

SENATE BILL No. 59

AN ACT concerning milk, cream and dairy products; amending K.S.A. 50-502 and 65-679 and repealing the existing sections; also repealing K.S.A. 65-701, 65-702, 65-703, 65-704, 65-705, 65-706, 65-707, 65-715, 65-716, 65-718, 65-719, 65-720, 65-720a, 65-720b, 65-720c, 65-720d, 65-720h, 65-720i, 65-720j, 65-720k, 65-720l, 65-720m, 65-720n, 65-720o, 65-720p, 65-720q, 65-720r, 65-737, 65-737a, 65-738, 65-738a, 65-741, 65-742, 65-744, 65-746, 65-747, 65-748, 65-749, 65-751, 65-752, 65-753, 65-770 and 75-1401 and K.S.A. 2000 Supp. 65-708, 65-708a, 65-745 and 65-750.

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

New Section 1. As used in this act:

(a) "Adulterated" has the same meaning as ascribed to it in K.S.A. 65-664, and amendments thereto.

(b) "Counter freezer" means a counter type freezing machine used to produce frozen dairy products.

(c) "Dairy manufacturing plants" means any place where dairy products, grade A milk or milk products are manufactured or prepared for sale or distribution, either at wholesale or retail. This term shall not include a licensed food service establishment which is licensed to manufacture homemade ice cream pursuant to this act.

(d) "Dairy products" means products which may be made from milk or cream for manufacturing purposes and which are not required to meet grade A standards, including butter, cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk (whole or skim), condensed whole milk, condensed skim milk (sweetened or plain), frozen dairy dessert, and frozen dairy dessert mixes and such other products as may be otherwise designated by rules and regulations.

(e) "Frozen dairy dessert" means and includes products containing milk or cream and other ingredients which are frozen or semi-frozen prior to consumption, such as ice cream, ice milk or sherbet, including frozen dairy desserts for special dietary purposes.

(f) "Frozen dairy dessert mix" means the pasteurized unfrozen combination of all ingredients with or without fruits, fruit juices, candy, nut meats, flavor or harmless color which makes a frozen dairy dessert.

(g) "Goat milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5 % milkfat and not less than 7.5 % milk solids not fat. Goat milk shall be produced according to the sanitary standards of this act.

(h) "Grade A pasteurized milk" means pasteurized milk which has at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The milk shall meet the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk does not have at least a 90% survey rating.

(i) "Grade A pasteurized milk products" means all pasteurized milk products which have at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The pasteurized milk products shall meet the requirements for grade A under rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk products within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk products do not have at least a 90% survey rating.

(j) "Grade A raw milk for pasteurization" means milk having at least 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation, the raw milk meeting the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A raw milk for pasteurization within the statewide system of milk inspection and regulatory services, although such milk does not have at least a 90% survey rating.

(k) "Imminent health hazard" means any condition which involves milk, milk products, or dairy products, or any practice or procedure in the handling, transportation, storage, processing or manufacturing of a

milk, milk product or dairy product which poses a significant threat of danger to the public health which should be corrected immediately to prevent injury or sickness and which should not be permitted to continue while a hearing or other proceeding is being conducted. An imminent health hazard may be declared at any point in a chain of events which ultimately may result in harm or danger to the public health. The occurrence of the final anticipated injury or other disease related condition shall not be a prerequisite for the establishment of the existence of an imminent health hazard.

(l) “In package form” means any commodity put up or packaged in any manner in advance of sale so as to constitute a unit quantity of the commodity for either wholesale or retail sale, exclusive of any auxiliary container enclosing such packages which individually conform to the requirements of this act.

(m) “Milk” means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8.25% milk solids not fat and not less than 3.25% milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized. Milk shall be interpreted to include goat milk.

(n) “Milk distributor” means any person who first sells or offers for sale in Kansas any packaged grade A pasteurized milk, milk product, or dairy product.

(o) “Milk hauler/sampler” means any person who collects official samples and may transport raw milk from a farm or raw milk products to or from a milk plant or both, receiving station or transfer station and has in their possession a permit from any state to sample such products.

(p) “Milk inspection and regulatory services” means the inspection, sampling, laboratory testing and the administrative procedures relating thereto, necessary to determine that the production, processing, distribution and sale of grade A milk, milk products, and dairy products comply with the requirements of this act and any rules and regulations adopted hereunder.

(q) “Milk or cream for manufacturing purposes” means raw milk or raw cream which is not subject to grade A standards and which is produced for processing and manufacturing into dairy products for human consumption. Milk for manufacturing purposes may contain less than 3.25% of butterfat and shall be delivered pure, sweet and clean.

(r) “Milk or cream receiving station” means any place where milk or cream may be received, collected, handled, processed, stored or collected and prepared for further transporting.

(s) “Milk or cream transfer station” means any place where milk or cream are transferred directly from one milk tank truck to another.

(t) “Milk processor” means any person who operates any place, premises or establishment where grade A raw milk for pasteurization or milk or cream for manufacturing purposes is processed, pasteurized, bottled or prepared for distribution.

(u) “Milk producer” means any person who owns or operates a dairy farm and who provides, sells or offers for sale grade A raw milk for pasteurization or milk or cream for manufacturing purposes to a milk plant, receiving station or transfer station.

(v) “Milk products” means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, nonfat (skim) milk, reduced fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured reduced fat or lowfat milk, cultured nonfat (skim) milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat milk, acidified nonfat (skim) milk, low-sodium milk, low-sodium reduced fat or lowfat milk, low-sodium nonfat (skim) milk, lactose-reduced milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat (skim) milk, aseptically processed and packaged milk and milk products, milk, reduced fat or lowfat milk or nonfat (skim) milk with

added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined herein. Milk products also include those dairy foods made by modifying the federally standardized products listed in this section in accordance with 21 C.F.R. 130.10, requirements for foods named by use of a nutrient content claim and a standardized term. Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein or if they are labeled as Grade A as adopted and described by rules and regulations promulgated under this act. The term milk shall not include dietary products (except as defined herein), infant formula, ice cream or other desserts, butter or cheese.

(w) “Misbranded” has the same meaning as ascribed to it in K.S.A. 65-665, and amendments thereto.

(x) “On-farm retail sales of milk or milk products” means the sale of milk or milk products on the farm by the producer from the production of the dairy herd to the final consumer, so long as the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm. The advertisement upon any such sign shall state that such milk or milk products are raw and shall be in letters of a uniform size. Each container in which any unpasteurized milk is sold or offered for sale shall be clearly labeled as ungraded raw milk.

(y) “Pasteurized” has the same meaning as ascribed to it in 21 C.F.R. 131.3 and 135.3.

(z) “Person” means any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.

(aa) “Plant fabricating single service articles” means any place which manufactures single service articles which are expected to come in contact with grade A milk or grade A milk products.

(bb) “Secretary” means the secretary of the state department of agriculture, or the secretary’s designee.

(cc) “Single service article or container” means any container having a milk or milk product-contact surface and used in the packaging, handling, storage or servicing of grade A milk and is intended for one usage only.

New Sec. 2. (a) The secretary shall adopt such rules and regulations as are necessary to implement the provisions of this act, and shall be charged with the enforcement of this act and of any rules and regulations adopted hereunder.

(b) All rules and regulations of the department of agriculture or the secretary of the department of agriculture concerning milk, cream and dairy products in existence on the effective date of this act shall continue to be effective until revised, amended, revoked or nullified pursuant to law.

New Sec. 3. It shall be the duty of the secretary to:

(a) Establish a statewide system of milk inspection and regulatory services to insure, by means of uniform inspection and sampling procedures, that all milk and milk products sold in this state at retail to the final consumer, except on-farm retail sales of milk or milk products, shall attain the standard of grade A pasteurized. The secretary may contract with the governing body of any county or incorporated city, or both, for the provision of milk inspection and regulatory services, and compensation shall be made by the secretary for the furnishing of these services;

(b) inspect or cause to be inspected, as often as may be deemed practicable, all businesses licensed pursuant to this act and any other places where milk, milk products or dairy products are produced, manufactured, kept, handled, stored or sold within the state. The secretary may enter any business licensed under this act during regular business hours or any other hours during which business is in operation or any other place where any milk, milk products or dairy products are manufactured, produced, stored, sold or kept for sale or transportation, for the purpose of performing official duties under this act;

(c) prohibit the production and sale of adulterated or misbranded milk, milk products or dairy products;

(d) seize and condemn for food purposes all unclean, adulterated or misbranded milk, milk products or dairy products wherever such milk, milk products or dairy products may be found; and

(e) take or cause to be taken samples of milk, milk products or dairy products and cause the same to be analyzed or tested according to such methods as shall be prescribed by rules and regulations. Such test or analyses shall conform to methods of the association of official analytical chemists or any other such similar organization as determined by the secretary. Such analyses or tests shall be preserved and recorded as evidence, and the certificate of such test, when sworn to by the analyst, shall be admitted in evidence in all prosecutions that may result under the operation of this act.

New Sec. 4. The secretary may:

(a) Examine any books and records which are kept by any person who is subject to this act and which pertain to any milk, milk products or dairy products or any fees required to be paid pursuant to this act;

(b) examine under oath or otherwise, any person whom the secretary may believe has knowledge concerning the unlawful operation of any business required to be licensed under this act or any place where milk, milk products or dairy products are produced, bought, sold or stored contrary to the provisions of this act;

(c) issue subpoenas requiring the appearance of witnesses and the production of books, papers, reports and records, and to administer oaths under this act;

(d) cooperate with, contract with, and receive funds from any governmental agency; and

(e) enter into reciprocal agreements with other states governing the inspection of milk, milk products and dairy products.

New Sec. 5. (a) The secretary may adopt rules and regulations:

(1) Establishing criteria for the sanitary production, processing, handling, sampling, examination, testing, grading and labeling of all milk, milk products and dairy products sold or produced in the state of Kansas;

(2) providing criteria for the inspection of dairy farms, dairy manufacturing plants, plants fabricating single service articles, milk or cream transfer stations, milk or cream receiving stations, milk haulers, milk distributors, and counter freezers;

(3) establishing sanitation standards and equipment and utensil standards for dairy farms, dairy manufacturing plants, plants fabricating single service articles, transfer stations, receiving stations, milk haulers and milk distributors;

(4) establishing standards of identity for milk, milk products and dairy products. Such standards shall take into consideration corresponding federal standards of identity where such standards exist;

(5) prescribing for any person regulated under this act any book-keeping or reporting requirements deemed necessary by the secretary, including the maintenance of records and making such records available to the secretary;

(6) regarding bacterial and coliform standards or other quality standards for milk, milk products, or dairy products; and

(7) establishing specifications for apparatus and chemicals and procedures for sampling, testing and weighing milk, cream, butter and any other milk products or dairy products. These specifications, directions and other technical requirements shall conform, insofar as practical, to the official methods of analysis of the association of official analytical chemists or any other such similar organization.

(b) Any rules and regulations promulgated under this act shall conform, insofar as practicable, to the pasteurized milk ordinance, and the policies adopted by the interstate milk shippers conference.

New Sec. 6. (a) All milk, milk products and dairy products which have been inspected in accordance with the provisions of this act, and any rules and regulations adopted thereunder, may be moved, distributed or sold, any place in this state, and any further inspection by any political subdivision of this state shall be prohibited. The duly authorized official of any political subdivision of this state may take samples of such products which have been moved into, distributed within or sold within, the boundaries of such political subdivision of this state, for the sole purpose of determining that such products meet the bacterial, butterfat, temperature

and coliform standards prescribed in the rules and regulations adopted pursuant to this act. Nothing in this act shall be construed as prohibiting any epidemiological investigations by the proper authorities of any political subdivision.

(b) No political subdivision of this state shall be permitted to fix or impose any license fee, privilege or occupation tax or other charge against the production premises or the product or against any person as a prerequisite for the movement, distribution or sale of any milk, milk product or dairy products within the state or any political subdivisions thereof, and any sampling performed by any political subdivision in accordance with the provisions of subsection (a) or any testing or inspection of milk or milk products by any political subdivision for epidemiological purposes, shall be performed entirely at the expense of such political subdivision.

(c) The secretary or the secretary's authorized representative shall be notified of any sampling being performed by political subdivisions within the state under the provisions of this section.

New Sec. 7. (a) The secretary, through the department of agriculture's laboratory, may test any sample of milk, milk product or dairy product for bacteria or somatic cells or perform any other test required by this act or any rules and regulations promulgated under this act.

(b) The secretary is hereby authorized to establish by rules and regulations a schedule of fees for such tests performed by the laboratory which are not performed for regulatory purposes.

New Sec. 8. (a) Any person who engages in business as a dairy manufacturing plant shall first apply for and obtain a dairy manufacturing plant license from the secretary and shall pay a license fee of \$120.

(b) Any person who engages in business as a distributor of milk, milk products or dairy products shall first apply for and obtain a milk distributor license from the secretary and shall pay a license fee of \$120. No milk distributor license shall be required for a licensed dairy manufacturing plant which distributes only those products which it manufactures.

(c) Any person who engages in business as a milk hauler shall first apply for and obtain a milk hauler license from the secretary and shall pay a license fee of \$25. As part of the application, the secretary may require the applicant to be tested regarding proper procedures for sampling, testing and weighing milk or cream and state laws and rules and regulations.

(d) Any person who engages in the business of freezing a frozen dairy dessert mix for sale at retail shall first apply for and obtain a counter freezer license from the secretary and shall pay a license fee of \$50.

(e) Any food service establishment which is required to be licensed pursuant to K.S.A. 36-501 *et seq.*, and amendments thereto, and who manufactures homemade ice cream for sale on its premises shall first apply for and obtain a homemade ice cream manufacturing license from the secretary and shall pay a license fee of \$50. Homemade ice cream made pursuant to this section shall be manufactured at the licensed food service establishment and shall be sold only on the premises for immediate consumption by the customers of the licensed food service establishment.

(f) Any person who operates a milk or cream transfer station or milk or cream receiving station shall first apply for and obtain a milk or cream station license from the secretary and shall pay a license fee of \$50.

(g) Any person who engages in business as a manufacturer of single service dairy containers or manufacturer of single service dairy container closures shall first apply for and obtain a single service manufacturing license from the secretary and shall pay a license fee of \$50.

(h) The dairy manufacturing plant license, milk distributor license, counter freezer license, homemade ice cream manufacturing license, milk or cream station license and single service manufacturing license shall expire on December 31 of the year for which it was issued unless suspended or revoked by the secretary pursuant to this act. The milk hauler license shall expire on June 30 following the date of issuance unless suspended or revoked by the secretary pursuant to this act.

(i) No license issued under this section shall be transferable. No license shall be renewed if any assessments or fees required under this act are delinquent.

(j) Each applicant for a license shall submit an application on a form

supplied by the secretary accompanied by the license fee. All licenses shall be conspicuously displayed in the applicant's place of business.

New Sec. 9. (a) Any person who is required to pay or remit a fee under this act in order to sell, offer for sale, receive or distribute grade A raw milk for pasteurization, grade A pasteurized milk or grade A pasteurized milk products within this state shall first apply for and obtain a valid permit to do so from the secretary. Such permit shall be issued upon application to the secretary, and no fee shall be charged therefor.

(b) No permit issued under this section shall be transferable. No permit shall be renewed if any assessments or fees required under this act are delinquent.

New Sec. 10. The secretary may deny, suspend, revoke or modify or refuse to renew the provisions of any license or permit issued under this act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act that the applicant, licensee or permit holder or any agent or employee, thereof has:

- (a) Been convicted of or pleaded guilty to a violation of this act or any rules and regulations promulgated thereunder;
 - (b) failed to comply with any provision or requirement of this act or any rules and regulations promulgated thereunder;
 - (c) interfered with the secretary in the performance of any job duties regarding any inspection or the administration of the provisions of this act;
 - (d) denied access to premises required to be inspected under the provisions of this act;
 - (e) failed to pay or remit any required fee or fees, or any part thereof;
- or
- (f) failed to submit a required report, or submitted a false report.

New Sec. 11. The following fees for the statewide system of milk inspection and regulatory services are hereby established:

(a) A fee of \$.01 for each 100 pounds of milk produced by milk producers under Kansas grade A inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, milk processor or milk distributor to whom the milk is sold or delivered. Each cooperative, processor or distributor is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(b) A fee of \$.01 for each 100 pounds of packaged grade A pasteurized milk or milk products sold in Kansas at retail to the final consumer shall be paid. Each distributor is hereby charged with such fee which shall be remitted to the secretary.

(c) A fee of \$.01 per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of Kansas which is processed into grade A milk or grade A milk products shall be paid. Each milk processor is hereby charged with such fee which shall be remitted to the secretary.

(d) A milk fee of \$.01 per 100 pounds of milk or cream for manufacturing purposes produced by milk producers under Kansas manufacturing grade milk inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, dairy manufacturing plant or any other person to whom the milk or cream for manufacturing purposes is sold or delivered. Each cooperative, dairy manufacturing plant or other person is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(e) A fee of \$.0075 per 100 pounds of Kansas produced milk or cream for manufacturing purposes or other Kansas produced milk delivered to a dairy manufacturing plant shall be paid on all Kansas milk used in the manufacturing of dairy products. As used in this subsection, the term dairy products shall not include any frozen dairy dessert or frozen dairy dessert mix. Each dairy manufacturing plant shall pay such fee which shall be remitted to the secretary.

(f) In lieu of the fee prescribed in subsection (e), a fee of \$1 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix shall be paid by the manufacturer thereof. Each manufacturer of frozen dairy dessert or frozen dairy dessert mix is hereby charged with such fee which shall be remitted to the secretary. Frozen dairy dessert mix which is fur-

ther processed into the corresponding frozen dairy dessert by the manufacturer of the frozen dairy dessert mix shall not be subject to the fee required by this subsection.

(g) A fee of \$1 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix imported for retail sale in Kansas shall be paid by the milk distributor who imports these products.

(h) If any fee computed pursuant to subsection (a) through (e) is less than \$2.50, then the sum of \$2.50 shall be paid in lieu of the computed fee. If any fee computed pursuant to subsection (f) or (g) is less than \$7.50, a minimum fee of \$7.50 shall be paid in lieu of the computed fee.

(i) All fees established herein shall be paid to the secretary in the following manner:

(1) The fees established in subsections (a) through (e) shall be remitted on or before the 30th day of each month for the calendar month immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the quantities upon which the remittance is based.

(2) The fees established in subsections (f) and (g) shall be remitted on April 30, July 31, October 31 and January 31 for the three calendar months immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the quantity of frozen dairy dessert or frozen dairy dessert mix upon which the remittance is based.

(j) Any person who fails to remit all or any part of the required fee or to submit the required report by the date due may be assessed an additional charge equal to 1% of the amount of delinquent fees for each day after the date due, or \$5, whichever amount is greater.

New Sec. 12. (a) The secretary shall remit all moneys received under this act to the state treasurer at least monthly. Upon receipt of such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the dairy fee fund, which is hereby created, unless otherwise stated.

(b) All expenditures from the dairy fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

(c) On July 1, 2001, the director of accounts and reports shall transfer all moneys in the dairy division fee fund and the grade A milk fee fund to the dairy fee fund. On July 1, 2001, all liabilities of the dairy division fee fund and the grade A milk fee fund are hereby transferred to and imposed on the dairy fee fund and the dairy division fee fund and the grade A milk fee fund are hereby abolished.

New Sec. 13. (a) Utensils, milk cans, milking machines, pipeline systems and other equipment used in the handling of milk and dairy products shall be:

- (1) Maintained in good condition;
- (2) free from rust, open seams, milk stone or any unsanitary condition;
- (3) washed, rinsed and drained after each milking and stored in suitable facilities; and
- (4) sanitized immediately before use as required by rules and regulations promulgated pursuant to this act.

(b) Any source of water supply used by a dairy farm shall be safe, clean and ample for the cleaning of dairy utensils and equipment as required by rules and regulations promulgated under this act. If the source of water used by a dairy farm is not a public water supply, then the source of water shall be properly constructed in an approved location as required by rules and regulations promulgated under this act. Whenever any source of water supply does not meet the required standards, the water supply shall be deemed unacceptable and the dairy farm or producer shall be removed from production until evidence that necessary corrections have been made is presented to the secretary and the secretary determines that the water supply standards have been met.

New Sec. 14. Nothing in this act pertaining to the manufacture of butter shall apply to farmers or producers of milk and cream when churning milk or cream produced on their own farm into what shall be known as dairy, country or farm butter or to prohibit such producers from making cheese out of milk and cream which are produced on their own farm,

when such product is to be used as on-farm retail sales of milk or milk products.

New Sec. 15. (a) The secretary may issue and enforce a written or printed stop sale or stop use order to the owner or custodian of any quantity of milk, milk products or dairy products or any equipment used in the storage, handling, production or packaging of milk, milk products or dairy products which the secretary determines to be in violation of any provisions of this act or any rules or regulations adopted hereunder. The order shall prohibit the further sale, processing, movement, and use of such equipment or product, except on approval of the enforcing officer, until such enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the order issued.

(b) No person may sell, use or remove any milk, milk products or dairy products or otherwise violate the terms of any order issued pursuant to subsection (a).

(c) Any order issued pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(d) The provisions of this subsection shall not be construed as limiting the right of the enforcing officer to proceed as authorized by other sections of this act.

New Sec. 16. (a) If the secretary determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of this act or any rules and regulations or order issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder.

(b) If the secretary makes written findings of fact that there is a situation involving an immediate danger to the public health, safety or welfare or that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the secretary may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order, the secretary shall promptly notify the person subject to the order that:

- (1) It has been entered;
- (2) the reasons therefor; and
- (3) that upon written request from the person subject to the order within 15 days after service of the order the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the secretary, the order will remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered the secretary, after giving notice of and opportunity for hearings to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order.

New Sec. 17. The district courts of the state of Kansas shall have jurisdiction to restrain violations of this act or the rules and regulations promulgated thereunder. The court may issue such orders, including temporary restraining orders, as the facts may warrant without first requiring proof that an adequate remedy at law does not exist. Any orders issued pursuant to this section shall be issued without bond. Proceedings may be instituted under this section without any criminal proceedings, administrative proceedings or civil penalty proceedings being first initiated.

New Sec. 18. (a) Any licensee or any employee or agent thereof who violates any provision of this act or any rules and regulations promulgated thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$300 for each violation and, in the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) No civil penalty shall be imposed pursuant to this section except

upon the written order of the secretary to the licensee who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the licensee to appeal to the secretary. Any such licensee within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(c) Any licensee aggrieved by a final order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(d) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer, deposited in the state treasury and credited to the state general fund.

New Sec. 19. It shall be unlawful for any person to:

(a) Engage in any business or activity which requires a license or permit under this act without having a license or permit;

(b) sell, offer or expose for sale:

(1) Any milk, milk products or dairy products which do not conform to the definition and standards of identity established under this act;

(2) any milk, milk products or dairy products which are adulterated or misbranded; or

(3) any frozen dairy dessert which does not conform to the bacteria and coliform quality standards established by this act or rules and regulations adopted hereunder.

(c) adulterate or misbrand any milk, milk products or dairy products;

(d) sell, offer for sale or have in such person's possession with the intent to sell at retail to the final consumer any milk or milk product which has not been inspected and designated grade A pasteurized in accordance with the provisions of this act and any rules and regulations adopted thereunder, except that on-farm retail sales of milk or milk products shall be exempt from the provisions of this act unless stated otherwise; or

(e) violate any provision of this act or any rules or regulations promulgated thereunder.

New Sec. 20. Any person who violates any provision of this act or any rules and regulations promulgated thereunder shall be guilty of an unclassified misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500.

New Sec. 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not effect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 22. K.S.A. 50-502 is hereby amended to read as follows: 50-502. (a) The term "dairy products" shall include milk, milk without butterfat, cream, combinations of milk and cream, evaporated milk, condensed milk, flavored milk, milk drinks, buttermilk, cottage cheese, butter, ice milk as defined in section ~~65-720 of the General Statutes of 1949, 1 and amendments thereto~~, and ice cream.

(b) The term "distributor" means any person engaged in the business of distributing dairy products for resale.

(c) The term "person" shall include individuals, partnerships, associations, firms and corporations.

(d) The term "processor" means any person engaged in the business of processing or manufacturing dairy products.

(e) The term "retail dealer" shall mean any person who sells or distributes dairy products at retail to the consumer: *Except*, That the term "retail dealer" shall not include any person who is engaged in the distribution of dairy products direct to consumers on army, navy, or air force bases, or United States government reservations or hospitals, schools, and other government agencies or any school, college or university in this state whether public, private or parochial. Wholesalers, processors, or distributors who are also engaged in making home deliveries of dairy products shall not, for the purpose of this act, be deemed retail dealers.

(f) The term "wholesaler" means any person engaged in the business of selling dairy products for resale.

Sec. 23. K.S.A. 65-679 is hereby amended to read as follows: 65-679. Nothing in this act shall be construed as limiting or abridging the authority of the ~~state board~~ *secretary* of agriculture established under the Kansas dairy law, K.S.A. ~~65-701 to 65-718, inclusive, and all acts amendatory thereof and supplemental sections 1 through 21, and amendments~~ thereto; the Kansas livestock remedy law, K.S.A. ~~47-501 to through 47-515, inclusive, and all acts amendatory thereof and supplemental and amendments~~ thereto; or the Kansas commercial feeding stuffs law, K.S.A. ~~2-1001 to through 2-1013, inclusive, and all acts amendatory thereof or supplemental and amendments~~ thereto.

Sec. 24. K.S.A. 50-502, 65-679, 65-701, 65-702, 65-703, 65-704, 65-705, 65-706, 65-707, 65-715, 65-716, 65-718, 65-719, 65-720, 65-720a, 65-720b, 65-720c, 65-720d, 65-720h, 65-720i, 65-720j, 65-720k, 65-720l, 65-720m, 65-720n, 65-720o, 65-720p, 65-720q, 65-720r, 65-737, 65-737a, 65-738, 65-738a, 65-741, 65-742, 65-744, 65-746, 65-747, 65-748, 65-749, 65-751, 65-752, 65-753, 65-770 and 75-1401 and K.S.A. 2000 Supp. 65-708, 65-708a, 65-745 and 65-750 are hereby repealed.

Sec. 25. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.