total amount of revenue derived from the fees collected
12 pursuant to this section are insufficient to carry out the purposes for which
13 the fees are collected, the secretary may amend such rules and regulations
14 to increase the amount of the fee or fees, except that the amount of any
15 fee shall not exceed the maximum amount authorized by this subsection.
16 Whenever the amount of fees collected pursuant to this subsection pro-
17 vides revenue in excess of the amount necessary to carry out the purposes
18 for which such fees are collected, it shall be the duty of the secretary to
19 decrease the amount of the fees prescribed for retail food stores or food
20 processing plants by amending the rules and regulations which fix the
21 fees, as the case may be.

22 (c) All moneys received as fees under this section shall be remitted
23 to the state treasurer at least monthly. Upon receipt of each such remit-
24 tance, the state treasurer shall deposit the entire amount in the state
25 treasury to the credit of the food inspection fee fund.

26 (d) The secretary of health and environment shall adopt rules and
27 regulations necessary to carry out the provisions of this section.

28 New Sec. 3. (a) It shall be unlawful for any person to engage in the
29 business of conducting a retail food store or food processing plant unless
30 such person shall have in effect a valid license therefor issued by the
31 secretary. For the purpose of this section, the sale of food in the same
32 location less than seven days in any calendar year shall be construed as
33 the occasional sale of food. Nothing in this act shall prevent the secretary
34 from inspecting any retail food store or food processing plant when a
35 complaint against such retail food store or food processing plant is trans-
36 mitted to the secretary or any authorized agent thereof.

37 (b) Applications for such licenses shall be made on forms prescribed
38 by the secretary, and each such application shall be accompanied by an
39 application fee and by a license fee. Application fees may be adjusted in
40 accordance with the type of retail food store or food processing plant or
41 based on other criteria as determined by the secretary. Such license fee
42 shall be fixed in an amount which, together with the application fee, is
43 sufficient to defray the cost of administering the retail food store and food

1 processing plant inspection and licensure activities of the secretary. Prior
2 to the issuance of any such license, the secretary shall inspect or cause to
3 be inspected the retail food store or food processing plant designated in
4 the application, to determine that it complies with rules and regulations
5 adopted pursuant to subsection (d) of section 3, and amendments thereto.
6 If the retail food store or food processing plant is found to be in compli-
7 ance, the secretary shall issue the license. If the application for license is
8 denied, the secretary shall give written notice thereof to the applicant,
9 stating also that the applicant is entitled to a hearing thereon if a written
10 request therefor is filed with the secretary within 20 days of the date such
11 notice is sent. Such hearing shall be held in accordance with the provisions
12 of the Kansas administrative procedure act.

13 (c) Every license issued hereunder shall be displayed conspicuously
14 in the retail food store or food processing plant for which it is issued, and
15 no such license shall be transferable to any other person or location.
16 Whenever any such license is lost, destroyed or mutilated, a duplicate
17 license shall be issued to any otherwise qualified licensee upon application
18 therefor and the payment of a fee in the amount of \$3.

19 New Sec. 4. The secretary shall inspect or cause to be inspected, at
20 least once annually, every retail food store and food processing plant in
21 this state. For such inspections the secretary or the secretary's lawful
22 agent shall have the right of entry and access thereto, at any reasonable
23 time. Whenever, upon inspection, it shall be determined that any retail
24 food store or food processing plant does not comply with the rules and
25 regulations of the secretary adopted pursuant to subsection (d) of section
26 3, and amendments thereto, it shall be the duty of the secretary to give
27 written notice to the owner, proprietor or agent in charge of such retail
28 food store or food processing plant of the changes or alterations necessary
29 to effect a complete compliance with such rules and regulations. Such
30 notice shall provide that the retail food store or food processing plant
31 shall be brought into compliance with the applicable standards within a
32 period of time specified in the notice, which shall be not less than 10
33 days, except that a shorter period of time for compliance may be provided
34 in the notice whenever the secretary believes it essential to protect the
35 public health and safety. Such notice also shall state that if compliance
36 with the applicable standards is not effected within the time prescribed,
37 the license for such retail food store or food processing plant shall be
38 subject to suspension or revocation. The licensee of any retail food store
39 or food processing plant, for which a notice of noncompliance is given
40 pursuant to this section, may apply to the secretary for an extension of
41 the time prescribed in the notice for compliance with the applicable rules
42 and regulations. Upon review of any such application, the secretary may
43 grant or deny such application or modify the provisions of any such notice

1 with respect to the time for compliance with any of the particulars stated
2 therein. Upon reinspection of any retail food store or food processing
3 plant for which a notice of noncompliance has been issued pursuant to
4 this section, if such retail food store or food processing plant is found to
5 be in noncompliance with the rules and regulations adopted by the sec-
6 retary pursuant to subsection (d) of section 3, and amendments thereto,
7 the secretary may determine to suspend or revoke the license issued for
8 such retail food store or food processing plant. In such event, the secretary
9 shall send written notice to the licensee that the license for such retail
10 food store or food processing plant will be suspended or revoked, effective
11 20 days after the date such notice is sent, unless within such time the
12 licensee files with the secretary a written request for a hearing on the
13 proposed suspension or revocation. All hearings pursuant to this section
14 shall be conducted in accordance with the provisions of the Kansas ad-
15 ministrative procedure act.

16 Sec. 5. K.S.A. 36-503 is hereby repealed.

17 Sec. 6. This act shall take effect and be in force from and after its
18 publication in the statute book.

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