

SENATE BILL No. 203

AN ACT concerning the secretary of agriculture; relating to powers and duties; amending K.S.A. 36-515 and K.S.A. 2008 Supp. 36-503, 36-510 and 74-598 and repealing the existing sections.

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

New Section 1. (a) The secretary shall inspect or cause to be inspected every lodging establishment in this state. For such inspections the secretary or the secretary's lawful agent shall have the right of entry and access thereto, at any reasonable time.

(b) Whenever, upon inspection, it is determined that any lodging establishment does not comply with the applicable standards promulgated in the rules and regulations of the secretary, the secretary shall give written notice to the owner, proprietor or agent in charge of such establishment of the changes or alterations necessary to comply with such standards.

(1) The notice shall order the establishment to comply with the applicable standards within a period of time specified in the notice, which shall be not less than 10 days, except that a shorter period of time may be provided in the notice whenever the secretary believes it essential to protect the public health and safety.

(2) The notice also shall state that the license for such establishment shall be subject to suspension or revocation for failure to comply with the applicable standards within the time specified.

(3) The licensee of any establishment given a notice pursuant to this section may apply to the secretary for an extension of the time specified in the notice. The secretary shall review such application and may grant or deny such application or modify the provisions of the notice with respect to the time for compliance with any of the particulars stated in the notice.

(c) Upon reinspection of any lodging establishment given a notice pursuant to this section, if it is determined that such establishment does not comply with the applicable standards promulgated in the rules and regulations of the secretary, the secretary may suspend or revoke the license issued for such establishment. If the secretary suspends or revokes the license, the secretary shall send written notice to the licensee that the license for such establishment will be suspended or revoked, effective 20 days after the date such notice is sent, unless within such time the licensee files with the secretary a written request for a hearing on the proposed suspension or revocation. All hearings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) The secretary is authorized to receive lodging inspection reports from qualified individuals, private entities or public entities to determine compliance with lodging standards promulgated pursuant to the food service and lodging act, and amendments thereto. The secretary is authorized to promulgate such rules and regulations as are necessary to receive such inspection reports. Such rules and regulations shall be promulgated on or before July 1, 2010.

(e) This section shall be a part of and supplemental to the food service and lodging act.

New Sec. 2. (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 the food service and lodging act, and amendments thereto, 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. Any such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(b) This section shall be a part of and supplemental to the food service and lodging act.

New Sec. 3. If the secretary of agriculture 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 of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2008 Supp. 74-581, and

amendments thereto, or any rules and regulations or orders 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 or rules and regulations or orders issued thereunder. Any such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

New Sec. 4. (a) If the secretary of agriculture finds that the public health or safety is endangered by the continued operation of a food processing plant or retail food store, the secretary may suspend, temporarily, the license of such establishment without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas administrative procedure act.

(b) In no case shall a temporary suspension of a license under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the licensee shall be reinstated to full licensure unless the secretary has suspended or revoked the license, after notice and hearing, or the license has expired as otherwise provided under the Kansas food, drug and cosmetic act, and amendments thereto, or any rules and regulations or orders issued thereunder.

Sec. 5. K.S.A. 2008 Supp. 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 agriculture, 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 ~~shall not be required to obtain a license hereunder under this section.~~ 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. For the purpose of this section, hotels that provide only complimentary food service to only that hotel's overnight guests shall not be required to purchase a food service license separate from the lodging establishment license. This exemption from licensing does not exempt any food service establishment inside the hotel from inspection or regulation. *Any person not otherwise required to be licensed under this section who prepares, serves or sells food for the sole purpose of soliciting funds to be used for community projects, educational and youth activities or humanitarian purposes, shall not be required to obtain a license under this section.* Nothing in this act shall prevent the secretary of agriculture from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of agriculture or any authorized agent thereof ~~except that no provision of this act shall be construed to authorize the secretary of agriculture to inspect or cause to be inspected under the provisions of this act any food service establishment licensed by the secretary of agriculture 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) *A food service establishment operated in connection with any premises licensed, registered or permitted by the department of health and environment pursuant to any other law, which is inspected and regulated pursuant to that law, shall not be required to obtain a license under subsection (a). No provision of this act authorizes the secretary of agriculture to inspect or cause to be inspected such food service establishment under the provisions of this act. This exemption shall not apply to a food service establishment whose primary function is not operated in connection with any premises licensed, registered or permitted pursuant to such other law.*

~~(b)~~ (c) Applications for ~~such~~ licenses under subsection (a) 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 an amount fixed by rules and regulations adopted by the secretary of agriculture. Application fees may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed \$200. Such license fee shall not exceed \$200 and shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the food service establishment inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the food service establishment designated in the application, to determine that it complies with the standards for food service establishments promulgated pursuant to this act. If such food service establishment is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

~~(c)~~ (d) Every license issued hereunder shall be displayed conspicuously in the food service establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of ~~\$3~~ \$5.

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

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

Sec. 6. K.S.A. 2008 Supp. 36-510 is hereby amended to read as follows: 36-510. (a) The secretary shall be responsible for the enforcement of the lodging and food service standards promulgated pursuant to this act, but the secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of all or any portion of such standards, whenever the secretary shall determine that such municipality has adequate personnel to provide proper enforcement. Any municipality entering into a contract with the secretary to enforce such standards shall act as an agent of the secretary in carrying out such duties, and no such municipality shall charge any lodging establishment or food service establishments a fee for services performed as an agent of the secretary under such contract which is in addition to and separate from any fee such establishment is required to pay to the secretary under the provisions of this act. Such municipality shall enforce such standards within such municipalities of this state as are designated in the contract. Any inspection of lodging or food service establishments by officers, employees or agents of any such municipality, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

(b) The secretary and the state fire marshal are hereby authorized and empowered to enter into a contract authorizing the state fire marshal and the fire marshal's deputies or lawful agents to enforce all or any portion of the lodging or food service standards promulgated pursuant to this act. Such contract shall designate specific lodging or food service establishments, or types of lodging or food service establishments, wherein such authority may be exercised. Any inspection of such establishments by the state fire marshal or the fire marshal's deputies or lawful agents, to determine compliance with lodging or food service standards established pursuant to this act, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

Such contract also may provide similar authority for the secretary of agriculture and the secretary's officers, employees and agents with respect to enforcement of all or any portion of the Kansas fire prevention code in specified lodging or food service establishments, or in types of lodging

or food service establishments. Any inspection of such establishments by the secretary, or the secretary's officers, employees and agents, to determine compliance with the Kansas fire prevention code, shall have the same force and effect as if performed by the state fire marshal or the marshal's deputies and agents.

~~(c) Any food service establishment which is not required to be licensed under the provisions of this act, but which is licensed by the secretary pursuant to any other law, or which is maintained in connection with premises which are licensed by the secretary pursuant to any other law, shall be subject to the food service standards established pursuant to this act. In the discretion of the secretary, enforcement of such standards may be delegated to the personnel of the department who are responsible for enforcing the provisions of the law under which such food service establishment or premises are licensed. Failure of any such premises to comply with the food service standards promulgated pursuant to this act shall be grounds for the suspension or revocation of the license issued for the premises under such other law. The licensee shall not have any license revoked or suspended without first being given an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.~~

Sec. 7. K.S.A. 36-515 is hereby amended to read as follows: 36-515.

~~(a) Any failure by a licensee to comply with the food service or lodging standards established pursuant to this act shall be grounds for the suspension or revocation of such licensee's license to operate a food service establishment, a lodging establishment or food vending machines. After notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may deny, suspend, revoke, refuse to renew or modify the license to operate a food service establishment, a lodging establishment or food vending machines if the licensee has:~~

~~(1) Failed to comply with the standards established pursuant to this act; or~~

~~(2) failed to comply with any provision or requirement of the Kansas food service and lodging act, and amendments thereto, or any rule or regulation adopted thereunder.~~

~~(b) Upon conviction, any person who violates any provision of this act shall be guilty of a class C misdemeanor, except that upon any subsequent conviction such person shall be guilty of a class B misdemeanor.~~

~~(c) The secretary may seek injunctive relief from the appropriate district court to enjoin any operator of a food service establishment, lodging establishment or food vending machine company from conducting business when such operator has failed to make application for or to obtain a license for such purpose as required by the food service and lodging act or when such license has been suspended or revoked.~~

Sec. 8. K.S.A. 2008 Supp. 74-598 is hereby amended to read as follows: 74-598. (a) The secretary of agriculture may deny, suspend, revoke, refuse to renew or modify the provisions of any license issued under the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2008 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, if the secretary finds, ~~after notice and hearing,~~ that the applicant or licensee has:

(1) Been convicted of or pleaded guilty to a violation of any provision or requirement transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2008 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder;

(2) failed to comply with any provision or requirement transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2008 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder;

(3) interfered with or prevented the secretary or any authorized representative of the secretary from the performance of that person's job duties regarding any inspection or the administration of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2008 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder; or

(4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2008 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder.

(b) The secretary shall inform the applicant or licensee of the opportunity for a hearing pursuant to the Kansas administrative procedure act before any license shall be denied, suspended, modified, revoked or denied renewal.

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

Sec. 9. K.S.A. 36-515 and K.S.A. 2008 Supp. 36-503, 36-510 and 74-598 are hereby repealed.

Sec. 10. 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.