

Approved: 3-26-08  
Date

## MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:30 a.m. on February 13, 2008 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department  
Jason Thompson, Office of Revisor of Statutes  
Matt Todd, Office of Revisor of Statutes  
Judy Seitz, Committee Assistant

Conferees appearing before the Committee:

Erik Wisner, Policy & Program Analyst, Kansas Department of Agriculture  
Barbara Hinton, Legislative Post Auditor, Legislative Division of Post Audit  
Senator Derek Schmidt, 15<sup>th</sup> District  
Brad Harrelson, State Policy Director-Governmental Relations, Kansas Farm Bureau  
Constantine Cotsoradis, Deputy Secretary of Agriculture, Kansas Department of Agriculture  
Mary Glassburner, Director of the Bureau of Consumer Health, Kansas Department of Health and Environment

Others attending:

See attached list.

Senator Lee welcomed the Mitchell County Leadership group to the meeting.

Raney Gilliland, Kansas Legislative Research Department, gave an explanation of **SB 557 –Department of agriculture; certificates of free sale; food safety**. The 2004 legislature transferred certain food safety functions from the Kansas Department of Health and Environment (KDHE) to the Kansas Department of Agriculture (KDA). **SB 557** attempts to clarify the full authority of the KDA to promulgate rules and regulations. This bill also updates the powers, duties and functions and gives clear authority to the KDA and to the Secretary of Agriculture with respect to the transfer.

Erik Wisner, Policy and Program Analyst, Kansas Department of Agriculture, spoke in support of **SB 557** (Attachment 1). Mr. Wisner introduced KDA staff members: Steve Moris, Program Manager of the Retail Foods Inspection Program and Julie Ehler, Staff Attorney. He summarized the legislative changes requested in **SB 557**.

Information regarding a timeline on interactions with the Attorney General's office and a summary of KDA's proposed food safety statutory changes was distributed to each member of the Committee (Attachment 2).

Mr. Wisner and Ms. Ehler took questions from the Committee. Constantine Cotsoradis also answered questions.

The hearing on **SB 557** was held open.

The hearing on **SB 584 –Transfer of food service and lodging duties to department of agriculture** was opened.

Barb Hinton, Legislative Post Auditor, Legislative Division of Post Audit, provided background information on **SB 584** (Attachment 3). Ms. Hinton spoke of the findings of a 2003 audit on food safety. Legislative Division of Post Audit found a number of problems and concluded that combining food safety inspection programs could produce several benefits. A combined inspection program could eliminate duplicate driving time and overlapping inspection duties which would save the state an estimated \$90,000. She also said that conducting inspections under a risk-based approach could save nearly \$680,000 per year.

Ms. Hinton offered to stand for questions.

CONTINUATION SHEET

MINUTES OF THE Senate Agriculture Committee at 8:30 a.m. on February 13, 2008 in Room 423-S of the Capitol.

Senator Schmidt spoke in support of **SB 584**. He said in 2004 Governor Sebelius issued an executive reorganization order to transfer part of the food safety inspection function from the KDHE to the KDA. That reorganization was a result of an act started by the 2004 legislature. **SB 584** completes the efficiencies started and implemented by the previous legislature. Senator Schmidt noted that the reorganization mainly involved transfer of inspections of retail food stores, restaurants in retail food stores, food processing plants, vending machines and ice cream trucks. He also said the KDHE retained inspection of stand-alone restaurants and other stores that could be interpreted as more than one type of facility. Since the initial consolidation the data shows KDA to have been very efficient in performing inspections. Senator Schmidt mentioned that through implementation of a computer data entry, the KDA has maintained the number of inspectors while increasing the number of inspections. He also said that performance indicators show particularly in regard to proper holding temperatures, contaminated equipment, personal hygiene and chemicals that kDA has greatly improved compliance rates based on inspections from December 31, 2004 compared to inspections from December 31, 2007. Senator Schmidt said these efficiencies have been gained without additional fee increases, nor is the department suggesting any for the future. **SB 584** would complete suggestions brought forward by the Legislative Post Auditor presented in a post audit report of October, 2003.

Brad Harrelson, State Policy Director, Governmental Relations, Kansas Farm Bureau (KFB) spoke in support of **SB 584** (Attachment 4). The KFB believes efficiency would be gained in transferring these food safety duties and more importantly, it would enhance food safety for consumers.

Mr. Harrelson took questions.

Written testimony in opposition to **SB 584** was provided by Yvonne Gibbons, Director, Salina-Saline County Health Department (Attachment 5).

Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture, gave neutral testimony on **SB 584** (Attachment 6). The KDA is proud of the achievements in food safety, but this is a decision the legislature will have to make.

Mr. Cotsoradis stood for questions.

Mary Glassburner, Director of the bureau of Consumer Health, KDHE, gave neutral testimony on **SB 584** (Attachment 7). She said the reorganization of the food safety responsibilities with transferring some of those duties to the KDA resulted in many efficiencies. All inspection staff is credentialed as Certified food Safety Professionals (CFSP).

The hearing on **SB 584** will be continued.

The meeting was adjourned.

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-13-08

NAME	REPRESENTING
Julie Harrison	Leadership Mitchell County
Danielle Jeardoe	Leadership Mitchell County
Beth Holling	Leadership Mitchell County
Jane Pruitt	" " "
Crystal Cunningham	" " "
Dan Partridge	Lawrence - Douglas County Health Dept.
Jessi Peters	Leadership Mitchell County
Lori Thielen	Leadership Mitchell County
Paula Melick	" " "
Mike Beam	Ks. Livestock Assn
Austin Hayden	Hein Law Firm
Quinn Peters	Leadership Mitchell Co.
Joni Adams	Leadership Mitchell Co
Seri Henninger	"
Angela Kola	Ks. Dept of Health & Env.
Mary Glassburner	Ks Dept of Health & Environment
Steve Morris	Ks Dept of Agriculture
Julie Ehler	Ks Dept of Agriculture
CV Cotsoyadis	KD A

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-13-08

NAME	REPRESENTING
Erik Wisner	KDA
BRAD HEIDRICK	Leadership Mitchell Co.
SUSAN KWAY	KDFE
Tom PALACE	PMCA of KS
EDD DESCH	PMCA of KS
Barb Hinton	Post Audit
Laurel Murdie	" "

**Testimony on SB 557 to  
Senate Agriculture Committee**

**by Erik Wisner  
Policy and Program Analyst  
Kansas Department of Agriculture**

**February 13, 2008**

Good morning, Chairman Taddiken and members of the committee. I am Erik Wisner, policy and program analyst with the Kansas Department of Agriculture. I am here in support of SB 557, which will make several important changes to statutes related to our food safety programs.

In 2004, Governor Sebelius issued Executive Reorganization Order 32 that transferred certain food safety inspection functions from the Kansas Department of Health and Environment to the Kansas Department of Agriculture. Among these functions were inspections of retail food stores, food service in retail food stores, food processing plants, vending machines and ice cream trucks. KDHE retained inspection responsibility for stand-alone food service establishments (restaurants). A memorandum of understanding between our agencies addresses facilities that do not fit neatly into the existing licensing structure.

During our first year handling the new food safety duties, we noticed several areas needing improvement. What we gleaned that first year prompted us to conduct a more thorough review of our licensing structure so we could develop effective remedies that advance food safety while being equitable to industry.

First, we found facilities we regulate aren't equal; their operations and product distribution vary greatly. Therefore, we propose a new statute to establish that inspection frequency be based on risk. That will allow us to inspect low-risk operations, like the mom and pop store with a soda fountain and coffee pot, differently than the mega grocery store with the deli counter and a seafood shop that makes and serves sushi.

Second, we propose a new statute that gives us authority to issue a single, combined license for facilities under our jurisdiction. This would allow us to issue one license to a retail food store with food service, as opposed to requiring separate licenses for each business operation. Current law does not allow this.

While developing these remedies, we also learned there are ambiguities between the executive reorganization order, the bill the Legislature passed to complement the ERO, and the Kansas Food, Drug and Cosmetic Act and the Kansas Food Service and Lodging Act. Therefore, we request several technical amendments:

- Amend K.S.A. 74-596, 74-597 and 74-598 to clarify meaning of “act.”
- Amend K.S.A. 65-688 to clarify that the Kansas Department of Agriculture has authority to promulgate regulations that require a food establishment to be operated in a safe, sanitary manner.
- Add a new statute that will make both the retail food and food processing licenses renewable annually and provide for a \$10 late fee for licenses not renewed within 30 days of expiration.
- Add a new statute that continues all existing rules and regulations after the new statute is implemented.

We also propose to amend the statute to allow us to increase from \$3 to \$5 the fee for reissuing a license. This change is based on a cost analysis and our meetings with the Kansas Department of Health and Environment regarding changes they are considering.

We also added language to specify that we have authority to inspect and license food processing plants in food service establishments. This would eliminate the jurisdictional gray area between KDA and KDHE, and KDHE would continue to license and inspect food service establishments that process foods for sale only at that food service establishment.

The final statutory change we seek is to allow us to charge a fee up to \$25 for issuing certificates of free sale. Over the past two years we have seen a steady increase in the number of requests for certificates of free sale so businesses can sell their products abroad. It is important that we continue to issue the certificates in a timely manner to preserve our ability to export Kansas products, and the change would apply to all of our programs, not just food safety.

Because conditions involving food safety are dynamic, and because effects on consumers can be dramatic, we believe in maintaining a strong presence in the food safety arena. We strongly support these policy changes because they will protect consumers and, at the same time, increase the efficiency and effectiveness of our food safety regulatory activities.

Thank you for your support. I will stand for questions at the appropriate time.

## Summary of SB 557—KS Department of Agriculture Legislative Changes

### Background

- In 2004, Gov. Sebelius issued Executive Reorganization Order 32 that transferred certain food safety inspection functions from the Kansas Department of Health and Environment (KDHE) to the Kansas Department of Agriculture (KDA).
- Among these functions were inspections of retail food stores, food service establishments in retail food stores, food processing plants, vending machines and ice cream trucks. KDHE retained inspections of stand-alone food service establishments and other stores that could be interpreted as more than one type of facility that was decided by and agreed upon MOU between the two agencies after the transfer in 2004-2005.
- A comprehensive review of the food safety licensing structure resulted in several suggested changes to increase efficiency by decreasing multiple inspectors in one facility and changing the frequency of inspections to reflect the relative risk of foodborne illness.
- Attorney General Opinion 2007-24 determined that KDA did not have statutory authority to implement a unified license for retail food stores with food service.
- KDA met with Attorney General's office for guidance on statutory changes necessary to implement a unified license. This discussion brought to light other ambiguities between the ERO, the legislature's implementation of the ERO, and the existing statutes, specifically the Food, Drug and Cosmetic Act and the Food Service and Lodging Act.
- Over the past two years KDA has received a dramatic increase in the number of requests for issuing businesses certificates of free sale so they can sell their products abroad. The ability to issue these certificates in a timely manner is important to the viability of the export industry in Kansas.

### Proposed Amendments and New Statutes

- Amend three statutes to clarify meaning of the act (**pg 7, line 5; pg 8, line 2; pg 9, line 5**).
- Amend a statute to grant KDA authority to inspect food service establishments within a food processing facility and transfer the authority to make regulations (**pg 6, line 29**).
- Amend two statutes to increase the fee for reissuing license from \$3 to \$5. This fee coincides with proposed rate that KDHE will charge for stand-alone food service establishments (**pg 6, line 17; pg 2, line 16**).
- Amend a statute to clarify that KDA has authority to promulgate regulations that require food establishment be operated in a safe, sanitary manner (**pg 5, line 21**).
- New statute that will make both the retail food and food processing licenses annual; and provides for a \$10 fee if the license is not renewed within 30 days after expiration (**pg 1, line 23**).
- New statute that provides the authority to establish inspection frequency based on risk (**pg 1, line 35**).
- New statute that provides authority for a single combined license for facilities under KDA jurisdiction, specifically food service establishments in retail food stores. (**pg 1, line 39**).
- New statute that authorizes the Secretary to issue certificates of free sale and establish a fee not to exceed \$25. *This statute would apply to all programs* (**pg 1, line 14**).
- New statute that makes all existing rules and regs continue in effect after new statute changes implemented (**pg 2, line 9**).

**Raney Gilliland - Information concerning Food Safety statutory changes proposed by KDA**

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**From:** "Wisner, Erik" <ewisner@KDA.STATE.KS.US>  
**To:** <RaneyG@klrd.state.ks.us>  
**Date:** 2/1/2008 2:41 PM  
**Subject:** Information concerning Food Safety statutory changes proposed by KDA  
**CC:** "Cotsoradis, Constantine" <ccotsoradis@kda.state.ks.us>, "Ehler, Julie" <JEhler@KDA.STATE.KS.US>, "Starkey, H. David" <DStarkey@KDA.STATE.KS.US>, "Patterson, Ginger" <GPatterson@KDA.STATE.KS.US>, "Polansky, Adrian" <APOLANSKY@KDA.STATE.KS.US>, "Moris, Steve" <smoris@KDA.STATE.KS.US>  
**Attachments:** AG.7.3.07.pdf; AG.8.21.07.pdf; AG.9.4.07.pdf; AG.9.25.07.pdf; FoodSafety\_MEMO\_Raney\_020108.doc; KDA\_FS\_Statute\_chgs.doc

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Raney—

I have attached the information you requested regarding a timeline on interactions with the Attorney General's office and a summary of KDA's proposed food safety statutory changes that were introduced in committee this past Wednesday. In addition, I have included the draft language that was sent to Jason Thompson after the Senate Ag hearing on Wednesday.

Please let me know if you need any additional information.

Thanks,

Erik Wisner  
Kansas Dept. Of Agriculture

*Senate Agriculture Committee  
2-13-08  
Attachment 2*



July 3, 2007

Hon. Paul J. Morrison  
Office of the Attorney General  
120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

RE Request for Attorney General's Opinion regarding licensing of food service establishments in retail food stores by the Kansas Department of Agriculture

Dear Attorney General Morrison:

Please consider this a formal request for an Attorney General's Opinion regarding the licensing of food service establishments in retail food stores by the Kansas Department of Agriculture.

Current Kansas food safety law deals separately with "retail food stores" and with "food service establishments." The definition of "retail food store" is found at K.S.A. 65-688(a)(1). The statutory definition specifically says that the "term does not include ... food service establishments ... ." K.S.A. 74-581(c) authorizes the Kansas Department of Agriculture to license, inspect and regulate retail food stores. A "food service establishment" is defined in K.S.A. 36-501(e). K.S.A. 74-581(a) authorizes the department to license, inspect and regulate food service establishments located in retail food stores. Currently, a retail food store that owns and operates a food service establishment in the retail food store is required to obtain both a retail food store license and a food service establishment license. The department is considering a single license for this situation, a retail food store which owns and operates a food service establishment in, and as part of, the retail food store. The license fee would be graduated based on the size of the combined facility and risk involved.

K.S.A. 36-503 pertains to the licensing of food service establishments. (Note: This statute refers to secretary of health and environment but by K.S.A. 74-582 it includes the secretary of agriculture.) K.S.A. 36-503(a) says, in part:

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 (i.e. secretary of agriculture), ... except that ... any

Hon. Paul J. Morrison  
RE: Licensing of food service establishments in  
retail food stores by the KDA  
July 3, 2007  
Page 2

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...

In light of these various statutes, can the secretary provide by regulation for a single license for a retail food store and food service establishment where the retail food store owns and operates a food service establishment located in the same retail food store?

Thank you for your opinion and assistance in this matter.

Sincerely,



H. David Starkey  
Chief Legal Counsel



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

RECEIVED

AUG 22 2007

LEGAL SECTION  
KS DEPT. OF AGRICULTURE

PAUL J. MORRISON  
ATTORNEY GENERAL

August 21, 2007

120 SW 10TH AVE., 2ND FLOOR  
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H. David Starkey  
Chief Legal Counsel  
Kansas Department of Agriculture  
109 SW 9<sup>th</sup> Street  
Topeka, Kansas 66612

Dear Mr. Starkey:

Enclosed is Attorney General Opinion No. 2007-24, concluding that the Secretary of Agriculture does not have authority to establish by regulation a single license for a retail food store and a food service establishment under the circumstances described. It appears that remedial legislation is necessary in order to accomplish this goal. In researching background for this opinion, I identified a number of statutes that would need to be amended along with adding a more general grant of statutory regulation authority. I would be willing to work with Department of Agriculture staff to draft appropriate statutory amendments. Please let me know if I can be of assistance.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
PAUL J. MORRISON

Camille Nohe  
Assistant Attorney General

CN:jm

2-4



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

PAUL J. MORRISON  
ATTORNEY GENERAL

August 21, 2007

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ATTORNEY GENERAL OPINION NO. 2007- 24

H. David Starkey  
Chief Legal Counsel  
Kansas Department of Agriculture  
109 SW 9<sup>th</sup> Street  
Topeka, Kansas 66612

Re: Hotels, Lodginghouses and Restaurants--Food Service and Lodging  
Establishments--License for Food Service Establishment Required

Public Health--Food, Drugs and Cosmetics--Retail Food Stores; License  
Requirements, Fees, Inspections, Denial, Hearing, Display

Synopsis: The limited regulation authority granted to the Secretary of Agriculture is not sufficient to establish a single composite or component license for a retail food store and food service establishment when the retail food store owns and operates a food service establishment located in the same retail food store. Cited herein: K.S.A. 36-501; 36-507; K.S.A. 2006 Supp. 65-688; 65-689; 74-581.

\* \* \*

Dear Mr. Starkey:

As Chief Legal Counsel for the Kansas Department of Agriculture, you inquire whether the Secretary of the Department of Agriculture (Secretary) may provide by regulation for a single license for a retail food store and food service establishment when the retail food store owns and operates a food service establishment located in the same retail food store.

While it appears reasonable in the scenario you present for the Department to issue one license, as opposed to two, due to the limited regulation authority within the current statutory licensure scheme, two licenses are required.

2-5

The Food Service and Lodging Establishments Act<sup>1</sup> provides the statutory basis by which the Secretary licenses<sup>2</sup> food service establishments.<sup>3</sup> Within that Act, K.S.A. 36-507 grants the Secretary authority to adopt regulations, but only to establish "minimum standards for the safe and sanitary operation of food service establishments" that are "designed to ensure the health, comfort and safety of the guests in food service establishments." This is the extent of the Secretary's authority to adopt regulations, which clearly does not include authority to establish a single composite or component license for a retail food store and food service establishment when the retail food store owns and operates a food service establishment located in the same retail food store.

The Secretary also licenses<sup>4</sup> retail food stores. The Secretary's authority to adopt regulations under the retail food stores licensing statutes<sup>5</sup> is even more limited, authorizing the Secretary to adopt regulations "establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores" with a maximum fee not exceeding \$200.<sup>6</sup> Additionally, the Secretary has authority to "adopt rules and regulations necessary to carry out the provisions of *this section*."<sup>7</sup> "This section" refers to K.S.A. 2006 Supp. 65-688.<sup>8</sup> Besides the authority to establish appropriate inspection fees, this section grants the Secretary authority to adopt regulations that pertain to inspections themselves. Again, this limited regulation authority is not sufficient to establish a single composite or component license for a retail food store and food service establishment when the retail food store owns and operates a food service establishment located in the same retail food store.

We are constrained to reach this conclusion based on established case law as exemplified by *Woods v. Midwest Conveyor Co.*<sup>9</sup> In *Woods*, the Kansas Commission on Civil Rights had adopted a regulation that allowed it to award punitive damages. This regulation was declared void by the Court as exceeding the statutory authority of the agency:

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<sup>1</sup>K.S.A. 36-501 *et seq.*

<sup>2</sup>Prior to 2004, the Secretary of the Kansas Department of Health and Environment licensed food service establishments. In 2004 certain food safety programs, including licensing of food service establishments, were transferred to the Secretary of Agriculture. K.S.A. 2006 Supp. 74-581 *et seq.*

<sup>3</sup>"'Food service establishment' means any place in which food is served or is prepared for sale or service on the premises or elsewhere. . . ." K.S.A. 36-501(e).

<sup>4</sup>Prior to 2004, the Secretary of the Kansas Department of Health and Environment licensed retail food stores. As with the licensing of food service establishments, in 2004 certain food safety programs, including licensing of retail food stores were transferred to the Secretary of Agriculture. K.S.A. 2006 Supp. 74-581 *et seq.*

<sup>5</sup>K.S.A. 2006 Supp. 65-688 and 65-689.

<sup>6</sup>K.S.A. 2006 Supp. 65-688(b).

<sup>7</sup>K.S.A. 2006 Supp. 65-688(d).

<sup>8</sup>Originally L. 2001, Ch. 203, § 2.

<sup>9</sup>231 Kan. 763 (1982).

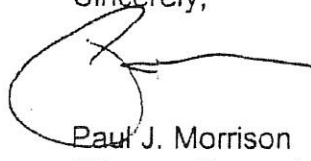
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H. David Starkey  
Page 3

"However, the Commission cannot pull itself up by its own bootstraps. The power to adopt rules and regulations is administrative in nature, not legislative, and to be valid must be within the authority conferred. An administrative rule or regulation which goes beyond that which the legislature has authorized, or which violates the statute, or which alters, extends, or limits the source of its legislative powers is void."<sup>10</sup>

Should the Secretary of Agriculture wish to proceed with single composite or component license, remedial legislation would be required.

Sincerely,



Paul J. Morrison  
Attorney General



Camille Nohe  
Assistant Attorney General

PJM:MF:CN:jm

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<sup>10</sup>*Id.* at 771.



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

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September 4, 2007

Leslie Garner  
Legal Secretary  
Department of Agriculture  
109 SW 9<sup>th</sup> Street  
Topeka, Kansas 66612

Re: K.A.R. 4-28-5, Fees; food processing plant

Dear Ms. Garner:

We have reviewed the above-referenced regulation for legality pursuant to K.S.A. 77-420(b) and cannot approve it - for one major and one minor reason.

The major reason is this: Section (d) sets an expiration date and section (e) sets renewal requirements. However, unfortunately, K.S.A. 65-689 authorizes only a license being issued for a food processing plant and says nothing about that license expiring or being renewed - unlike every other licensing program of which we are aware. Clearly, remedial legislation is in order. I realize that we approved this regulation with these sections included in October 2004. The only thing I can say is, we made a mistake at that time in approving this regulation.

The minor reason is this: We do not think that this regulation implements K.S.A. 2006 Supp. 74-582 (especially when coupled with K.S.A. 2006 Supp. 74-581). That statute explains how it is that the Secretary of Agriculture, and not the Secretary of KDHE, has jurisdiction over food processing plants. However, we do not understand K.A.R. 4-28-5 as implementing that statute.

We see two options for the Department at this time: Either leave the existing regulation as it is (rightly or wrongly, it has been approved and currently has the force and effect of law) until appropriate legislation is enacted, or resubmit it with sections (d) and (e) deleted, and K.S.A. 74-582 deleted from the history. I apologize for our mistake and regret that it has now caused a problem for your agency.

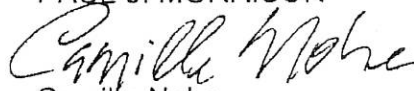
2-8

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If you wish to discuss either of these issues, please feel free to contact me.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
PAUL J. MORRISON



Camille Nohe  
Assistant Attorney General

CN:cn

Enclosure: Original document

cc: Representative Carl Holmes, Chair, Joint Committee on Rules and Regulations  
Senator Vicki Schmidt, Vice Chair, Joint Committee on Rules and Regulations  
Representative Janis Pauls, Ranking Minority Member, Joint committee on Rules  
and Regulations  
Raney Gilliland, Legislative Research





STATE OF KANSAS  
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September 25, 2007

Leslie Garner  
Legal Secretary  
Department of Agriculture  
109 SW 9<sup>th</sup> Street  
Topeka, Kansas 66612

Re: K.A.R. 4-28-8, 4-28-9, 4-28-11, 4-28-13, 4-28-15 and 4-28-16

Dear Ms. Garner:

We have reviewed the above-referenced regulations for legality, but for the reasons explained below, cannot approved them at this time.

(1) The primary reason is that the history of each of these regulations, besides appropriately indicating K.S.A. 36-507 (for food service establishments within the Secretary of Agriculture's jurisdiction) as the "authorized by and implementing" statute, also lists K.S.A. 2006 Supp. 65-673. That statute authorizes the Secretary to adopt regulations for the "efficient enforcement of *this act*." As of 2004, "this act" includes K.S.A. 2006 Supp. 65-673 and K.S.A. 2006 Supp. 65-688 regarding retail food stores. However, that statute only sets out some definitions (including "retail food store") and allows the Secretary to establish a graduated fee schedule to cover the cost of inspections of retail food stores and food processing plants. Neither K.S.A. 2006 Supp. 65-688, nor K.S.A. 65-689 (requirement that retail food stores be licensed and inspected<sup>1</sup>) authorize the Secretary to adopt the food code for retail food stores.

Thus for K.A.R. 4-28-8, 4-28-9, 4-28-11 and 4-28-13, the history should read: Authorized by and implementing K.S.A. 36-507. (See below for comments regarding K.A.R. 4-28-15 and 4-28-16.)

(2) K.A.R. 4-28-15: We think the history should read: Authorized by K.S.A. 36-507;

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<sup>1</sup>We note that K.S.A. 65-689 somewhat confusingly authorizes the Secretary to inspect retail food stores to determine compliance with regulations adopted pursuant to K.S.A. 2006 65-688(d), which only allows the secretary to adopt regulations necessary to carry out the provisions of that statute, i.e., to set graduated inspection fees. In order for a food code to be adopted in relation to retail food stores, remedial legislation is necessary.

2-10

Page 2

implementing K.S.A. 36-508 (which addresses remedial action, suspension or revocation of a food service establishment license).

Additionally, sections of Chapter 8, which this regulation adopts by reference (8.404.11 and 8-404.12, and to some extent 8.405.11 through 8.406.11), address ceasing operations. In contrast the applicable statute (K.S.A. 36-508) speak to suspension or revocation of the license, not closure or the ceasing of operations. Consequently, we do not see linkage between these sections of Chapter 8 and the statute. Finally, Chapter 8 should be scrutinized carefully to ensure that nothing being adopted by reference conflicts with the procedures established in K.S.A. 36-508 and 36-509.

(3) K.A.R. 4-28-16 - Although a mobile food establishment, a pushcart and a temporary food establishment appear to be "food service establishments" as that term is defined in K.S.A. 36-507, it does not appear that these types of food service establishments were transferred to the Secretary of Agriculture in K.S.A. 74-581. That statute transferred only certain regulatory authority from the Secretary of the Kansas Department of Health and Environment to the Secretary of Agriculture, *i.e.*, mobile retail ice cream vendors, food service establishments located in retail food stores, food vending machines, retail food stores and food processing plants. Consequently, we do not think the Secretary of Agriculture has authority to regulate the types of establishments listed in K.A.R. 4-28-16.

If you would like to discuss any of these issues, please feel free to contact me.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
PAUL J. MORRISON



Camille Nohe  
Assistant Attorney General

## MEMORANDUM

TO: Raney Gilliland, Legislative Research Department  
FROM: Erik Wisner, Kansas Department of Agriculture  
DATE: February 1, 2008

RE Food Safety statutory changes proposed by the Kansas Department of Agriculture

You requested background information regarding food safety statutory changes proposed by the Kansas Department of Agriculture. Specifically you requested a timeline of interactions with the Attorney General's office; a document that illustrates the Attorney General's concerns and why we need to make our statutory changes; and a summary of what the bill intends to accomplish.

1. Timeline of interactions with the Attorney General's office:

- 07-03-07 To simplify licensing for businesses, KDA wanted to implement a single license for food service establishments in retail food stores. An attorney general's opinion was requested to determine KDA's authority to issue a single license by regulation. See attachment.
- 08-21-07 The Attorney General issued an opinion that KDA had no authority to implement a unified license to include food service establishments and retail food stores. See attachment. A separate letter was sent by Assistant Attorney General Camille Nohe indicating the necessity to amend a number of statutes. See attachment.
- 08-30-07 KDA personnel met with Ms. Nohe. She recommended the following revisions:
- 1) KSA 74-598: delete "this act," replace with KSA 74-581 to clarify what "this act" referred to in the Executive Reorganization Order and Senate Bill 296.
  - 2) KSA 65-688: in the definition of "retail food store," delete "does not include a food service establishment."
  - 3) KSA 65-689: add annual renewal and inspection language to make the license expire annually (similar to KSA 36-505).
  - 4) Add a statute authorizing the secretary to adopt regulations to issue a single license for retail food stores and food service establishments.

These recommendations are in KDA's proposed legislation.

- 09-04-07 K.A.R. 4-28-5 is a regulation transferred to KDA's jurisdiction following the executive reorganization order. It established an annual license fee for food processing plants. KDA proposed an amendment to incorporate risk into the annual fee structure. Ms. Nohe did not approve the amendment. Although the Attorney General's office had approved the existing regulation, she determined there is no statutory authority for an annual license. See attachment. KDA withdrew the proposed amendments to the regulation.

KDA's proposed legislation includes statutory authority for an annual license.

09-25-07 KDHE proposed amendments to its regulations in order to adopt the 2005 Model Food Code. Likewise, KDA proposed new regulations K.A.R. 4-28-8 to 4-28-15 to adopt the same food code. KDA relied on the same statutory authority for the regulations as KDHE. Ms. Nohe did not approve KDA's proposed adoption of the model food code. She again recommended remedial legislation so KDA could adopt the 2005 Model Food Code. See attachment.

10-02-07 KDA personnel met with Ms. Nohe. After reviewing existing statutes pertaining to retail food stores, it was determined that KDA could proceed with adoption of the new food code by regulation. However, remedial legislation was still suggested to clarify the authority to adopt regulations under the food drug and cosmetic act.

KDA's proposed legislation includes the recommended remedial legislation.

10-25-07 KDA personnel met with Ms. Nohe to review KDA's proposed statutory amendments based on all of her recommendations. Ms. Nohe provided further guidance and was satisfied KDA's revisions would provide the necessary authority to promulgate regulations and would clarify existing statutory confusion and fill gaps created by the references to "this act" in the statutes transferring food safety jurisdiction to KDA.

**Amendments to K.S.A. 74-581(a) regarding food service in a food processing plant; K.S.A. 65-689; K.S.A. 36-504; the new section concerning the continuation of orders and directives of the secretary until superseded; and the new section concerning certificates of free sale are recommended as the result of department review and not interaction with the Attorney General's staff.**

## 2. Summary of KDA Food Safety Statutory Changes

### Background

- In 2004, Gov. Sebelius issued Executive Reorganization Order 32 that transferred certain food safety inspection functions from the Kansas Department of Health and Environment (KDHE) to the Kansas Department of Agriculture (KDA).
- Among these functions were inspections of retail food stores, food service establishments in retail food stores, food processing plants, vending machines and ice cream trucks. KDHE retained inspections of stand-alone food service establishments and other stores that could be interpreted as more than one type of facility that was decided by and agreed upon MOU between the two agencies after the transfer in 2004-2005.
- A comprehensive review of the food safety licensing structure has resulted in several suggested changes to increase the efficiency of inspections by decreasing multiple

inspectors in one facility and changing the frequency of inspections to reflect the relative risk of foodborne illness.

- Attorney General Opinion 2007-24 determined that KDA did not have statutory authority to implement a unified license for retail food stores and retail food stores that operate a food service establishment.
- On August 30, 2007, legal counsel met with Camille Nohe, Assistant Attorney General for guidance on statutory changes necessary to implement a unified license. This discussion brought to light other possible ambiguities between the Executive Reorganization Order, the legislature's implementation of the ERO, and the existing statutes, specifically the Kansas Food, Drug and Cosmetic Act and the Kansas Food Service and Lodging Act.
- Over the past two years KDA has received a dramatic increase in the number of requests for issuing businesses certificates of free sale so they can sell their products abroad. The ability to issue these certificates in a timely manner is important to the viability of the export industry in Kansas.

Proposed Amendments and New Statutes (Changes based on interaction w/ AG are in **BOLD**)

- **Amend three statutes to clarify meaning of the act.** (74-596; 74-597; 74-598)
- Amend a statute to grant KDA authority to inspect food service establishments within a food processing facility and transfer the authority to make regulations. (74-581)
- Amend two statutes to increase the fee for reissuing license from \$3 to \$5. This fee coincides with proposed rate that KDHE will charge for stand-alone food service establishments. (KSA 65-689; 36-504)
- **Amend a statute to clarify that KDA has authority to promulgate regulations that require food establishment be operated in a safe, sanitary manner.** (65-688)
- **New statute that will make both the retail food and food processing licenses annual; and provides for a \$10 fee if the license is not renewed within 30 days after expiration.**
- **New statute that provides the authority to establish inspection frequency based on risk.** (patterned after KSA 36-505)
- **New statute that provides authority for a single combined license for facilities under KDA jurisdiction, specifically food service establishments in retail food stores.**
- New statute that authorizes the Secretary to issue certificates of free sale and establish a fee not to exceed \$25. *This statute would apply to all programs.*
- **New statute that makes all existing rules and regs continue in effect after new statute changes implemented.**

## DRAFT—KDA Food Safety Statutory Changes

### PROPOSED STATUTORY AMENDMENTS.

**74-581.** Transfer of powers, duties and functions to department and secretary of agriculture. (a) Except as otherwise provided by this order, the following powers, duties, and functions of the department of health and environment, the secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment are hereby transferred to and imposed upon the department of agriculture and the secretary of agriculture:

(a)(1) All powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq. and amendments thereto, relating to the licensing, inspection, and regulation of mobile retail ice cream vendors, food service establishments in food processing plants or any combination thereof, and food service establishments located in retail food stores;

(b)(2) all powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq. and amendments thereto, relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. 36-501;

(c)(3) all powers, duties, and functions under K.S.A. 65-688 through K.S.A. 65-689, and amendments thereto, relating to the licensing, inspection, and regulation of retail food stores and food processing plants; and

(d)(4) all of those powers, duties, and functions under K.S.A. 65-619 through K.S.A. 65-687, and amendments thereto, that relate to the powers, duties, and functions transferred under paragraphs (a) (1), (b) (2), and (c) (3) above.

(b) The secretary of agriculture is hereby authorized to make such rules and regulations as are necessary to carry out the powers, duties and functions transferred to and imposed upon the department of agriculture and the secretary of agriculture pursuant to paragraph (a).

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 1; Oct. 1.

**74-596.** Same; violations; penalties; misbranded or adulterated food; curative action. (a) Any person or entity who shall violate any of the provisions ~~of this act~~ transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto or the rules and regulations adopted, may incur a civil penalty in an amount not more than \$1,000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(b) Any person or entity who shall violate any of the provisions ~~of this act~~ transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto or the rules and regulations adopted, ~~in an intentional and or~~ reckless manner shall be guilty of a class A, nonperson misdemeanor.

(c) Any food misbranded or adulterated or containing or suspected of containing any substance or substances injurious to public health or which is offered or exposed for sale in violation of any of the provisions ~~of this act~~ transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted shall be subject to seizure in place until such time that the final disposition of the food has been determined by sampling and analysis. Within 30 days of seizure in place, upon verification that the suspected food was misbranded, adulterated or contains a substance or substances that may be injurious to public health the secretary of agriculture shall issue an order establishing measures to prevent further contamination or the threat to public health. The opportunity for hearing pursuant to the Kansas administrative procedure act shall be provided upon issuance of the order. The secretary of agriculture may order the destruction of contaminated food if no alternative assures that further contamination of health hazards are averted, and may

be imposed in addition to any other penalty established by law. The district courts of the state of Kansas shall have jurisdiction to restrain violations of ~~this act~~ the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted by injunction.

History: L. 2004, ch. 147, § 12; July 1.

**74-597.** Same; contracts for county enforcement; inspections; access to premises; search warrants. The secretary of agriculture is hereby authorized and empowered to contract with the governing body of any county for the enforcement of all or any portion of the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted established under this act. Any county entering into a contract with the secretary to enforce such statutes, rules and regulations shall act as an agent of the secretary in carrying out such duties. Any inspection of any premises by officers, employees or agents of any such county, 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. For the purposes of carrying out the provisions of transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted this act, the secretary of agriculture or the secretary's agent or the county or district attorney or their agents may enter any premises at any reasonable time, in order:

(a) To have access for the purpose of inspecting any premises, products or equipment subject to ~~this act~~ the provisions of K.S.A. 2006 Supp. 74-581, and amendments thereto and the rules and regulations adopted; or

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

(c) to inspect or investigate complaints of violations of ~~this act~~ the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted; or

(d) to sample products.

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

The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the various counties or districts. In the event a county or district attorney refuses to act, the attorney general shall so act. The secretary of agriculture is charged with the duty of enforcing all other provisions of ~~this act~~ transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted.

History: L. 2004, ch. 147, § 13; July 1.

**74-598.** Same; licenses; denial, suspension or revocation; grounds; hearing; appeal. (a) The secretary of agriculture may deny, suspend, revoke, refuse to renew or modify the provisions of any license issued under ~~this act~~ the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted, 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 ~~this act~~ any provision or requirement transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto, or any rule and regulation promulgated thereunder;

(2) failed to comply with any provision or requirement of ~~this act~~ transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 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 of ~~this act~~ transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted; or

(4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions of ~~this act~~ transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2006 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 procedures act before any license shall be denied, suspended, modified, revoked or denied renewal; the secretary shall inform the applicant or licensee of the date and place of hearing upon such proposed revocation, denial or suspension.

(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.

History: L. 2004, ch. 147, § 14; July 1.

**65-688.** Retail food stores and food processing plants; inspection fees; rules and regulations. [See Revisor's Note] (a) As used in this section and K.S.A. 65-689, and amendments thereto:

(1) "Retail food store " means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines.

(2) "Food processing plant " means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. "Food processing plant" shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail.

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

(4) "Secretary" means the secretary of agriculture.

(b) In order to reimburse the state of Kansas for inspections by the secretary of agriculture of retail food stores and food processing plants, the secretary of agriculture shall adopt rules and regulations establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location. Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for retail food stores or food processing plants by amending the rules and regulations which fix the fees, as the case may be.

(c) All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund.

(d) The secretary of agriculture shall adopt rules and regulations necessary to carry out the provisions of this section including establishing minimum conditions necessary to operate and maintain a retail food store



or a food processing plant in a safe and sanitary manner, and establishing enforcement provisions necessary to effect complete compliance with such standards.

History: L. 2001, ch. 203, § 2; L. 2002, ch. 91, § 16; L. 2004, ch. 147, § 6; July 1.

**65-689.** Same; license requirements, fees, inspections, denial, hearing, display. (a) It shall be unlawful for any person to engage in the business of conducting a retail food store or food processing plant unless such person shall have in effect a valid license therefor issued by the secretary. For the purpose of this section, the sale of food in the same location less than seven days in any calendar year shall be construed as the occasional sale of food. Nothing in this act shall prevent the secretary from inspecting any retail food store or food processing plant when a complaint against such retail food store or food processing plant is transmitted to the secretary or any authorized agent thereof.

(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. Application fees may be adjusted in accordance with the type of retail food store or food processing plant or based on other criteria as determined by the secretary. Such license fee shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the retail food store and food processing plant 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 retail food store or food processing plant designated in the application, to determine that it complies with rules and regulations adopted pursuant to subsection (d) of section 3 [65-688], and amendments thereto. If the retail food store or food processing plant 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 retail food store or food processing plant 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~~.

History: L. 2001, ch. 203, § 3; July 1.

**36-504.** License for food vending machine companies required; application, form, application fee; inspection; denial, hearing; license fee; display; duplicate; records; information on machine; machines from licensed dealers only; inoperative machines; additional machines; license for vending machine dealers; application, form, fee; certain reports required. (a) It shall be unlawful for any person to engage in the business of conducting a food vending machine company unless such person shall have in effect a valid license therefor issued by the secretary of health and environment. Applications for such licenses shall be on forms prescribed by the secretary, and each such application shall specify the brand name and serial number of each food vending machine to be operated and serviced by the applicant during the period of licensure and shall be accompanied by an application fee in an amount fixed by rules and regulations adopted by the secretary of health and environment not to exceed \$100 and by the appropriate license fee required by subsection (b). Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the applicant and each food vending machine for which the applicant is to be licensed, to determine that they are in compliance with the applicable food service standards promulgated pursuant to this act. If the applicant and such machines are found to be in compliance with such standards, 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 thereof if a written request therefor is filed with the secretary within twenty (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.

(b) The license fee for a food vending machine company shall be an amount equal to the product of the total number of food vending machines to be operated and serviced by the food vending machine company

during the calendar year, multiplied by \$3, except that no food vending machine shall be included in such total number which is operated and serviced by a state institution or a public school.

(c) Every license issued hereunder shall be displayed conspicuously on the premises of the food vending machine company for which it is issued, and no such license shall be transferable to any other person nor shall such license be valid for the operation and service of any food vending machines other than those specified in the application for a license under subsection (a) or those additional food vending machines for which operation and servicing are authorized pursuant to subsection (f). 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) Each licensed food vending machine company shall keep a current record of the location of each food vending machine which such company is licensed to operate and service, and such record shall be available at any reasonable time to the secretary. Each licensed food vending machine company shall cause the name of such company, the service telephone number and such additional information as the secretary may require, to be displayed conspicuously on each food vending machine that such company is licensed to operate and service.

(e) Each licensed food vending machine company shall notify the secretary within 10 days of the brand name and serial number of all food vending machines that become inoperative and are thereafter disposed of by such company or that are obtained by such company for use in addition to those which the food vending machine company is currently licensed to operate and service. Except for food vending machines obtained through isolated or occasional purchases thereof from a licensed food vending machine company, food vending machine companies shall be licensed to operate and service only food vending machines which are obtained from food vending machine dealers licensed pursuant to subsection (g).

(f) Whenever food vending machines are obtained by a licensed food vending machine company which are to be operated and serviced in addition to those currently authorized under the license, such company may apply to the secretary to include such additional machines under the license of such company. Such application shall be in the form prescribed by the secretary and each such application shall specify the brand name and serial number of each such additional machine and shall be accompanied by a fee of \$2 for each such additional machine. Prior to the issuance of such authorization, the secretary shall inspect or cause to be inspected each additional food vending machine to determine that it is in compliance with the applicable food service standards promulgated pursuant to this act. Only such additional machines which are in compliance with such standards shall be included under the license of such company.

(g) It shall be unlawful for any person to engage in business as a food vending machine dealer and to sell food vending machines to food vending machine companies licensed in this state unless such person shall have a valid license therefor issued by the secretary of health and environment. Applications for such licenses shall be on forms prescribed by the secretary and each such application shall be accompanied by the fee prescribed in this subsection. A person without this state may make application to the secretary for a license as a food vending machine dealer and be granted such a license by the secretary and thereafter shall be subject to all of the applicable provisions of this act and entitled to act as a licensed food vending machine dealer in this state, subject however, to such person filing proof with the application to the secretary of health and environment that such person has appointed the secretary of state of Kansas as agent for receipt of service of process relating to any matter or issue arising under this act. The fee for a food vending machine dealer's license for all or any part of any calendar year shall be \$25.

(h) A licensed food vending machine dealer shall report to the secretary of health and environment on or before the last day of each calendar month all sales of food vending machines made during the preceding month to Kansas vending machine companies, on forms prescribed by such secretary, showing the name and address of the purchaser, brand name and serial number of the machine and its sale price.

History: L. 1975, ch. 314, § 8; L. 1976, ch. 205, § 2; L. 1978, ch. 154, § 3; L. 1984, ch. 313, § 57; July 1, 1985.

## PROPOSED NEW STATUTES.

**New Section.** Renewal of licenses; application, form, fee; inspection; failure to renew, restoration fee. (a) Except as otherwise provided in this section, any license issued under the provisions of K.S.A. 65-689, and amendments thereto, and [new section XX], and amendments thereto, shall expire on December 31 of the year in which it is issued, and may be renewed by making application to the secretary on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary and shall be accompanied by the license fee required for the issuance of an original license. If, for any reason, a licensee fails to renew a license prior to the expiration date thereof, the licensee may obtain a renewal of such license within 30 days following the expiration date thereof, by complying with the foregoing provisions of this section and paying a restoration fee in the amount of \$10.

(b) The secretary is authorized to establish rules and regulations to establish an inspection frequency taking into account the relative risk posed by such establishments to public health and food safety.

History:

**New Section.** Single, combined license, authority to adopt regulations. (a) The secretary of agriculture may adopt such rules and regulations as necessary to issue a single, combined license in order to efficiently carry out the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture in K.S.A. 2006 Supp. 74-581 and amendments thereto.

(b) The secretary is hereby authorized to require a licensee, or a person required to be licensed, to provide such information and documentation as necessary to determine the amount of the license fee.

(c) A food service establishment as defined in K.S.A. 36-501 that is licensed pursuant to this section shall not be required to obtain a separate license under K.S.A. 36-503, and amendments thereto.

History:

**New section.** Rules and regulations; orders and directives continued in effect until superseded. All rules and regulations, orders, and directives of the secretary of agriculture which relate to the functions transferred pursuant to K.S.A. 2006 Supp. 74-581 and amendments thereto and the rules and regulations adopted, which are in effect on the effective date of this act shall continue to be effective until revised, amended, revoked, or nullified pursuant to law.

History:

(GENERAL AUTHORIZATION STATUTE)

**New section.** Certificates of free sale, fees. (a) In addition to the specific powers and duties conferred upon the secretary of agriculture by the laws of this state, the secretary is hereby authorized to issue certificates of free sale upon request that are necessary or incidental to the execution of the laws relating to the department of agriculture.

(b) The secretary may establish a fee schedule to cover the cost of issuing such certificates not to exceed \$25 per certificate.

(c) The secretary is authorized to adopt such rules and regulations necessary to carry out the provisions of this section.

History:



LEGISLATURE OF KANSAS  
**LEGISLATIVE DIVISION OF POST AUDIT**

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**Testimony for the Senate Agriculture Committee on SB 584**

Barb Hinton, Legislative Post Auditor

February 13, 2008

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you to provide background information on SB 584. This bill addresses an issue raised in our 2003 performance audit, *Food Safety Programs in Kansas: Evaluating Possible Costs and Efficiencies of Combining Them*.

At the time we completed our audit, the primary responsibility for ensuring food safety was divided between the Department of Agriculture and the Department of Health and Environment:

- the Department of Agriculture was responsible for meat, poultry, dairy, and egg inspection programs
- KDHE was responsible for inspecting food service establishments, which includes restaurants, grocery stores, and food processing plants and warehouses

At that time, the two Departments spent about \$3.2 million for food safety inspection staff and \$700,000 on contracts with local health departments to inspect restaurants in 14 counties. We found a number of problems with Kansas' system at that time, including:

1. **Kansas' system had a number of inefficiencies...**for example inspectors from more than one agency or program inspected the same businesses (grocery stores saw multiple inspectors from the Department of Agriculture and KDHE). In addition, inspection territories overlapped, and some establishments were inspected more often than necessary.
2. **Coordination needed to be improved...** at that time, KDHE and the Department of Agriculture didn't routinely share records, and the overlapping authority for some commodities like meat in grocery stores could cause delays in response times. In addition, many of the inspectors had said coordination between the Departments needed to be improved.
3. **Similar food businesses were regulated inconsistently...**for example, some high risk establishments (grocery stores and food processing plants) weren't required to be inspected on a regular basis. In addition, at that time Kansas laws required similar businesses to be regulated differently. For example, State-inspected meat processing plants were inspected often—sometimes twice per week---while meat processing at grocery stores wasn't required to be inspected at all.

Senate Agriculture Committee  
2-13-08

Attachment 3

We also found that 5 states had significantly combined their food safety functions at the time—4 of which had placed primary responsibility for food safety inspection programs within their departments of agriculture.

We concluded that combining food safety inspection programs could produce several benefits:

- a single agency housing all programs could provide the incentive to regulate similar food businesses and processes more consistently
- communication would improve because information could be shared more easily.
- Kansas could realize some significant savings and improve food safety if food safety inspections were combined **and** inspections were switched to a risk-based approach:
  - A combined inspection program could eliminate duplicate driving time and overlapping inspection duties, which we estimated would save the State about \$90,000.
  - Conducting inspections under a risk-based approach (at frequencies that appear to better reflect their relative risk compared to each other) could generate nearly \$680,000 in savings per year. These savings actually could be realized whether or not the inspection programs were combined.

Our audit recommended that the Legislature transfer responsibility for all food safety-related inspections into a single agency. Even if those programs weren't combined, we recommended that a risk-based food safety inspection system should be implemented because of the potential for improved public safety and cost savings.

As you know, Executive Reorganization Order No 32 in January 2004 transferred the inspection of grocery stores and food processing plants and warehouses from KDHE to the Department of Agriculture. The responsibility for inspecting restaurants remained with KDHE.

Senate Bill 584, as written, would closely follow our recommendation that all food-safety-related inspections be combined into a single agency.



*PUBLIC POLICY STATEMENT*

SENATE COMMITTEE on AGRICULTURE

RE: SB 584 – an act concerning transferring certain food safety inspection powers to the Kansas Department of Agriculture.

**February 13, 2008  
Topeka, Kansas**

**Testimony provided by:  
Brad Harrelson  
State Policy Director  
KFB Governmental Relations**

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Chairman Taddiken, and members of the Senate Committee on Agriculture, thank you for the opportunity to appear before you today. I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization and represents more than 127,000 food-consuming members through the 105 county Farm Bureau Associations across Kansas. More than forty thousand of these members are agricultural producer families actively engaged in food production.

Five years ago, KFB rose in strong support of transferring food safety and inspection functions to the Kansas Department of Agriculture (KDA). We appreciate the efforts of the 2004 legislature in passing into law the first step in transferring those duties to KDA. It can be concluded by the data and results from that action provided by the Department, that this initial transfer has been successful. It has led to increased regulatory efficiency, consistency in enforcement, and enhanced consumer protection. Based on those conclusions we believe now is the time to finish the job.

The 2003 Legislative Post Audit report on combining food safety programs (see attachment) also recommends this step be taken. The report concludes that cost savings and greater efficiency could be gained by combining all food safety-related

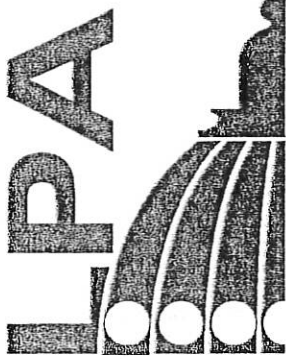
*Senate Agriculture Committee  
2-13-08  
Attachment 4*

inspections into a single agency. More importantly however, overall improvements in assuring food safety for Kansans could be achieved according to the report. That should be everyone's goal and is certainly ours.

Therefore, we strongly support SB 584. Farm Bureau members not only have a vested interest in a strong regulatory program to assure continued safe food and fiber, but also an obligation to support improved and strengthened food safety efforts from field to table. We appreciate the opportunity to provide input as you consider this proposal and urge the committee to act favorably on moving all food safety and inspection functions to the Kansas Department of Agriculture. Thank you.

*Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*

4-2



# PERFORMANCE AUDIT REPORT

**Food Safety Programs in Kansas: Evaluating  
Possible Costs and Efficiencies of Combining Them**

## ***Executive Summary*** *with Conclusions and Recommendations*

A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
October 2003



# ***Legislative Post Audit Committee***

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## ***Legislative Division of Post Audit***

**THE LEGISLATIVE POST** Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$9 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

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October 22, 2003

To: Members of the Kansas Legislature

This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, from our completed performance audit, *Food Safety Programs in Kansas: Evaluating Possible Costs and Efficiencies of Combining Them*.

This report includes several recommendations for transferring all food safety functions into a single agency so that resources can be used more efficiently. In addition, regardless of whether inspection programs are combined into one agency, the report recommends that KDHE and the Department of Agriculture convene a task force to develop risk-based inspection frequencies (each food or food process would be inspected at frequencies that reflect their relative food safety health risk in relation to other foods and processes) and to develop and propose the regulatory and statutory changes needed to accomplish those frequencies. We would be happy to discuss these recommendations or any other items in the report with you at your convenience.

If you would like a copy of the full audit report, please call our office and we will send you one right away.

Barbara J. Hinton  
Legislative Post Auditor

## EXECUTIVE SUMMARY

LEGISLATIVE DIVISION OF POST AUDIT

### Overview of Kansas' Food Safety Inspection Programs

Kansas has a number of programs that inspect facilities that produce or sell food for human consumption. These programs include the Meat and Poultry Inspection Program, the Dairy Inspection Program, and the Egg Inspection Program, all which are housed within the Kansas Department of Agriculture. The fourth program, the Food Protection Program is housed within the Kansas Department of Health and Environment (KDHE). ..... page 3

The Department of Agriculture and the Animal Health Department have other inspection programs that inspect facilities producing or selling food items, but these programs don't have food safety as their main objective. These programs include the Weights and Measures Program, Plant Protection and Weed Control Program, Grain Warehouse Inspection Program, Kansas Grain Inspection Service, and Animal Disease Control.

### Question 1: Could Food Safety Inspection Programs In Kansas Be Combined To Streamline Operations, Save Money, and Improve Food Safety?

Several factors suggest that Kansas' current food safety system needs to be improved. Kansas' system is modeled after the federal system, which has been criticized as being inconsistent in oversight and inefficient in its use of resources. Kansas has some of these same problems. .... page 7

Kansas' food safety system has a number of inefficiencies that can increase costs. These inefficiencies include:

Inspectors from more than one agency or program inspect the same businesses. Grocery stores are the most likely to see multiple inspectors from the Department of Agriculture and KDHE. This fragmented approach is more costly to the State than if all or most areas of a business' operation could be inspected during one visit.

Inspection territories currently overlap even when inspectors aren't going to the same business. Inspectors may not be inspecting the same establishments, but they do go to the same cities to perform inspections. If inspection functions were better coordinated, staff could be assigned to inspect all (or at least more) facilities within a single territory, reducing the need for multiple inspectors to travel to the same location.

*Some types of establishments are inspected more often than seems necessary, causing inefficient use of inspection staff. For example, federal law doesn't specify how often custom meat processing plants need to be inspected, but Department of Agriculture officials said it's likely they'd need to conduct 24 inspections per year in order to meet federal performance standards. During calendar year 2002, inspectors conducted an average of 39 processing inspections at each of these plants, about 60% more than may have been needed.*

*Coordination can be improved in situations where regulatory authority overlaps. Here's what we found:*

..... page 9

*The Departments of Health and Environment and Agriculture don't routinely share records that could assist in regulation. For example, we reviewed inspection records in 5 rural counties and found 7 businesses that it seemed likely KDHE should be inspecting but wasn't.*

*Overlapping regulatory authority can delay response times. In two recent cases that required KDHE and the Department of Agriculture to coordinate (wheat tainted with a herbicide and uninspected meat being sold in a grocery store), it's likely that responses would have been more timely if inspection programs were housed in one agency or if there was a plan in place to coordinate their roles. In both cases, the federal agencies involved contributed to the delays.*

*Many inspectors say coordination should be improved. A survey of KDHE and Department of Agriculture food safety inspection staff showed that 57% of those that had been involved in an event that required coordination thought the coordination was only somewhat or not well coordinated, while 43% said events were well coordinated or very well coordinated.*

*Kansas food safety inspection requirements are sometimes inconsistent. For example:*

..... page 10

*Some high risk establishments aren't required to be inspected regularly. Kansas law currently doesn't require retail food stores or food processing plants to be inspected on a regular basis. Some of these groceries have delis, seafood counters, bakeries, and also process meat.*

*Kansas laws require similar businesses to be regulated differently. We found significant differences in how meat processing is regulated. For example, State-inspected meat plants must be inspected often (inspections occurred more than twice per week in 2003), while there is no inspection requirement for meat processing at grocery stores. Similarly, milk processing plants regulated by the Department of Agriculture were inspected an average of 9 times each in 2003, while juice or cider processing plants regulated by KDHE aren't required to be inspected.*

A 2002 change to the licensing laws has resulted in portions of several large food manufacturers being uninspected. To eliminate duplicate licensing of some facilities by KDHE and the Department of Agriculture, the 2002 Legislature re-defined the establishments KDHE is responsible for regulating. In response, KDHE removed 75 processing plants from its licensing and inspection lists. In all, 31 of those plants were primarily meat processing plants whose operation is thoroughly inspected by the Department of Agriculture or the USDA. However, 31 of the remaining 44 plants are considered by KDHE to inherently pose a high food safety risk.

**Combining food safety inspection programs could produce several benefits.** Several other states have taken a more coordinated approach to food safety by placing responsibilities within a single department, typically agriculture. A single agency housing all programs could provide the incentive to regulate similar food businesses and processes more consistently. In addition, communication should improve because the information could be shared more easily.

..... page 13

Kansas can realize some significant savings and improve food safety if food safety inspections are combined and inspections are changed to a risk-based approach. Inspections can be grouped in any number of ways, but reorganizing functions into the following groups seemed the most reasonable to us:

- dairy inspection, focusing on dairy establishments plus other beverage processing facilities.
- food processing inspection, including meat slaughter and processing plants
- retail sales inspections, including restaurants and grocery stores

Using these groupings, we calculated how many resources would be needed to operate a combined food safety inspection program under three inspection frequencies:

..... page 15

1. Continuing to do inspections at the current rate could save the State about \$90,000 per year. The primary savings under this scenario comes from eliminating duplicate drive time caused by the current overlap in territories for KDHE inspectors and contracted local health departments.
2. Conducting inspections only as often as required by law could generate about \$1.2 million in annual savings. This could, however, deteriorate the quality of the State's food safety system, because certain facilities that should be inspected aren't required by law to be inspected.
3. Conducting inspections under a risk-based approach would generate nearly \$680,000 in annual savings. Under this scenario, we assumed that all types of establishments would continue to be inspected, but at

frequencies that appear to better reflect their relative risk (compared to each other) to the public's health and safety.

Most of the potential savings we identified from regrouping food safety inspection activities could be achieved whether or not those activities were combined into a single agency. However, placing the programs in one agency could be critical to achieving a risk-based inspection approach, and could lead to better coordination, improved communication, and more consistent regulations. Regardless of how the State's food safety inspection programs are organized, KDHE needs to improve its ability to extract data from its licensing and enforcement databases.

**Kansas needs to continue taking steps to become prepared for intentional threats to food safety.** ..... page 19  
*Compared to preparedness for other disasters, Kansas is least prepared for bioterrorism threats. The State is developing a bioterrorism preparedness and response plan, but food safety issues that impact the public will be only a small part of the plan.*

**Conclusion.** ..... page 20  
*Although the State hasn't experienced a high number of food-borne illness outbreaks, Kansas' current food safety system has a number of problems caused by having 2 separate agencies share food safety inspection responsibilities: inefficiencies increase costs, some establishments are inspected more frequently than necessary, some high-risk establishments aren't inspected frequently enough, and communication isn't complete and routine. Housing all inspection programs in a single agency would make it more likely that a comprehensive food safety regulatory system will be planned and implemented. In our opinion, the foundation for such a system should include inspection frequencies that are based on the relative food safety health risk posed by the food product or processes, and the system could – like Wyoming's – be based on similarities in food safety laws and regulations rather than focusing on the differences. Once these risks and the appropriate inspection frequencies are identified, Kansas will need to take the steps necessary to restructure current inspection frequencies and staff inspection duties. This action has the potential to save money for the State, but it also has great potential for improving overall food safety in Kansas.*

**Recommendations.** ..... page 20  
*The Legislature should transfer all food safety functions into a single agency so that resources can be used more efficiently. If all food programs are transferred to the Department of Agriculture, a plan for communicating with KDHE'S Bureau of Epidemiology and Disease Prevention should be put into place. Regardless of whether inspection programs are combined into one agency, KDHE and the Department of Agriculture should convene a task force to develop risk-based inspection frequencies, and to develop and propose the regulatory and statutory changes needed to accomplish those frequencies. If the State's food-safety inspection programs aren't combined into one agency, plans for communication and coordination*

should be developed and implemented, inspection duties should be realigned to form three inspection groups either through Memorandum of Understanding or legislation, overlap that currently exists in some facilities should be eliminated, and the two agencies should work together to ensure the food processing plants dropped by KDHE due to a change in licensing fees are properly inspected. Finally, KDHE should find a more efficient system for extracting data from its Food Protection databases.

**Agency Response.** The agencies submitted a joint response that generally agreed with the recommendations directed to them.

<b>APPENDIX A:</b> Scope Statement	.....	page 23
<b>APPENDIX B:</b> Inspection Frequencies for Entities Regulated by Kansas' Food Safety System	.....	page 25
<b>APPENDIX C:</b> Agency Response	.....	page 26

This audit was conducted by Laurel Murdie, Jill Shelley, and Amy Thompson. Cindy Lash was the audit manager. If you need any additional information about the audit's findings, please contact Ms. Murdie at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at [LPA@lpa.state.ks.us](mailto:LPA@lpa.state.ks.us).

4-10

**Mark Taddiken - Senate Bill 584**

**From:** "Yvonne Gibbons" <yvonne.gibbons@salhelp.org>  
**To:** <taddiken@senate.state.ks.us>  
**Date:** 2/12/2008 9:15 AM  
**Subject:** Senate Bill 584  
**CC:** <jfunk@salhelp.org>, "Melissa" <melissa.heinrich@salhelp.org>

February 12, 2008

Senator Mark Taddiken  
 Chairman of Senate Agriculture Committee

Dear Senator,

The Salina-Saline County Health Department is concerned about Senate Bill 584, which would transfer KDHE Lodging and Food Inspections over to the Department of Agriculture. We oppose this move for two major reasons.

- 1) Epidemiology is a core function of public health. Presently, this function is handled by KDHE and subsequently by local health departments. Two specific objectives of epidemiology include identifying the etiology or cause of a disease and it's risk factors, and determine the extent found in the community. The aim is to intervene to reduce morbidity and mortality from the disease. Food safety certainly falls into this category.  
 With epidemiology and food inspections being housed in the same state and local departments, the process - reporting, investigating, educating and regulating, goes hand in hand. With the food inspections being housed in another state agency, the process could be complicated, cumbersome and time intensive.
- 2) The Department of Agriculture promotes agriculture and farming. It's focus is not inspections or epidemiology.

Please oppose the transfer of Food and Lodging to the Department of Agriculture.

Yvonne Gibbons, RN, BSN, MPH  
 Director

Jo Funk, RS  
 Environmental Health Coordinator

Melissa Heinrich  
 Sanitarian

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Senate Agriculture Committee  
 2-13-08  
 Attachment 5



**Testimony on SB 584 to  
Senate Agriculture Committee**

**by Constantine V. Cotsoradis  
Deputy Secretary  
Kansas Department of Agriculture**

**February 13, 2008**

Good morning, Mr. Chairman and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture.

SB 584 would transfer on July 1, 2008, all of the powers, duties and functions of the department of health and environment concerning food service and lodging to the secretary of agriculture.

In 2004, by executive order of the governor and supplemental legislation, certain food safety inspection functions transferred to the Kansas Department of Agriculture from the Kansas Department of Health and Environment. Among the transferred functions were inspections of retail food stores, restaurants in food stores, food processing plants, vending machines and ice cream trucks. The Kansas Department of Health and Environment retained inspection responsibility for stand-alone restaurants.

We are very proud of the professionalism and expertise demonstrated by our food safety staff in inspecting processing plants, beverage plants, warehouses, retail stores, convenience stores, grocery stores, vending machines and restaurants in retail stores. Staff work extremely hard to protect consumers and to educate industry about food safety compliance.

As Secretary of Agriculture Adrian Polansky detailed in his state of Kansas agriculture report at the beginning of the session, we can report many efficiency gains with improved food safety compliance. However, as proud as we are of these achievements, we neither support nor oppose this legislation. This is a decision the legislature will have to make.

I will answer questions at the appropriate time.

*Senate Agriculture Committee  
2-13-08*



Kathleen Sebelius, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

Division of Health

**Testimony on Senate Bill No. 584  
to  
The Senate Committee on Agriculture**

**by  
Mary Glassburner  
Director of the Bureau of Consumer Health**

**February 13, 2008**

Chairman Taddiken and members of the Committee, my name is Mary Glassburner, and I am the director of the Bureau of Consumer Health at the Kansas Department of Health and Environment (KDHE). Thank you for the opportunity to appear before you today regarding issues related to food safety and public health. Senate Bill No. 584 proposes to transfer the Food Safety and Consumer Protection program and the Lodging Safety and Sanitation program from KDHE to the Department of Agriculture.

The KDHE Food Safety and Consumer Protection program is administered to prevent foodborne illnesses and injury. Kansas has a long history of public health and food safety. During the early part of the last century, the first regulation for oysters was enacted in Kansas, a unique accomplishment for this landlocked prairie state. This activity is an example of the public health focus of Dr. Samuel J. Crumbine, a national pioneer in public health. The responsibility of food safety in restaurants and sanitation inspection in hotels was initiated in 1913 by Dr. Crumbine, Secretary of Health, and administered under the Hotel and Restaurant Commission until 1923. From 1923-1963, food safety and hotel sanitation was the responsibility of the Hotel and Restaurant Board. In 1963, the recognition that food safety and hotel sanitation was a public health and safety responsibility resulted in the oversight of the Kansas Board of Health under the Secretary of Health and was passed to its successor—the Department of Health and Environment in 1974.

Present day food safety includes biological and epidemiological implications that were not contemplated in the era of Dr. Crumbine. However, the context of public health and the eradication of disease persist in the primary objectives and policies developed under the authority of KDHE and are reflected in these two important public health programs. The inspection and regulation of food service establishments (restaurants) continue to target the

*Senate Agriculture Committee  
2-13-08  
Attachment 7*

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prevention of foodborne illnesses associated with these establishments, which are the greatest direct risk of illness. This process has three key elements -- identification of the risk (inspection and investigation), intervention (education and correction), and response (progressive compliance). In the business of food safety, the highest risk posed to the everyday health and safety of the public is where there are the most multiple processes in preparing, storing and serving food to the immediate consumer.

Just a little over 3 years ago, the Governor enacted a reorganization of food safety responsibilities in the state. The responsibility for food safety in food processing facilities, food vending machines, mobile ice cream vendors, retail grocery stores and the food service located inside these grocery stores was transferred from KDHE to the Department of Agriculture (KDA). This shift complemented the existing authority of KDA, which already had a regulatory presence in grocery stores in its dairy, meat and egg compliance checks. The reorganization also maintained a single point of regulatory contact in these businesses. This reorganization allowed KDHE to focus resources and its public health expertise on the businesses that historically pose the greatest direct risk of illness—food service establishments.

The KDHE now regulates 10,300 food service establishments. They include restaurants, school kitchens, senior citizen kitchens and meal sites, mobile food kitchens, and temporary food service, with these establishments receiving an annual inspection in accordance with statutory expectations. In addition, all schools receive 2 inspections during the school year. During FY07, the program conducted approximately 18,000 inspections in 10,300 establishments.

The goal of the Department has been to enhance the program's inspection and enforcement processes while maintaining high degree of adherence to federally established standards. The program incorporated the formal quality assurance process establishing standards, by which all inspectors are trained and evaluated, and inspection processes and program elements are analyzed, and the Department has received federal recognition for meeting nationally recognized standards in food safety. All inspection staff is held to a high level of professionalism and are credentialed as Certified Food Safety Professionals (CFSP). The lodging program staff is also required to be Registered Environment Sanitarians. Both professional credentials are awarded after rigorous testing through the National Environmental Health Association. In addition, staff must pass specific and periodic testing by the Department's FDA Certified Evaluation Officer.

KDHE has a close relationship with each and every local health department. This is critical in the investigation of foodborne illness. Local health departments can immediately investigate reported illnesses that may become health threats in their community. In addition, the Department contracts with 7 local health agencies to conduct food safety inspections in order to eliminate a duplication of services. Some of these working relationships with local health agencies have existed for over 25 years and have proven to be very successful. Working collaboratively with the food service establishments, KDHE inspectors, epidemiologists and local health officials are able to efficiently collect information that identifies the most likely cause of the illness, initiate steps to limit its impact, and provide public health education as a preventative measure.

Education is a key component in correcting risky practices; therefore the program has linked its quality assurance with education. This includes both formal and informal presentations

and food safety material distribution. An important communication tool is seen in the food safety Web site located at [www.KSFoodSafety.org](http://www.KSFoodSafety.org). This Web site was developed to provide Kansans with a variety of food safety information, guidance, and education. The site also provides the public with access to food establishment inspection results. The site provides a convenient link to other health related sites. An important site featured the "Focus on Food Safety" educational tool developed by the program. This Web site is one of the Department's most often visited public information site with over 750,000 pages visited last year.

As mentioned earlier, the KDHE food safety program turned its focus to high-risk establishments during the past three years. As food safety moved forward in Kansas with the reorganization, it also became clear that not all establishments fit into a simplified reorganization structure. KDHE and KDA responded responsibly with food safety being the driving force by entering into working agreements to improve the process as efficiently as possible.

Since this transfer of responsibilities also includes the Lodging Safety and Sanitation Program, the spotlight must shift briefly from food safety. The Lodging Safety and Sanitation Program is a revitalization of an environmental safety and regulatory program whose goal is to ensure safe and sanitary lodging for visitors to Kansas. During the past 2 years, the KDHE has identified an upsurge in unique sanitation and safety issues. A Lodging Advisory Committee was established to make recommendation for updating the Kansas Lodging Regulations. In addition, the Department developed educational materials that focus on bed bugs and specific life safety issues, including swimming pool safety and sanitation, smoke detectors and carbon monoxide detectors. As mentioned, this regulatory program is an environmental health program and inspections focus on items such as general sanitation, swimming pool/hot tub water quality and safety, life safety issues, moisture and mold, etc. The program concentrates on the identification of problems, industry education, and corrections.

As a result of the Governor's reorganization, the Department focuses on the businesses with the highest risk for foodborne illness and carries out efficient disease investigations. There exists a strong linkage with local health agencies and the Epidemiologists that facilitates these investigations. Finally, both KDHE and KDA are responsibly addressing and updating the working agreements ensuring that the integrity of food safety is maintained.

Thank you for the opportunity to appear before the committee today. I will now stand for questions