

## Executive Reorganization Order No. 32

By Governor Kathleen Sebelius

1-14

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Section 1. Except as otherwise provided by this order, the following powers, duties, and functions of the department of health and environment, the secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment are hereby transferred to and imposed upon the department of agriculture and the secretary of agriculture:

(a) all powers, duties, and functions under the food service and lodging act, K.S.A. 36- 501 et seq., relating to the licensing, inspection, and regulation of mobile retail ice cream vendors and food service establishments located in retail food stores;

(b) all powers, duties, and functions under the food service and lodging act, K.S.A. 36- 501 et seq., relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. 36-501;

(c) all powers, duties, and functions under K.S.A. 65-688 through K.S.A. 65-689 relating to the licensing, inspection, and regulation of retail food stores and food processing plants; and

(d) all of those powers, duties, and functions under K.S.A. 65-619 through K.S.A. 65-687 that relate to the powers, duties, and functions transferred under paragraphs (a), (b), and (c) above.

Sec. 2. (a) The department of agriculture and the secretary of agriculture shall be the successor in every way to the powers, duties, and functions of the department and secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 1. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department or secretary of agriculture shall be deemed to have the same force and effect as if performed by the department or secretary of health and environment, the division of health, the director of the division of health,

1 or the office of laboratory services in which such powers, duties, and  
2 functions were vested prior to the effective date of this order.

3 (b) Whenever the department of health and environment, the sec-  
4 retary of health and environment, the division of health, the director of  
5 the division of health, or the office of laboratory services or words of like  
6 effect, are referred to or designated by a statute, contract, or other doc-  
7 ument and such reference is in regard to any of the powers, duties, or  
8 functions transferred to the department or secretary of agriculture pur-  
9 suant to this order, such reference or designation shall be deemed to  
10 apply to the department of agriculture or the secretary of agriculture.

11 (c) All rules and regulations, orders, and directives of the secretary  
12 of health and environment which relate to the functions transferred by  
13 this order and which are in effect on the effective date of this order shall  
14 continue to be effective and shall be deemed to be rules and regulations,  
15 orders, and directives of the secretary of agriculture until revised,  
16 amended, revoked, or nullified pursuant to law.

17 Sec. 3. (a) The balances of all funds or accounts thereof appropriated  
18 or reappropriated for the department of health and environment relating  
19 to the powers, duties, and functions transferred by this order are hereby  
20 transferred within the state treasury to the department of agriculture and  
21 shall be used only for the purpose for which the appropriation was orig-  
22 inally made.

23 (b) Liability for all accrued compensation or salaries of officers and  
24 employees who are transferred to the department of agriculture under  
25 this order shall be assumed and paid by the department of agriculture.

26 Sec. 4. (a) When any conflict arises as to the disposition of any prop-  
27 erty, power, duty, or function or the unexpended balance of any appro-  
28 priation as a result of any abolition or transfer made by or under the  
29 authority of this order, such conflict shall be resolved by the governor,  
30 whose decision shall be final.

31 (b) The department of agriculture shall succeed to all property, prop-  
32 erty rights, and records which were used for or pertain to the performance  
33 of powers, duties, and functions transferred to the department of agri-  
34 culture. Any conflict as to the proper disposition of property, personnel,  
35 or records arising under this order shall be determined by the governor,  
36 whose decision shall be final.

37 Sec. 5. (a) No suit, action, or other proceeding, judicial or adminis-  
38 trative, lawfully commenced, or which could have been commenced, by  
39 or against any state agency or program mentioned in this order, or by or  
40 against any officer of the state in such officer's official capacity or in  
41 relation to the discharge of such officer's official duties, shall abate by  
42 reason of the governmental reorganization effected under the provisions  
43 of this order. The court may allow any such suit, action, or other pro-

1 ceeding to be maintained by or against the successor of any such state  
2 agency or any officer affected.

3 (b) No criminal action commenced or which could have been com-  
4 menced by the state shall abate by the taking effect of this order.

5 Sec. 6. (a) All officers and employees of the department of health and  
6 environment who, immediately prior to the effective date of this order,  
7 are engaged in the exercise and performance of the powers, duties, and  
8 functions transferred by this order, as well as all officers and employees  
9 of the department of health and environment who are determined by the  
10 secretary of health and environment and the secretary of agriculture to  
11 be engaged in providing administrative, technical, or other support serv-  
12 ices that are essential to the exercise and performance of the powers,  
13 duties, and functions transferred by this order, are hereby transferred to  
14 the department of agriculture. All classified employees so transferred  
15 shall retain their status as classified employees.

16 (b) Officers and employees of the department of health and environ-  
17 ment transferred by this order shall retain all retirement benefits and  
18 leave balances and rights which had accrued or vested prior to the date  
19 of transfer. The service of each such officer and employee so transferred  
20 shall be deemed to have been continuous. Any subsequent transfers, lay-  
21 offs, or abolition of classified service positions under the Kansas civil serv-  
22 ice act shall be made in accordance with the civil service laws and any  
23 rules and regulations adopted thereunder. Nothing in this order shall  
24 affect the classified status of any transferred person employed by the  
25 department of health and environment prior to the date of transfer.

26 Sec. 9. Except as otherwise provided by this order, all of the provi-  
27 sions of this order shall take effect and have the force of general law on  
28 October 1, 2004, unless disapproved by either house of the Kansas leg-  
29 islature as provided by subsection (c) of section 6 of article 1 of the con-  
30 stitution of Kansas, and unless so disapproved, this order is to be pub-  
31 lished as and with the acts of the legislature and the statutes of this state.

32  
33 DONE AT The Capitol in Topeka  
34 Under the Great Seal of the  
35 State of Kansas this \_\_\_\_ day  
36 of \_\_\_\_\_, 2004.

37  
38 BY THE GOVERNOR  
39 KATHLEEN SEBELIUS

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41 RON E. THORNBURGH  
42 *Secretary of State*  
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JANET A. CHUBB  
*Assistant Secretary of State*

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