

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:40 a.m. on February 11, 2009 in Room 446-N of the Capitol.

All members were present except:

Senator Marci Francisco- excused
Senator Janis Lee- excused
Senator Steve Morris- excused

Committee staff present:

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

Conferees appearing before the Committee:

Erik Wisner, Policy and Program Analyst, Kansas Department of Agriculture (KDA)
Julie Hein, Kansas Restaurant and Hospitality Association (KRHA)

Others attending:

See attached list.

Chairman Taddiken opened the hearing on **SB 203 - Secretary of agriculture, food safety and lodging program changes**.

Erik Wisner, Policy & Program Analyst, Kansas Department of Agriculture, (KDA) (Attachment 1) appeared as a proponent to **SB 203**. He noted that the 2008 Legislature enacted SB 584 which transferred all responsibility for the inspection and licensing of food service establishments and lodging facilities from the Kansas Department of Health and Environment (KDHE) to the KDA.

Mr. Wisner said that KDA wants to re-establish the provision that allowed premises with a primary function licensed by the Kansas Department of Health and Environment (KDHE) to be exempt from food safety licensing by KDA. Another change suggested is to clarify when a hearing regarding licensure would take place. He said the right of hearing should be after the order is issued rather than before to be consistent with the Kansas Administrative Procedures Act.

Mr. Wisner said the last change would create a uniform system of enforcement actions for all KDA programs that regulate food safety and lodging facilities.

He submitted a balloon that would allow KDA to enter into agreements with facilities to conduct their own private inspections.

Another change proposed is on page 3 line 41, the sentence beginning "Such food service" and ends on page 4 line 7 with the sentence ending with "the Kansas administrative procedure act". KDHE was concerned that the language would create undue regulations for some of the facilities currently regulated.

Mr. Wisner introduced staff members: Steve Morris, Manager, Food, Safety and Lodging Program, and Julie Ehler, Staff Attorney, responsible for the KDA's food safety enforcement.

Mr. Wisner took questions from the Committee.

Mr. Morris answered questions regarding lodging inspections, dining facilities and kitchen areas.

Ms. Ehler responded to a question regarding authority to inspect lodging.

Chairman Taddiken said that KDHE has worked with the KDA on this bill and KDHE did not feel they needed to appear before the Committee.

CONTINUATION SHEET

Minutes of the Senate Agriculture Committee at 8:30 a.m. on February 11, 2009 in Room 446-N of the Capitol.

Constantine Cotsoradis, Deputy Secretary, KDA, answered questions from the Committee.

Senator Huelskamp requested the KDA work on language to the bill which would exempt bake sales and school suppers from inspection.

Raney Gilliland, Kansas Legislative Research Department, had a question regarding the proposed amendment and the creation of standards for inspection of lodging establishments and how do they know what standards are in compliance with Kansas standards.

Mr. Cotsoradis said this is a voluntary program and the details will be dealt with in rules and regulations. He said there needs to be a balance between ensuring that communities can have these fund raisers but provide a certain level of food safety.

Julie Hein, Kansas Restaurant and Hospitality Association (KRHA), appeared in support of **SB 203**. No written testimony was provided. She said the idea of the private industry using their industry reports came from the KRHA. Ms. Hein also said that many of the flag companies have very strict inspections and are inspected twice per year. She said the KRHA is contemplating that the rules and regulations process would create an opportunity to make these inspections more efficient by working with KDA

Ms. Hein offered to stand for questions.

Chairman Taddiken closed the hearing on **SB 203**.

The next meeting is scheduled for February 17, 2009.

The meeting was adjourned at 9:05 a.m.

**Testimony on Senate Bill 203
to
The Senate Agriculture Committee**

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

February 11, 2009

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 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

Senate Agriculture Committee

2-11-09

Attachment 1

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.

We strongly support these changes 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>
Ability to issue a <u>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.	<i>Current-- None</i> <i>Proposed -- SB203, New Sect. 4</i>	<i>Current-- KSA 36-515a</i>	<i>Current-- KSA 36-515a</i>	<i>Current -- KAR 4-17-6, adoption of the Grade 'A' Pasteurized Milk Ordinance.</i>
Ability to issue a <u>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.	<i>Current-- None</i> <i>Proposed -- SB203, New Sect. 3</i>	<i>Current--None</i> <i>Proposed -- SB203, New Sect. 2</i>	<i>Current-- None</i> <i>Proposed -- SB203, New Sect. 2</i>	<i>Current -- KSA 65-786</i>
Grounds to suspend or revoke license due to a violation of law outside of a FS standard	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.	<i>Current-- KSA 74-598</i>	<i>Current--None</i> <i>Proposed -- SB203, Sect. 7</i>	<i>Current-- None</i> <i>Proposed -- SB203, Sect. 7</i>	<i>Current --KSA 65-780</i>
Explicit Authority to enter a facility to perform inspections	Copied from other statutes and provides specific authority for the program to enter and perform inspections in a regulated facility.	<i>Current -- KSA 74-597, 65-674</i>	<i>Current --KSA 74-597, 36-505</i>	<i>Current-- None</i> <i>Proposed -- SB203, New Sect.1</i>	<i>Current --KSA 65-773</i>

SENATE BILL No. 203

By Committee on Agriculture

2-4

9 AN ACT concerning the secretary of agriculture; relating to powers and
10 duties; amending K.S.A. 36-515 and K.S.A. 2008 Supp. 36-503, 36-
11 510 and 74-598 and repealing the existing sections.

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

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

18 (b) ~~Whenever, upon inspection, it is determined that any lodging es-~~
19 ~~tablishment does not comply with the applicable standards promulgated~~
20 ~~in the rules and regulations of the secretary, the secretary shall give writ-~~
21 ~~ten notice to the owner, proprietor or agent in charge of such establish-~~
22 ~~ment of the changes or alterations necessary to comply with such~~
23 ~~standards.~~

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

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

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

38 (c) Upon reinspection of any lodging establishment given a notice
39 pursuant to this section, if it is determined that such establishment does
40 not comply with the applicable standards promulgated in the rules and
41 regulations of the secretary, the secretary may suspend or revoke the
42 license issued for such establishment. If the secretary suspends or revokes
43 the license, the secretary shall send written notice to the licensee that the

Comment [ew1]: (b) The secretary may authorize qualified individuals, private entities or public entities to inspect lodging establishments to determine compliance with lodging standards promulgated pursuant to the Kansas food service and lodging act, and amendments thereto. The secretary is authorized to promulgate such rules and regulations as are necessary to implement such inspections.

1-4