

**Substitute for SENATE BILL No. 296**

By Committee on Agriculture

2-20

10 AN ACT relating to the Kansas department of agriculture; transferring  
11 powers and duties of the secretary of the department of health and  
12 environment to the secretary of agriculture; amending K.S.A. 65-688  
13 and 74-560 and K.S.A. 2003 Supp. 74-567 and repealing the existing  
14 sections.  
15

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

17 New Section 1. On and after October 1, 2004, the Kansas depart-  
18 ment of agriculture shall succeed to whatever right, title or interest the  
19 department of health and environment has acquired in any real property  
20 in this state concerning the functions transferred by this act or by 2004  
21 Executive Reorganization Order No. 32, and the authority shall hold the  
22 same for and in the name of the state of Kansas. On and after October  
23 1, 2004, whenever any statute, contract, deed or other document concerns  
24 the power or authority of the department of health and environment or  
25 the secretary of the department of health and environment concerning  
26 the functions transferred by this act or by 2004 Executive Reorganization  
27 Order No. 32 to acquire, hold or dispose of real property or any interest  
28 therein, the Kansas department of agriculture shall succeed to such power  
29 or authority.

30 New Sec. 2. Except as otherwise provided in this act, on October 1,  
31 2004, officers and employees who, immediately prior to such date, were  
32 engaged in the performance of powers, duties or functions of the de-  
33 partment of health and environment concerning food and food service  
34 which are transferred by this act or by 2004 Executive Reorganization  
35 Order No. 32, or who become a part of the Kansas department of agri-  
36 culture, or the powers, duties and functions of which are transferred to  
37 the Kansas department of agriculture, and who, in the opinion of the  
38 secretary of the Kansas department of agriculture, are necessary to per-  
39 form the powers, duties and functions of the Kansas department of ag-  
40 riculture, shall be transferred to, and shall become officers and employees  
41 of the Kansas department of agriculture.

42 New Sec. 3. On and after October 1, 2004, when any conflict arises  
43 as to the disposition of any power, function or duty or the unexpended

1 balance of any appropriation as a result of any abolition, transfer, attach-  
2 ment or change made by or under authority of this act, such conflict shall  
3 be resolved by the governor, whose decision shall be final.

4 New Sec. 4. (a) On and after October 1, 2004, the Kansas depart-  
5 ment of agriculture shall serve as custodian for all agency records as de-  
6 fined by the Kansas open records act, related to those sections of chapter  
7 36, article 5 and chapter 65, article 6, from which authority is transferred  
8 from the secretary of health and environment to the secretary of agricul-  
9 ture. The department of health and environment shall continue to serve  
10 as custodian as defined by the Kansas open records act for all agency  
11 records related to chapter 36, article 5 and chapter 65, article 6 generated  
12 prior to October 1, 2004. A request for records generated prior to October  
13 1, 2004, pursuant to the Kansas open records act may be made to the  
14 Kansas department of agriculture and it will be forwarded to the depart-  
15 ment of health and environment upon receipt.

16 (b) The department of health and environment will immediately  
17 make available to the Kansas department of agriculture upon request any  
18 records, memoranda, writings, entries, prints, representations or combi-  
19 nations thereof of any act, transaction, occurrence or event of the de-  
20 partment of health and environment related to those functions trans-  
21 ferred to the secretary of agriculture.

22 New Sec. 5. (a) The balances of all funds or accounts thereof approp-  
23 riated or reappropriated for the department of health and environment  
24 relating to the powers, duties and functions transferred by this act are  
25 hereby transferred within the state treasury to the Kansas department of  
26 agriculture and shall be used only for the purpose for which the approp-  
27 riation was originally made. On and after October 1, 2004, all such bal-  
28 ances shall be deposited in the food safety fee fund and may be used to  
29 carry out the responsibilities and duties of the division of food safety of  
30 the Kansas department of agriculture, as established by this act.

31 (b) There is hereby created the food safety fee fund. The Kansas  
32 department of agriculture shall remit all moneys received by or for it from  
33 fees, charges or penalties to the state treasurer in accordance with the  
34 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
35 each such remittance, the state treasurer shall deposit the entire amount  
36 in the state treasury to the credit of the food safety fee fund. All expend-  
37 itures from the food safety fee fund shall be made in accordance with  
38 appropriation acts upon warrants of the director of accounts and reports  
39 issued pursuant to vouchers approved by the secretary of agriculture or  
40 by a person or persons designated by the secretary.

41 Sec. 6. K.S.A. 65-688 is hereby amended to read as follows: 65-688.

42 (a) As used in this section and K.S.A. 65-689, and amendments thereto:

43 (1) “Retail food store” means any establishment or section of an es-

1    establishment where food and food products are offered to the consumer  
2    and intended for off-premises consumption. The term includes delica-  
3    tessens that offer prepared food in bulk quantities only. The term does  
4    not include roadside markets that offer only fresh fruits and vegetables  
5    for sale, food service establishments or food and beverage vending ma-  
6    chines, ~~or any plant which is registered by the department of agriculture~~  
7    ~~under article 7 of chapter 65 of the Kansas Statutes Annotated or which~~  
8    ~~is licensed by the department of agriculture under article 6a of chapter~~  
9    ~~65 of the Kansas Statutes Annotated.~~

10    (2) “Food processing plant” means a commercial operation that man-  
11    ufactures, packages, labels or stores food for human consumption and  
12    does not provide food directly to the consumer. “Food processing plant”  
13    shall not include any operation or individual beekeeper that produces or  
14    stores honey who does not process or offer the honey for sale at retail, ~~or~~  
15    ~~any plant which is registered by the department of agriculture under~~  
16    ~~article 7 of chapter 65 of the Kansas Statutes Annotated or which is li-~~  
17    ~~icensed by the department of agriculture under article 6a of chapter 65~~  
18    ~~of the Kansas Statutes Annotated.~~

19    (3) “Food” means a raw, cooked or processed edible substance, ice,  
20    beverage or ingredient used or intended for use or for sale in whole or in  
21    part for human consumption or chewing gum.

22    (4) “Secretary” means the secretary of ~~health and environment~~  
23    *agriculture*.

24    (b) In order to reimburse the state of Kansas for inspections by the  
25    secretary of ~~health and environment~~ *agriculture* of retail food stores and  
26    food processing plants, the secretary of ~~health and environment~~ *agricul-*  
27    *ture* shall adopt rules and regulations establishing a graduated inspection  
28    fee schedule to cover all of the cost of inspection of retail food stores and  
29    food processing plants which shall not exceed \$200 per calendar year for  
30    each retail food store and food processing plant location. Whenever the  
31    secretary determines that the total amount of revenue derived from the  
32    fees collected pursuant to this section are insufficient to carry out the  
33    purposes for which the fees are collected, the secretary may amend such  
34    rules and regulations to increase the amount of the fee or fees, except  
35    that the amount of any fee shall not exceed the maximum amount au-  
36    thorized by this subsection. Whenever the amount of fees collected pur-  
37    suant to this subsection provides revenue in excess of the amount nec-  
38    essary to carry out the purposes for which such fees are collected, it shall  
39    be the duty of the secretary to decrease the amount of the fees prescribed  
40    for retail food stores or food processing plants by amending the rules and  
41    regulations which fix the fees, as the case may be.

42    (c) All moneys received as fees under this section shall be remitted  
43    to the state treasurer at least monthly. Upon receipt of each such remit-

1 tance, the state treasurer shall deposit the entire amount in the state  
2 treasury to the credit of the food ~~inspection~~ *safety* fee fund.

3 (d) The secretary of ~~health and environment~~ *agriculture* shall adopt  
4 rules and regulations necessary to carry out the provisions of this section.

5 New Sec. 7. The secretary of agriculture and the secretary of health  
6 and environment shall provide for a mechanism for ongoing communi-  
7 cation and access between the division of food safety, as established by  
8 this act, and the bureau of epidemiology at the department of health and  
9 environment.

10 New Sec. 8. (a) There is hereby established within and as a part of  
11 the Kansas department of agriculture, the division of food safety. The  
12 secretary of agriculture shall appoint a director of such division and such  
13 director shall be in the classified service of the Kansas civil service act.

14 (b) The secretary of agriculture may organize the division of food  
15 safety in the manner the secretary deems most efficient, so long as the  
16 same is not in conflict with the provisions of this act or with the provisions  
17 of law, and the secretary may establish policies governing the transaction  
18 of business of the division of food safety within the department.

19 Sec. 9. K.S.A. 2003 Supp. 74-567 is hereby amended to read as fol-  
20 lows: 74-567. (a) The state board of agriculture shall have such powers,  
21 duties and functions as prescribed by this section. The board shall serve  
22 in an advisory capacity to the governor and the secretary to review and  
23 make recommendations on department legislative initiatives and pro-  
24 posed rules and regulations or proposed revised rules and regulations  
25 prior to the submission of such rules and regulations to the secretary of  
26 administration pursuant to K.S.A. 77-420, and amendments thereto, other  
27 than rules and regulations pertaining to personnel matters of the depart-  
28 ment ~~and~~, rules and regulations of the division of water resources *and*  
29 *rules and regulations of the division of food safety*. The board shall not  
30 have any powers, duties or functions concerning the day-to-day operations  
31 of the *Kansas* department of agriculture.

32 (b) The board shall serve in an advisory capacity to the agriculture  
33 products development division of the department of commerce. The  
34 board shall advise the division on issues and concerns relating to agricul-  
35 ture products development and marketing.

36 (c) The agriculture products development division of the department  
37 of commerce shall report to the board, at not less than two meetings of  
38 such board each year, on the activities and functions of the division.

39 New Sec. 10. (a) The Kansas department of agriculture shall create  
40 a statistically based random selection of not less than 1,000 retail food  
41 stores which shall be inspected, documented and evaluated as a trans-  
42 ferred programs baseline. The department shall include the results of the  
43 baseline inspections in the report required on January 31, 2006, in section

1 12, and amendments thereto.

2 (b) On February 1, 2005, the Kansas department of agriculture shall  
3 report to the legislature the status of the baseline inspection program  
4 using 359 randomly selected retail food stores from subsection (a).

5 New Sec. 11. Not later than January 31, 2005, and January 31, 2006,  
6 the Kansas department of agriculture shall report to the house and senate  
7 committees on agriculture on the status of the transition. Such report  
8 shall be prepared in cooperation with the department of health and en-  
9 vironment. The report shall include the steps taken to ensure that food  
10 safety resources are targeted at identifying, preventing and eliminating  
11 those concerns that constitute the greatest risk to public health and food  
12 safety. The report shall also include a description of what steps have been  
13 taken to engage stakeholders in the transition and in deciding what actions  
14 would tend to improve food safety.

15 New Sec. 12. (a) Any ~~manufacturer, importer, jobber, firm, associ-~~  
16 ~~ation, corporation or~~ person **[or entity]** who shall violate any of the pro-  
17 visions of this act and amendments thereto or the rules and regulations  
18 adopted, may incur a civil penalty in an amount not more than \$1,000  
19 per violation, and in the case of a continuing violation every day such  
20 violation continues may be deemed a separate violation. Such civil penalty  
21 may be assessed in addition to any other penalty provided by law. Any  
22 civil penalty assessed pursuant to this subsection is subject to review in  
23 accordance with the act for judicial review and civil enforcement of  
24 agency actions.

25 (b) Any ~~manufacturer, importer, jobber, firm, association, corpora-~~  
26 ~~tion or~~ person **[or entity]** who shall violate any of the provisions of this  
27 act and amendments thereto or the rules and regulations adopted, in an  
28 intentional and reckless manner shall be guilty of a class A, nonperson  
29 misdemeanor.

30 (c) Any food misbranded or adulterated or containing or suspected  
31 of containing any substance or substances injurious to public health or  
32 which is offered or exposed for sale in violation of any of the provisions  
33 of this act and amendments thereto shall be subject to seizure in place  
34 until such time that the final disposition of the food has been determined  
35 by sampling and analysis. Within 30 days of seizure in place, upon veri-  
36 fication that the suspected food was misbranded, adulterated or contains  
37 a substance or substances that may be injurious to public health the sec-  
38 retary of agriculture shall issue an order establishing measures to prevent  
39 further contamination or the threat to public health. The opportunity for  
40 hearing pursuant to the Kansas administrative procedure act shall be pro-  
41 vided upon issuance of the order. The secretary of agriculture may order  
42 the destruction of contaminated food if no alternative assures that further  
43 contamination of health hazards are averted, and may be imposed in ad-

1 dition to any other penalty established by law. The district courts of the  
2 state of Kansas shall have jurisdiction to restrain violations of this act by  
3 injunction.

4 New Sec. 13. For the purposes of carrying out the provisions of this  
5 act, the secretary of agriculture or the secretary's agent or the county or  
6 district attorney or their agents may enter any premises at any reasonable  
7 time, in order:

8 (a) To have access for the purpose of inspecting any premises, prod-  
9 ucts or equipment subject to this act; or

10 (b) to inspect or sample food actually or reported to be adulterated  
11 or a threat to public health; or

12 (c) to inspect or investigate complaints of violations of this act; or

13 (d) to sample products.

14 Should the secretary of agriculture, the secretary's agent or the county  
15 or district attorney or their agents be denied access to any premises where  
16 such access was sought for the purposes authorized, the secretary of ag-  
17 riculture or the county or district attorney may apply to any court of  
18 competent jurisdiction for a search warrant authorizing access to such  
19 premises for such purposes. The court may upon such application, issue  
20 the search warrant for the purposes requested.

21 The enforcement of the criminal provisions of this act shall be the duty  
22 of, and shall be implemented by, the county or district attorneys of the  
23 various counties or districts. In the event a county or district attorney  
24 refuses to act, the attorney general shall so act. The secretary of agricul-  
25 ture is charged with the duty of enforcing all other provisions of this act.

26 New Sec. 14. (a) The secretary of agriculture may deny, suspend,  
27 revoke or modify the provisions of any license issued under this act, if the  
28 secretary finds, after notice and hearing, that the applicant or licensee  
29 has:

30 (1) Been convicted of or pleaded guilty to a violation of this act or  
31 any rule and regulation promulgated thereunder;

32 (2) failed to comply with any provision or requirement of this act or  
33 any rule and regulation adopted thereunder;

34 (3) interfered with or prevented the secretary or any authorized rep-  
35 resentative of the secretary from the performance of that person's job  
36 duties regarding any inspection or the administration of the provisions of  
37 this act; or

38 (4) denied the secretary or any authorized representative of the sec-  
39 retary access to any premises required to be inspected under the provi-  
40 sions of this act.

41 (b) Before any license shall be suspended, modified, revoked or de-  
42 nied renewal, the secretary shall inform the applicant or licensee of the  
43 date and place of hearing upon such proposed revocation, denial or

1 suspension.

2 (c) The licensee or applicant may appeal from the decision and order,  
3 in accordance with provisions of the act for judicial review and civil en-  
4 forcement of agency actions.

5 Sec. 15. K.S.A. 74-560 is hereby amended to read as follows: 74-560.

6 (a) On and after the effective date of this act, in order to reorganize the  
7 administration, planning and regulation of the state's agriculture industry  
8 there is hereby established within the executive branch of government  
9 the Kansas department of agriculture, which shall be administered under  
10 the direction and supervision of a secretary of agriculture.

11 ~~(b) The state board of agriculture, established pursuant to K.S.A. 74-~~  
12 ~~562, shall nominate three individuals to the governor for the appointment~~  
13 ~~as secretary of agriculture. The governor either shall select and appoint~~  
14 ~~a person nominated to be secretary or shall reject the nominations and~~  
15 ~~request the board to nominate three new individuals for the appointment~~  
16 ~~as secretary. Upon receipt of any such request for the nomination of three~~  
17 ~~new individuals, the board shall nominate three new individuals for the~~  
18 ~~appointment as secretary in the same manner. *The secretary shall be ap-*~~  
19 ~~*pointed by the governor.* The ~~nominees~~ *secretary* shall have a demon-~~  
20 ~~strated executive and administrative ability to discharge the duties of the~~  
21 ~~office of secretary. Every appointed secretary of agriculture shall be ap-~~  
22 ~~pointed subject to confirmation by the senate as provided in K.S.A. 75-~~  
23 ~~4315b, and amendments thereto. The secretary shall be a member of the~~  
24 ~~governor's cabinet. The secretary shall serve at the pleasure of the gov-~~  
25 ~~ernor. The secretary shall be in the unclassified service under the Kansas~~  
26 ~~civil service act and shall receive an annual salary to be fixed by the gov-~~  
27 ~~ernor. The acting secretary of agriculture who is serving as the secretary~~  
28 ~~on the effective date of this act shall be the secretary of agriculture as~~  
29 ~~established by this act, shall serve at the pleasure of the governor and~~  
30 ~~shall be subject to confirmation by the senate as provided in K.S.A. 75-~~  
31 ~~4315b, and amendments thereto. Any action of the Senate taken prior to~~  
32 ~~the effective date of this act which confirms an individual as the secretary~~  
33 ~~of agriculture is hereby validated and shall constitute confirmation by the~~  
34 ~~Senate of such individual as secretary of agriculture under this section.~~

35 (c) The secretary shall organize an annual public informational meet-  
36 ing. The meeting shall take place in each congressional district on a ro-  
37 tating basis.

38 (d) The provisions of the Kansas governmental operations accounta-  
39 bility law apply to the Kansas department of agriculture, and the depart-  
40 ment is subject to audit, review and evaluation under such law.

41 Sec. 16. K.S.A. 65-688 and 74-560 and K.S.A. 2003 Supp. 74-567 are  
42 hereby repealed.

43

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