

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 3:30 p.m. on March 2, 2009, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes  
Corey Carnahan, Kansas Legislative Research Department  
Pat Matzek, Committee Assistant

Conferees appearing before the Committee:

Erik Wisner, Policy and Program Analyst, Department of Agriculture  
Martin Kennedy, Deputy Secretary, Department on Aging

Others attending:

See attached list.

Chairman Powell opened the meeting with explanation of **SB 203** by Corey Carhanan, Kansas Legislative Research Department.

Mr. Carnahan stated **SB 203** relates to the food service and lodging act and other food safety laws. Many of the changes found in the bill result from the transfer of inspection authority from the Kansas Department of Health and Environment (KDHE) to the Kansas Department of Agriculture (KDA) in 2008. As this bill made its way through the Senate there were two amendments made to the bill; the first change is to exempt certain individuals or groups that give funds by providing food service for certain charity purposes, and, the second change is to allow any lodging establishment to let the franchise come in and inspect, and use that in lieu of a KDA inspection.

Questions were asked and comments were made.

**Hearing on:**

**SB 203 - Secretary of agriculture, food safety and lodging program changes.**

**Proponent:**

Erik Wisner, Policy and Program Analyst, Department of Agriculture, (Attachment 1) spoke in support of **SB 203**, documenting several important changes to statutes related to its food safety programs:

- To re-establish the provision that allowed premises with a primary function licensed by KDHE to be exempt from food safety licensing by KDA.
- Technical change - The right of hearing should be after the order is issued rather than before to be consistent with the Kansas Administrative Procedures Act.
- To create a uniform system of enforcement actions for all KDA programs that regulate food safety and lodging facilities.

Mr. Wisner further documented KDA supported the two amendments from the Senate Committee.

Questions were asked and comments were made.

**Neutral:**

Martin Kennedy, Deputy Secretary, Department on Aging (KDOA), (Attachment 2) provided neutral testimony on **SB 203**, stating in its current form, the bill would appear to require the Board of Agriculture to inspect and license adult care home kitchens, which would be a duplication of part of the Kansas Department on Aging's regulatory activity. Mr. Kennedy further stated the bill already exempts from its provisions those facilities licensed by the KDHE. The KDOA requests the bill be amended to extend the exemption to also include facilities licensed by its agency.

CONTINUATION SHEET

Minutes of the House Agriculture And Natural Resources Committee at 3:30 p.m. on March 2, 2009, in Room 783 of the Docking State Office Building.

No questions were asked or comments made.

Steve Moris, Program Manager, Department of Agriculture, also answered questions from members of the Committee.

Julie Hein, Hein Law Firm, Chartered, also answered questions from members of the Committee.

The hearing was closed on **SB 203**.

The next meeting is scheduled for March 3, 2009.

The meeting was adjourned at 4:20 p.m.

# AG. & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: 3-2-09

NAME	REPRESENTING
CV Cotsoyadis	KDA
Julie Ehler	KDA
Steve Morris	KDA
Rick Scheffler	KDA
Erik Wisner	KDA
Brad Stantler	Carter Group
John Donley	KS Lusk Ass'n
Leslie Kaufman	Ki Coop Council
John Secher	KART

**Testimony on Senate Bill 203**  
**to**  
**the House Agriculture and Natural Resources Committee**

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

**March 2, 2009**

Good afternoon, Chairman Powell 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 Senate Bill 203, which makes several important changes to statutes related to our food safety programs.

In 2008, the Legislature enacted SB 584 to transfer all responsibility for the inspection and licensing of food service establishments and lodging facilities from the Department of Health and Environment to the Department of Agriculture.

During the first few months handling these new food safety duties, we realized several adjustments needed to be made to the law to help us do a better job fulfilling our food safety mission. We believe these changes advance food safety and that they present little, if any, additional burden to the food and lodging industry.

First, we want to re-establish the provision that allowed premises with a primary function licensed by KDHE to be exempt from food safety licensing by KDA. These facilities include secure treatment facilities, detention centers, maternity centers, daycare homes, group daycare homes, childcare centers and hospitals. Under previous law, KDHE licensed these facilities for their core function but they were exempt from the food service license requirement. This exemption existed before the transfer, and we believe it should remain in place. Currently, we have a memorandum of understanding with KDHE to preserve the previous exemption for KDHE-licensed facilities.

The next change is to clarify when a hearing regarding licensure would take place. The right of hearing should be after the order is issued rather than before to be consistent with the Kansas Administrative Procedures Act.

The final changes would create a uniform system of enforcement actions for all KDA programs that regulate food safety and lodging facilities. Currently, we have a variety of enforcement tools we can use to regulate restaurants, grocery stores and lodging facilities, but they are not uniform across all license categories. Enforcement actions we would like to have available to us in all categories include cease-and-desist orders, temporary suspensions, the right

to enter a facility to conduct an inspection and license revocation authority for failure to pay a license fee or penalty. I have attached a chart that will better explain the need for these changes.

The bill also includes several amendments from the Senate committee. The first would exempt persons who prepare, serve or sell food for the sole purpose of a church, school or community fundraiser from the requirement to obtain a food service establishment license, regardless of how frequently the fundraisers occur. The second would authorize the Kansas Department of Agriculture to receive lodging and inspection reports from private lodging businesses and to promulgate rules and regulations necessary to receive these inspection reports. We support both amendments.

We strongly support all the changes proposed in SB 203 because they will help us protect consumers and increase the transparency of our food safety regulatory activities.

I will stand for questions at the appropriate time.

# KS Dept. of Ag—Food Safety Programs Enforcement Action Capabilities

1-3

		<i>Authority Provided / Proposed Inclusion</i>			
<u>Enforcement Action</u>	<u>Description of the need for the change</u>	<u>Grocery Store / Food Processing Plant</u>	<u>Food Service Establishment (Restaurant)</u>	<u>Lodging Facility</u>	<u>Other facility regulated by KDA (i.e. Dairy)</u>
<u>Ability to issue a Temporary Suspension</u>	This is the only immediate remedy for conditions in a facility. Because it is an immediate suspension with no right of hearing, it is temporary. In order to make the suspension permanent the agency must follow the standard procedure giving the licensee the opportunity for a hearing.	<u>Current-- None</u>  <u>Proposed -- SB203, New Sect. 4</u>	<u>Current-- KSA 36-515a</u>	<u>Current-- KSA 36-515a</u>	<u>Current -- KAR 4-17-6, adoption of the Grade 'A' Pasteurized Milk Ordinance.</u>
<u>Ability to issue a cease and desist order</u>	Needed in situations where a facility has failed to pay license fees or penalties. This makes them cease operations until fee or penalty is paid.	<u>Current-- None</u>  <u>Proposed -- SB203, New Sect. 3</u>	<u>Current--None</u>  <u>Proposed -- SB203, New Sect. 2</u>	<u>Current-- None</u>  <u>Proposed -- SB203, New Sect. 2</u>	<u>Current -- KSA 65-786</u>
<u>Grounds to suspend or revoke license due to a violation of law outside of a FS standard</u>	Currently, revocation of a license can only occur if they violate food safety standards (food code). This would allow revocation for any violation of FS laws including nonpayment of fines or preventing the program from carrying out their duties.	<u>Current-- KSA 74-598</u>	<u>Current--None</u>  <u>Proposed -- SB203, Sect. 7</u>	<u>Current-- None</u>  <u>Proposed -- SB203, Sect. 7</u>	<u>Current --KSA 65-780</u>
<u>Explicit Authority to enter a facility to perform inspections</u>	Copied from other statutes and provides specific authority for the program to enter and perform inspections in a regulated facility.	<u>Current -- KSA 74-597, 65-674</u>	<u>Current --KSA 74-597, 36-505</u>	<u>Current-- None</u>  <u>Proposed -- SB203, New Sect.1</u>	<u>Current --KSA 65-773</u>

Agriculture and Natural Resources Committee

March 1, 2009

SB 203/Secretary of agriculture,  
food safety and lodging program changes

Martin Kennedy, Deputy Secretary

Chairman Powell and members of the committee, thank you for the opportunity to offer an amendment today on SB 203 to clarify the licensing responsibilities as referenced in SB 203.

The Licensure, Certification and Evaluation Commission of KDOA has responsibility for the inspection of more than 600 adult care homes under state licensure statutes and the certification requirements of the federal Centers for Medicare and Medicaid Services (CMS). Adult care homes include nursing facilities, assisted living facilities, residential health care facilities, homes plus, nursing homes for mental health and intermediate care facilities for the mentally retarded (ICF-MRs).

As part of the requirements for licensure and federal certification, adult care homes must meet or exceed sanitation standards included in state law and federal regulation. For that reason, their kitchen and food service operations are inspected regularly as part of the regulatory activity of KDOA health facility surveyors.

In its current form, SB 203 would appear to require the Board of Agriculture to inspect and license adult care home kitchens, which would be a duplication of part of KDOA's regulatory activity. The bill already exempts from its provisions those facilities licensed by the Kansas Department of Health and Environment. We request the bill be amended to extend the exemption to also include facilities licensed by the Kansas Department on Aging.

The addition of this exemption would remove a potentially costly and duplicative function from SB 203. I would be happy to answer any questions you have regarding our suggested changes.

Ag & Natural Resources Committee  
Date 3-2-09  
Attachment 2