

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman John Faber at 3:30 P.M. on March 18, 2008 in Room 783 of the DSOB.

All members were present except:

Representative Clay Aurand - excused  
Representative Bill Feuerborn - excused  
Representative Carl Holmes - excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department  
Hank Avila, Kansas Legislative Research Department  
Gordon Self, Revisor of Statutes  
Kristen Kellems, Revisor of Statutes  
Florence Deeter, Committee Assistant

Conferees appearing before the committee:

None

Others attending:

See attached list.

**Hearing on: SB 584 - Transfer of food service and lodging duties to the Department of Agriculture**

The Chairman called the committee's attention to **SB 584**. Representative Powell explained the balloon changes in **HB 2838**, which were suggested by the Kansas Department of Health and Environment (KDHE) and are to be included in **SB 584**, then moved to recommend the amendment. Representative Grange seconded the motion. The motion passed. (Attachment 1).

Staff Raney Gilliland briefed the committee on the contents of **HB 2838**, saying hotels providing complimentary food service to overnight guests would not be required to purchase a food service license separate from a lodging establishment license. The balloon clarifies that this exemption from licensing does not exempt food service within the hotel from inspection or regulation.

Mary Glassburner, Bureau of Consumer Health, KDHE, answered questions from committee members saying, the food service establishments are inspected once each year; lodging facilities, prior to 2008, were inspected every three years. She said hotel inspectors always do on-site food inspections.

The Chairman called for consideration of a second balloon amendment from the Kansas Department of Agriculture (KDA) and the Kansas Department of Health and Environment (KDHE) (Attachment 2). Representative Light moved to recommend the balloon amendmen. Representative Svaty seconded the motion. Susan Kang, Policy Director, KDHE, explained that the amendment is an agreement between KDHE and KDA regarding food-borne illnesses. She said the language explains KDHE will be the leader in inspection procedures during any outbreak; expected cooperation between the agencies will facilitate the acquisition of pertinent information. Constantine Cotsoradis, Deputy Secretary, KDA answered a question saying that in the department's inspection of restaurants, any disease detected during that inspection is forwarded to KDHE for further inspection and remediation. He said county agencies are also involved in inspections.

Representative Knox requested a substitute motion to remove the words "regular and." Representative Schroeder seconded the motion. Following discussion, the substitute motion failed.

The Chairman returned to Representative Light's motion to amend; the motion passed.

Representative Powell moved to recommend SB 584 as favorable for passage as amended. Representative Grange seconded the motion. Staff Gordon Self provided explanation of Representative Powell's amendment, saying by combining **HB 2838** and **SB 584**, two separate effective dates are created. Staff needs to include some technical amendments in order to accomplish the intent of the bill. The motion and second to pass SB

CONTINUATION SHEET

MINUTES OF THE House Agriculture and Natural Resources Committee at 3:30 P.M. on March 18, 2008 in Room 783 of the DSOB.

584 was withdrawn.

Representative Powell moved to include the technical amendments as introduced in SB 584 and insert HB 2838 into SB 584. Representative Grange seconded the motion. The motion passed.

Representative Powell moved to recommend SB 584 be considered favorable for passage as amended. Representative Moxley seconded the motion. The motion passed.

The Chairman requested John Donley, Assistant General Counsel, Kansas Livestock Association, to provide a review of HCR 5034 heard previously in committee. Mr. Donley said beef checkoff dollars are collected in Kansas by the Kansas Beef Council and submitted to the Federal Beef Checkoff offices. He said Kansas has elected to send an additional amount of moneys totaling \$.85 of each dollar collected for national programs.

Upon hearing the briefing from Mr. Donley, the committee, by a vote of six to five, agreed not to work HCR 5034.

The meeting was adjourned at 4:00 p.m. The next meeting is scheduled for March 24, 2008, at 3:30 p.m.



SENATE BILL No. 584

By Committee on Agriculture

2-7

10 AN ACT concerning 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. 36-501,  
13 36-502, 36-504, 36-506, 36-507 and 36-510 and K.S.A. 2007 Supp. 36-  
14 503, 36-515b and 74-592 and repealing the existing sections.

36-503, as amended by section 10 of 2008  
Senate Bill No. 584,

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

17 New Section 1. (a) Except as otherwise provided by this act, on and  
18 after ~~July~~ **October** 1, 2008, all of the powers, duties and functions of the  
19 department of health and environment concerning food service and lodg-  
20 ing are hereby transferred to and conferred and imposed upon, the sec-  
21 retary of agriculture.

22 (b) Except as otherwise provided by this act, on and after ~~July Oc-~~  
23 **tober** 1, 2008, the secretary of agriculture shall be the successor in every  
24 way to the powers, duties and functions of the department of health and  
25 environment concerning food service and lodging in which the same were  
26 vested prior to ~~July~~ **October** 1, 2008. Every act performed in the exercise  
27 of such powers, duties and functions by or under the authority of the  
28 secretary of agriculture shall be deemed to have the same force and effect  
29 as if performed by the department of health and environment, in which  
30 such powers, duties and functions were vested prior to ~~July~~ **October** 1,  
31 2008.

32 (c) All rules and regulations of the department of health and envi-  
33 ronment concerning food service and lodging in existence on ~~July Oc-~~  
34 **tober** 1, 2008, shall continue to be effective and shall be deemed to be  
35 duly adopted rules and regulations of the secretary of agriculture until  
36 revised, amended, revoked or nullified pursuant to law.

37 (d) All orders and directives of the department of health and envi-  
38 ronment concerning food service and lodging in existence on ~~July Oc-~~  
39 **tober** 1, 2008, shall continue to be effective and shall be deemed to be  
40 orders and directives of the secretary of agriculture until revised,  
41 amended or nullified pursuant to law.

42 (e) The division of food safety shall be a continuation of the depart-  
43 ment of health and environment concerning food service and lodging.

1 New Sec. 2. (a) No suit, action or other proceeding, judicial or ad-  
2 ministrative, lawfully commenced, or which could have been commenced,  
3 by or against any state agency or program mentioned in this act, or by or  
4 against any officer of the state in such officer's official capacity or in  
5 relation to the discharge of such officer's official duties, shall abate by  
6 reason of the governmental reorganization effected under the provisions  
7 of this act. The court may allow any such suit, action or other proceeding  
8 to be maintained by or against the successor of any such state agency or  
9 any officer affected.

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

12 New Sec. 3. On and after ~~July~~ **October** 1, 2008, the secretary of  
13 agriculture shall succeed to whatever right, title or interest the depart-  
14 ment of health and environment has acquired in any real property in this  
15 state concerning the functions transferred by this act, and the secretary  
16 of agriculture shall hold the same for and in the name of the state of  
17 Kansas. On and after ~~July~~ **October** 1, 2008, whenever any statute, con-  
18 tract, deed or other document concerns the power or authority of the  
19 department of health and environment or the secretary of the department  
20 of health and environment concerning the functions transferred by this  
21 act to acquire, hold or dispose of real property or any interest therein,  
22 the secretary of agriculture shall succeed to such power or authority.

23 New Sec. 4. (a) Except as otherwise provided in this act, on ~~July~~  
24 **October** 1, 2008, officers and employees who, immediately prior to such  
25 date, were engaged in the performance of powers, duties or functions of  
26 the department of health and environment concerning food service and  
27 lodging which are transferred by this act, or who become a part of the  
28 Kansas department of agriculture, or the powers, duties and functions of  
29 which are transferred to the Kansas department of agriculture, and who,  
30 in the opinion of the secretary of agriculture, are necessary to perform  
31 the powers, duties and functions of the Kansas department of agriculture,  
32 shall be transferred to, and shall become officers and employees of the  
33 Kansas department of agriculture.

34 (b) Officers and employees of the department of health and environ-  
35 ment transferred by this act shall retain all retirement benefits and leave  
36 balances and rights which had accrued or vested prior to the date of  
37 transfer. The service of each such officer and employee so transferred  
38 shall be deemed to have been continuous. All transfers, layoffs or abolition  
39 of classified service positions under the Kansas civil service act shall be  
40 made in accordance with the civil service laws and any rules and regula-  
41 tions adopted thereunder. Nothing in this act shall affect the classified  
42 status of any transferred person employed by the department of health  
43 and environment prior to the date of transfer.

1 New Sec. 5. (a) On and after ~~July~~ **October** 1, 2008, the Kansas de-  
 2 partment of agriculture shall serve as custodian for all agency records, as  
 3 defined by the Kansas open records act, related to article 5 of chapter 36  
 4 of the Kansas Statutes Annotated, from which authority is transferred  
 5 from the department of health and environment to the secretary of ag-  
 6 riculture. The department of health and environment shall continue to  
 7 serve as custodian, as defined by the Kansas open records act, for all  
 8 agency records related to article 5 of chapter 36 of the Kansas Statutes  
 9 Annotated generated prior to ~~July~~ **October** 1, 2008. A request for records  
 10 generated prior to ~~July~~ **October** 1, 2008, pursuant to the Kansas open  
 11 records act, may be made to the Kansas department of agriculture and it  
 12 shall be forwarded to the department of health and environment upon  
 13 receipt.

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

and after

20 New Sec. 6. On ~~July~~ **October** 1, 2008, the balances of all funds or  
 21 accounts thereof appropriated or reappropriated for the department of  
 22 health and environment relating to the powers, duties and functions trans-  
 23 ferred by this act are hereby transferred within the state treasury to the  
 24 Kansas department of agriculture and shall be used only for the purpose  
 25 for which the appropriation was originally made.

Sec. 7. The provisions of sections 1-6, and amendments thereto, shall be effective on and after October 1, 2008.

8. 26 New Sec. ~~7~~ **7**. (a) On and after the effective date of this act, *and prior*  
 27 *to July 1, 2008*, the secretary of health and environment shall not make  
 28 any expenditures for the fiscal year ending June 30, 2008, from funds or  
 29 accounts appropriated or reappropriated for the department of health and  
 30 environment relating to the powers, duties and functions transferred by  
 31 this act on ~~July~~ **October** 1, 2008, without prior approval of the secretary  
 32 of agriculture.

33 (b) *On and after July 1, 2008, and prior to October 1, 2008, the*  
 34 *secretary of health and environment shall not make any expendi-*  
 35 *tures for the fiscal year ending June 30, 2009, from funds or ac-*  
 36 *counts appropriated or reappropriated for the department of health*  
 37 *and environment relating to the powers, duties and functions trans-*  
 38 *ferred by this act on October 1, 2008, without prior approval of the*  
 39 *secretary of agriculture.*

and after

9. 40 Sec. ~~8~~ **8**. On ~~July~~ **October** 1, 2008, K.S.A. 36-501 is hereby amended  
 41 to read as follows: 36-501. As used in the food service and lodging act,  
 42 the following words and phrases shall have the meanings respectively  
 43 ascribed to them herein:

1 (a) "Hotel" means every building or other structure which is kept,  
2 used, maintained, advertised or held out to the public as a place where  
3 sleeping accommodations are offered for pay primarily to transient guests  
4 and in which four or more rooms are used for the accommodation of such  
5 guests, regardless of whether such building or structure is designated as  
6 a cabin camp, tourist cabin, motel or other type of lodging unit.

7 (b) "Rooming house" means every building or other structure which  
8 is kept, used, maintained, advertised or held out to the public to be a  
9 place where sleeping accommodations are furnished for pay to transient  
10 or permanent guests and in which eight or more guests may be accom-  
11 modated, but which does not maintain common facilities for the serving  
12 or preparation of food for such guests.

13 (c) "Boarding house" means every building or other structure which  
14 is kept, maintained, advertised or held out to the public to be a place  
15 where sleeping accommodations are furnished for pay to transient or  
16 permanent guests and in which eight or more guests may be accommo-  
17 dated, and which maintains common facilities for the serving or prepa-  
18 ration of food for such guests. The term "boarding house" shall not in-  
19 clude facilities licensed under paragraph (5) of subsection (a) of K.S.A.  
20 75-3307b and amendments thereto.

21 (d) "Lodging establishment" means a hotel, rooming house or board-  
22 ing house.

23 (e) "Food service establishment" means any place in which food is  
24 served or is prepared for sale or service on the premises or elsewhere.  
25 Such term shall include, but not be limited to, fixed or mobile restaurant,  
26 coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room,  
27 sandwich shop, soda fountain, tavern, private club, roadside stand, in-  
28 dustrial-feeding establishment, catering kitchen, commissary and any  
29 other private, public or nonprofit organization or institution routinely  
30 serving food and any other eating or drinking establishment or operation  
31 where food is served or provided for the public with or without charge.

32 (f) "Food" means any raw, cooked or processed edible substance,  
33 beverage or ingredient used or intended for use or for sale, in whole or  
34 in part, for human consumption.

35 (g) "Food vending machine" means any self-service device which,  
36 upon insertion of a coin, coins or tokens, or by other similar means, dis-  
37 penses unit servings of food, either in bulk or in packages without the  
38 necessity of replenishing the device between each vending operation but  
39 shall not include any vending machine dispensing only bottled or canned  
40 soft drinks, or prepackaged and nonpotentially hazardous food, chewing  
41 gum, nuts or candies.

42 (h) "Food vending machine company" means any person who is in  
43 the business of operating and servicing food vending machines.

1 (i) "Food vending machine dealer" means any manufacturer, reman-  
2 ufacturer or distributor of food vending machines who sells food vending  
3 machines to food vending machine companies.

4 (j) "Person" means an individual, partnership, corporation or other  
5 association of persons.

6 (k) "Municipality" means any city or county of this state.

7 (l) "Secretary" means the secretary of ~~health and environment~~  
8 *agriculture*.

9 (m) "Department" means the *Kansas* department of ~~health and en-~~  
10 ~~vironment~~ *agriculture*.

and after

11 **10.** Sec. 9. On July ~~October~~ 1, 2008, K.S.A. 36-502 is hereby amended  
12 to read as follows: 36-502. (a) It shall be unlawful for any person to engage  
13 in the business of conducting a lodging establishment unless such person  
14 shall have in effect a valid license therefor issued by the secretary of ~~health~~  
15 ~~and environment~~ *agriculture*. Applications for such licenses shall be made  
16 on forms prescribed by the secretary, and each such application shall be  
17 accompanied by the appropriate license fee required by subsection (c) of  
18 this section. Prior to the issuance of any such license, the secretary shall  
19 inspect or cause to be inspected the lodging establishment designated in  
20 the application, to determine that it complies with the standards for lodg-  
21 ing establishments promulgated pursuant to this act. If such lodging es-  
22 tablishment is found to be in compliance, the secretary shall issue the  
23 license. If the application for license is denied, the secretary shall give  
24 written notice thereof to the applicant, stating also that the applicant is  
25 entitled to a hearing thereon if a written request therefor is filed with the  
26 secretary within 20 days of the date such notice is sent. Such hearing shall  
27 be held in accordance with the provisions of the Kansas administrative  
28 procedure act.

29 (b) Each license shall designate whether the licensed lodging unit is  
30 a hotel, rooming house or boarding house. Any person obtaining a license  
31 to engage in the business of conducting a rooming house or boarding  
32 house shall not have the right to use the name "hotel" in connection with  
33 such business. Every license issued hereunder shall be displayed con-  
34 spicuously in the lodging establishment for which it is issued, and no such  
35 license shall be transferable to any other person or location. Whenever  
36 any such license is lost, destroyed or mutilated, a duplicate license shall  
37 be issued to any otherwise qualified licensee upon application therefor  
38 and the payment of a fee in the amount of \$3.

39 (c) The fee for a license to conduct a lodging establishment in this  
40 state for all or any part of any calendar year shall be \$30, except that the  
41 fee for any lodging establishment containing 10 sleeping rooms shall be  
42 \$35 and for every additional 10 rooms therein, an additional fee of \$5  
43 shall be charged. All lodging establishments which are new, newly con-



1    structured or have a change of ownership shall pay an application fee which  
2    may be adjusted in accordance with the type of establishment or based  
3    on other criteria as determined by the secretary, but in no event shall any  
4    application fee exceed \$100 in addition to the license fee.

5    (d) Any person who, on the effective date of this act, has a valid  
6    license to operate a hotel or rooming house shall be a licensee under the  
7    provisions of this act, and any such license is hereby deemed to be a  
8    license to operate a lodging establishment issued under the provisions of  
9    this act.

10    ~~Sec. 10. On July ~~October~~ 1, 2008, K.S.A. 2007 Supp. 36-503 is~~  
11    ~~hereby amended to read as follows: 36-503. (a) It shall be unlawful for~~  
12    ~~any person to engage in the business of conducting a food service estab-~~  
13    ~~lishment unless such person shall have in effect a valid license therefor~~  
14    ~~issued by the secretary of health and environment *agriculture*, except that~~  
15    ~~any food service establishment providing only a device for the conven-~~  
16    ~~ience and operation by a customer for the purpose of heating prepackaged~~  
17    ~~food with no provision for consumption of food on the premises, or any~~  
18    ~~food service establishment licensed by the secretary pursuant to any other~~  
19    ~~law and maintained in connection with any premises licensed by the see-~~  
20    ~~retary pursuant to any other law shall not be required to obtain a license~~  
21    ~~under this section, nor shall any person engaged only in the serving of~~  
22    ~~food on railway dining cars or in the occasional sale or serving of food be~~  
23    ~~required to obtain a license hereunder. For the purpose of this section,~~  
24    ~~the sale or serving of food in the same location less than seven days in~~  
25    ~~any calendar year shall be construed as the occasional sale or serving of~~  
26    ~~food. Nothing in this act shall prevent the secretary of health and envi-~~  
27    ~~ronment from inspecting any food service establishment when a com-~~  
28    ~~plaint against such food service establishment is transmitted to the see-~~  
29    ~~retary of health and environment or any authorized agent thereof except~~  
30    ~~that no provision of this act shall be construed to authorize the secretary~~  
31    ~~of health and environment to inspect or cause to be inspected under the~~  
32    ~~provisions of this act any food service establishment licensed by the see-~~  
33    ~~retary of health and environment pursuant to any other law or maintained~~  
34    ~~in connection with any premises licensed by the secretary pursuant to any~~  
35    ~~other law which food service establishment is not required to obtain a~~  
36    ~~license under this section.~~

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, each of which shall be established in~~  
40    ~~an amount fixed by rules and regulations adopted by the secretary of~~  
41    ~~health and environment. Application fees may be adjusted in accordance~~  
42    ~~with the type of establishment or based on other criteria as determined~~  
43    ~~by the secretary, but in no event shall any application fee exceed \$200.~~

1 Such license fee shall not exceed \$200 and shall be fixed in an amount  
 2 which, together with the application fee, is sufficient to defray the cost  
 3 of administering the food service establishment inspection and licensure  
 4 activities of the secretary. Prior to the issuance of any such license, the  
 5 secretary shall inspect or cause to be inspected the food service estab-  
 6 lishment designated in the application, to determine that it complies with  
 7 the standards for food service establishments promulgated pursuant to  
 8 this act. If such food service establishment is found to be in compliance,  
 9 the secretary shall issue the license. If the application for license is denied,  
 10 the secretary shall give written notice thereof to the applicant, stating also  
 11 that the applicant is entitled to a hearing thereon if a written request  
 12 therefor is filed with the secretary within 20 days of the date such notice  
 13 is sent. Such hearing shall be held in accordance with the provisions of  
 14 the Kansas administrative procedure act.

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

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

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

13. 28 ~~Sec. 11.~~ On July ~~July~~ **October** 1, 2008, K.S.A. 36-504 is hereby amended  
 29 to read as follows: 36-504. (a) It shall be unlawful for any person to engage  
 30 in the business of conducting a food vending machine company unless  
 31 such person shall have in effect a valid license therefor issued by the  
 32 secretary of ~~health and environment~~ *agriculture*. Applications for such  
 33 licenses shall be on forms prescribed by the secretary, and each such  
 34 application shall specify the brand name and serial number of each food  
 35 vending machine to be operated and serviced by the applicant during the  
 36 period of licensure and shall be accompanied by an application fee in an  
 37 amount fixed by rules and regulations adopted by the secretary of ~~health~~  
 38 ~~and environment~~ not to exceed \$100 and by the appropriate license fee  
 39 required by subsection (b). Prior to the issuance of any such license, the  
 40 secretary shall inspect or cause to be inspected the applicant and each  
 41 food vending machine for which the applicant is to be licensed, to deter-  
 42 mine that they are in compliance with the applicable food service stan-  
 43 dards promulgated pursuant to this act. If the applicant and such ma-

Insert sections 11. and 12.  
 See Insert "A" attached

and after

1 chines are found to be in compliance with such standards, the secretary  
2 shall issue the license. If the application for license is denied, the secretary  
3 shall give written notice thereof to the applicant, stating also that the  
4 applicant is entitled to a hearing thereof if a written request therefor is  
5 filed with the secretary within ~~twenty (20)~~ 20 days of the date such notice  
6 is sent. Such hearing shall be held in accordance with the provisions of  
7 the Kansas administrative procedure act.

8 (b) The license fee for a food vending machine company shall be an  
9 amount equal to the product of the total number of food vending ma-  
10 chines to be operated and serviced by the food vending machine company  
11 during the calendar year, multiplied by \$3, except that no food vending  
12 machine shall be included in such total number which is operated and  
13 serviced by a state institution or a public school.

14 (c) Every license issued hereunder shall be displayed conspicuously  
15 on the premises of the food vending machine company for which it is  
16 issued, and no such license shall be transferable to any other person nor  
17 shall such license be valid for the operation and service of any food vend-  
18 ing machines other than those specified in the application for a license  
19 under subsection (a) or those additional food vending machines for which  
20 operation and servicing are authorized pursuant to subsection (f). When-  
21 ever any such license is lost, destroyed or mutilated, a duplicate license  
22 shall be issued to any otherwise qualified licensee upon application there-  
23 for and the payment of a fee in the amount of \$3.

24 (d) Each licensed food vending machine company shall keep a cur-  
25 rent record of the location of each food vending machine which such  
26 company is licensed to operate and service, and such record shall be  
27 available at any reasonable time to the secretary. Each licensed food vend-  
28 ing machine company shall cause the name of such company, the service  
29 telephone number and such additional information as the secretary may  
30 require, to be displayed conspicuously on each food vending machine that  
31 such company is licensed to operate and service.

32 (e) Each licensed food vending machine company shall notify the  
33 secretary within 10 days of the brand name and serial number of all food  
34 vending machines that become inoperative and are thereafter disposed  
35 of by such company or that are obtained by such company for use in  
36 addition to those which the food vending machine company is currently  
37 licensed to operate and service. Except for food vending machines ob-  
38 tained through isolated or occasional purchases thereof from a licensed  
39 food vending machine company, food vending machine companies shall  
40 be licensed to operate and service only food vending machines which are  
41 obtained from food vending machine dealers licensed pursuant to sub-  
42 section (g).

43 (f) Whenever food vending machines are obtained by a licensed food

1 vending machine company which are to be operated and serviced in ad-  
 2 dition to those currently authorized under the license, such company may  
 3 apply to the secretary to include such additional machines under the  
 4 license of such company. Such application shall be in the form prescribed  
 5 by the secretary and each such application shall specify the brand name  
 6 and serial number of each such additional machine and shall be accom-  
 7 panied by a fee of \$2 for each such additional machine. Prior to the  
 8 issuance of such authorization, the secretary shall inspect or cause to be  
 9 inspected each additional food vending machine to determine that it is in  
 10 compliance with the applicable food service standards promulgated pur-  
 11 suant to this act. Only such additional machines which are in compliance  
 12 with such standards shall be included under the license of such company.

13 (g) It shall be unlawful for any person to engage in business as a food  
 14 vending machine dealer and to sell food vending machines to food vend-  
 15 ing machine companies licensed in this state unless such person shall have  
 16 a valid license therefor issued by the secretary of health and environment.  
 17 Applications for such licenses shall be on forms prescribed by the sec-  
 18 retary and each such application shall be accompanied by the fee pre-  
 19 scribed in this subsection. A person without this state may make appli-  
 20 cation to the secretary for a license as a food vending machine dealer and  
 21 be granted such a license by the secretary and thereafter shall be subject  
 22 to all of the applicable provisions of this act and entitled to act as a licensed  
 23 food vending machine dealer in this state, subject however, to such person  
 24 filing proof with the application to the secretary of health and environ-  
 25 ment that such person has appointed the secretary of state of Kansas as  
 26 agent for receipt of service of process relating to any matter or issue  
 27 arising under this act. The fee for a food vending machine dealer's license  
 28 for all or any part of any calendar year shall be \$25.

29 (h) A licensed food vending machine dealer shall report to the sec-  
 30 retary ~~of health and environment~~ on or before the last day of each cal-  
 31 endar month all sales of food vending machines made during the preced-  
 32 ing month to Kansas vending machine companies, on forms prescribed  
 33 by such secretary, showing the name and address of the purchaser, brand  
 34 name and serial number of the machine and its sale price.

14. 35 Sec. ~~12~~ On July **October** 1, 2008, K.S.A. 36-506 is hereby amended and after  
 36 to read as follows: 36-506. (a) The secretary of ~~health and environment,~~  
 37 ~~after consultation with the food service and lodging advisory committee,~~  
 38 *agriculture* shall adopt rules and regulations establishing minimum stan-  
 39 dards for the safe and sanitary operation of lodging establishments. The  
 40 lodging standards promulgated by such rules and regulations shall relate  
 41 to:

- 42 (1) Water supply;
- 43 (2) heating;

1 (3) lighting;  
 2 (4) ventilation;  
 3 (5) toilet and other sanitary facilities;  
 4 (6) conditions increasing the hazards of fire, accidents or other  
 5 calamities;  
 6 (7) bedding and furnishings;  
 7 (8) sewage disposal; and  
 8 (9) such other minimum conditions which the secretary deems nec-  
 9 essary for the operation and maintenance of a lodging establishment in a  
 10 safe and sanitary manner.

11 (b) The standards promulgated pursuant to the rules and regulations  
 12 adopted hereunder shall be designed to ensure the health, comfort and  
 13 safety of the guests in lodging establishments. Such standards may be  
 14 based upon or incorporate by reference specific editions, or portions  
 15 thereof, of nationally recognized codes establishing lodging standards.  
 16 Such standards shall be applicable uniformly throughout the state, except  
 17 that the secretary may establish different standards for each of the various  
 18 classes of lodging establishments. Any provision of an ordinance or res-  
 19 olution of any municipality, prescribing safety and sanitation standards  
 20 for lodging establishments, which does not conform to the minimum stan-  
 21 dards promulgated by the secretary pursuant to this section, shall be null  
 22 and void; but nothing herein shall be construed as precluding any mu-  
 23 nicipality from establishing by ordinance or resolution standards which  
 24 are more stringent than those established by the secretary.

and after

15.

25 ~~Sec. 13~~ On ~~July~~ **October** 1, 2008, K.S.A. 36-507 is hereby amended  
 26 to read as follows: 36-507. (a) The secretary of ~~health and environment,~~  
 27 ~~after consultation with the food service and lodging advisory committee,~~  
 28 *agriculture* shall adopt rules and regulations establishing minimum stan-  
 29 dards for the safe and sanitary operation of food service establishments.  
 30 The food service standards promulgated by such rules and regulations  
 31 shall relate to:

32 (1) Preparation, sale, serving and storage of food;  
 33 (2) water supply;  
 34 (3) heating;  
 35 (4) lighting;  
 36 (5) ventilation;  
 37 (6) toilet and other sanitary facilities;  
 38 (7) conditions increasing the hazards of fire, accidents or other  
 39 calamities;  
 40 (8) sewage disposal; and  
 41 (9) such other minimum conditions which the secretary deems nec-  
 42 essary for the operation and maintenance of a food service establishment  
 43 in a safe and sanitary manner.

1 (b) The standards promulgated pursuant to the rules and regulations  
 2 adopted hereunder shall be designed to ensure the health, comfort and  
 3 safety of the guests in food service establishments. Such standards may  
 4 be based upon or incorporate by reference specific editions, or portions  
 5 thereof, of nationally recognized codes establishing food service stan-  
 6 dards. Such standards shall be applicable uniformly throughout the state,  
 7 and any provision of an ordinance or resolution of any municipality, pre-  
 8 scribing safety and sanitation standards for food service establishments,  
 9 which does not conform to the minimum standards promulgated by the  
 10 secretary pursuant to this section, shall be null and void; but nothing  
 11 herein shall be construed as precluding any municipality from establishing  
 12 by ordinance or resolution food service standards which are more strin-  
 13 gent than those established by the secretary: *Provided*, That no such or-  
 14 dinance or resolution shall be effective unless and until it has been ap-  
 15 proved by the secretary.

16 (c) In addition to the food service standards promulgated pursuant  
 17 to this section, the secretary shall adopt rules and regulations establishing  
 18 specific requirements for sanitary design, construction, location, servicing  
 19 and operation of food vending machines. Such standards may be based  
 20 upon, or may incorporate by reference, recommended vending sanitation  
 21 codes of the United States public health service which are in existence  
 22 on the effective date of this act.

23 **16.** Sec. ~~14~~, On ~~July~~ **October** 1, 2008, K.S.A. 36-510 is hereby amended  
 24 to read as follows: 36-510. (a) The secretary shall be responsible for the  
 25 enforcement of the lodging and food service standards promulgated pur-  
 26 suant to this act, but the secretary is hereby authorized and empowered  
 27 to contract with the governing body of any municipality for the enforce-  
 28 ment of all or any portion of such standards, whenever the secretary shall  
 29 determine that such municipality has adequate personnel to provide  
 30 proper enforcement. Any municipality entering into a contract with the  
 31 secretary to enforce such standards shall act as an agent of the secretary  
 32 in carrying out such duties, and no such municipality shall charge any  
 33 lodging establishment or food service establishments a fee for services  
 34 performed as an agent of the secretary under such contract which is in  
 35 addition to and separate from any fee such establishment is required to  
 36 pay to the secretary under the provisions of this act. Such municipality  
 37 shall enforce such standards within such municipalities of this state as are  
 38 designated in the contract. Any inspection of lodging or food service es-  
 39 tablishments by officers, employees or agents of any such municipality,  
 40 and any notice of noncompliance issued as a result of any such inspection,  
 41 shall have the same force and effect as if such had been done by the  
 42 secretary.

43 (b) The secretary and the state fire marshal are hereby authorized

and after

1 and empowered to enter into a contract authorizing the state fire marshal  
 2 and the fire marshal's deputies or lawful agents to enforce all or any  
 3 portion of the lodging or food service standards promulgated pursuant to  
 4 this act. Such contract shall designate specific lodging or food service  
 5 establishments, or types of lodging or food service establishments,  
 6 wherein such authority may be exercised. Any inspection of such estab-  
 7 lishments by the state fire marshal or the fire marshal's deputies or lawful  
 8 agents, to determine compliance with lodging or food service standards  
 9 established pursuant to this act, and any notice of noncompliance issued  
 10 as a result of any such inspection, shall have the same force and effect as  
 11 if such had been done by the secretary.

12 Such contract also may provide similar authority for the secretary of  
 13 ~~health and environment~~ *agriculture* and the secretary's officers, employ-  
 14 ees and agents with respect to enforcement of all or any portion of the  
 15 Kansas fire prevention code in specified lodging or food service estab-  
 16 lishments, or in types of lodging or food service establishments. Any in-  
 17 spection of such establishments by the secretary, or the secretary's offi-  
 18 cers, employees and agents, to determine compliance with the Kansas  
 19 fire prevention code, shall have the same force and effect as if performed  
 20 by the state fire marshal or the marshal's deputies and agents.

21 (c) Any food service establishment which is not required to be li-  
 22 censed under the provisions of this act, but which is licensed by the  
 23 secretary pursuant to any other law, or which is maintained in connection  
 24 with premises which are licensed by the secretary pursuant to any other  
 25 law, shall be subject to the food service standards established pursuant  
 26 to this act. In the discretion of the secretary, enforcement of such stan-  
 27 dards may be delegated to the personnel of the department who are  
 28 responsible for enforcing the provisions of the law under which such food  
 29 service establishment or premises are licensed. Failure of any such prem-  
 30 ises to comply with the food service standards promulgated pursuant to  
 31 this act shall be grounds for the suspension or revocation of the license  
 32 issued for the premises under such other law. The licensee shall not have  
 33 any license revoked or suspended without first being given an opportunity  
 34 for a hearing in accordance with the provisions of the Kansas administra-  
 35 tive procedure act.

and after

17.

36 Sec. ~~15~~. On July **October** 1, 2008, K.S.A. 2007 Supp. 36-515b is  
 37 hereby amended to read as follows: 36-515b. (a) Any person who violates  
 38 any provision of the food service and lodging act or any rule and regulation  
 39 adopted pursuant thereto, in addition to any other penalty provided by  
 40 law, may incur a civil penalty imposed under subsection (b) in an amount  
 41 not to exceed \$500 for each violation and, in the case of a continuing  
 42 violation, every day such violation continues shall be deemed a separate  
 43 violation.

1 (b) The ~~director of the division of health~~ *secretary of agriculture*,  
2 upon a finding that a person has violated any provision of the food service  
3 and lodging act or any rule and regulation adopted pursuant thereto, may  
4 impose a civil penalty within the limits provided in this section upon such  
5 person, which civil penalty shall be in an amount to constitute an actual  
6 and substantial economic deterrent to the violation for which the civil  
7 penalty is assessed.

8 (c) No civil penalty shall be imposed pursuant to this section except  
9 upon the written order of the ~~director of the division of health~~ *secretary*  
10 *of agriculture* to the person who committed the violation. Such order  
11 shall state the violation, the penalty to be imposed and the right of such  
12 person to appeal to the secretary. Any such person, within 20 days after  
13 notification, may make written request to the secretary for a hearing in  
14 accordance with the provisions of the Kansas administrative procedure  
15 act. The secretary shall affirm, reverse or modify the order of the director  
16 and shall specify the reasons therefor.

17 (d) Any person aggrieved by an order of the secretary made under  
18 this section may appeal such order to the district court in the manner  
19 provided by the act for judicial review and civil enforcement of agency  
20 actions.

21 (e) Any penalty recovered pursuant to the provisions of this section  
22 shall be remitted to the state treasurer in accordance with the provisions  
23 of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
24 remittance, the state treasurer shall deposit the entire amount in the state  
25 treasury to the credit of the state general fund.

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

18.

28 ~~Sec. 16.~~ On July ~~October~~ 1, 2008, K.S.A. 2007 Supp. 74-592 is  
29 hereby amended to read as follows: 74-592. The secretary of agriculture  
30 and the secretary of health and environment shall provide for a mecha-  
31 nism for ongoing communication and access between the division of food  
32 safety, as established by this act, and the bureau of epidemiology at the  
33 department of health and environment. ~~In exercising their respective au-~~  
34 ~~thorities under K.S.A. 36-501 et seq., and amendments thereto, the sec-~~  
35 ~~retary of agriculture and the secretary of health and environment shall~~  
36 ~~apply consistent standards, policies, protocols and procedures in the li-~~  
37 ~~censing, inspection and regulation of food service establishments, taking~~  
38 ~~into account the relative risk posed by such establishments to public~~  
39 ~~health and food safety.~~

and after

Sec. 19. K.S.A. 2007 Supp. 36-503 is hereby repealed.

20.

40 ~~Sec. 17.~~ On July ~~October~~ 1, 2008, K.S.A. 36-501, 36-502, 36-504,  
41 36-506, 36-507 and 36-510 and K.S.A. 2007 Supp. 36-503, 36-515b and  
42 74-592 are hereby repealed.

and after

as amended by section 10 of 2008 Senate Bill No. 584,



21 1 Sec. 18. This act shall take effect and be in force from and after its  
2 publication in the Kansas register.

41-1

## Insert "A"

Sec. 11. K.S.A. 2007 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 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. Hotels that serve food at no additional cost to the overnight guests shall not be considered to be operating a food service establishment. 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 an amount fixed by rules and regulations adopted by the secretary of health and environment. 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) 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.

(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).

Sec. 12. On and after October 1, 2008, K.S.A. 2007 Supp. 36-503, as amended by section 10 of 2008 Senate Bill No. 584, 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~~ 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 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. Hotels that serve food at no additional cost to the overnight guests shall not be considered to be operating a food service establishment. Nothing in this act shall prevent the secretary of ~~health and environment~~ agriculture from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of ~~health and environment~~ agriculture or any authorized agent thereof except that no provision of this act shall be construed to authorize the secretary of ~~health and environment~~ agriculture 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~~ 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) 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 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) 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.

(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).

Proposed by:  
Representative  
POLLER

**HOUSE BILL No. 2838**

By Committee on Appropriations

2-12

9 AN ACT concerning licensure for food service establishment; amending  
10 K.S.A. 2007 Supp. 36-503 and repealing the existing section.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 2007 Supp. 36-503 is hereby amended to read as  
14 follows: 36-503. (a) It shall be unlawful for any person to engage in the  
15 business of conducting a food service establishment unless such person  
16 shall have in effect a valid license therefor issued by the secretary of health  
17 and environment, except that any food service establishment providing  
18 only a device for the convenience and operation by a customer for the  
19 purpose of heating prepackaged food with no provision for consumption  
20 of food on the premises, or any food service establishment licensed by  
21 the secretary pursuant to any other law and maintained in connection  
22 with any premises licensed by the secretary pursuant to any other law  
23 shall not be required to obtain a license under this section, nor shall any  
24 person engaged only in the serving of food on railway dining cars or in  
25 the occasional sale or serving of food be required to obtain a license  
26 hereunder. For the purpose of this section, the sale or serving of food in  
27 the same location less than seven days in any calendar year shall be con-  
28 strued as the occasional sale or serving of food. ~~Hotels that serve food at  
29 no additional cost to the overnight guests shall not be considered to be  
30 operating a food service establishment.~~ Nothing in this act shall prevent  
31 the secretary of health and environment from inspecting any food service  
32 establishment when a complaint against such food service establishment  
33 is transmitted to the secretary of health and environment or any author-  
34 ized agent thereof except that no provision of this act shall be construed  
35 to authorize the secretary of health and environment to inspect or cause  
36 to be inspected under the provisions of this act any food service estab-  
37 lishment licensed by the secretary of health and environment pursuant  
38 to any other law or maintained in connection with any premises licensed  
39 by the secretary pursuant to any other law which food service establish-  
40 ment is not required to obtain a license under this section.

*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.*

41 (b) Applications for such licenses shall be made on forms prescribed  
42 by the secretary, and each such application shall be accompanied by an  
43 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 \$200.  
5 Such license fee shall not exceed \$200 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 Sec. 2. K.S.A. 2007 Supp. 36-503 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its  
34 publication in the Kansas register.