

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:30 a.m. on February 17, 2009 in Room 446-N of the Capitol.

All members were present except:  
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

Others attending:  
See attached list.

Chairman Taddiken noted the Committee had received copies of the Senate Agriculture Committee meeting minutes for January 27 and 28 to review and act on later.

The Chairman also mentioned the fiscal note for **SB 185 - Water rights, nonuse, due and sufficient cause.** had been distributed to each Committee member.

Chairman Taddiken recognized and welcomed members of the Young Stockmen's Association who are visiting the Committee. Each gave their name and hometown.

Chairman Taddiken said **SB 185** was scheduled for discussion and action. However, the Department of Agriculture (KDA) and Division of Water Resources (DWR), has been working with some of the stakeholders on issues raised at the hearing. Chairman Taddiken has requested the bill be referred to an exempt committee.

Jason Thompson, Revisor of Statutes Office, reviewed **SB 203 - Secretary of agriculture, food safety and lodging program changes (Attachment 1)**. The first amendments proposed by the KDA would add a subsection (d) page 2, line 7 which would authorize the secretary to receive lodging inspection reports from the national or chain hotels which are currently performed. The current subsection (d) would be changed to the new subsection (e). Mr. Thompson said the next amendment is on page 3, line 24, inserting language about fund raisers and exceptions in licensing for those events.

Another amendment is the deletion of language on page 3, line 41 to page 4, line 7 which clarifies that if a person is licensed under another registration or permit process by the KDHE it would not be necessary to licensed under this statute.

Another change is an increase in the fee for a duplicate license from \$3 to \$5 on page 4, line 37.

Erik Wisner, Policy and Program Analyst, KDA, took questions from the Committee.

Steve Morris, Manager, KDA Food, Safety and Lodging Program, answered questions.

Senator Bruce moved adoption of the amendments proposed by KDA; seconded by Senator Huelskamp. There was no discussion. Motion carried.

Senator Huelskamp moved that SB 203 be passed as amended; seconded by Senator Bruce. Motion carried.

In the minutes of January 28 meeting there should be a change in the motion by Senator Bruce "to introduce all three proposals as one bill" in place of "three bills". Senator Huelskamp moved approval of the Committee meeting minutes for January 27 and 28 (as corrected), seconded by Senator Ostmeyer. Motion carried.

CONTINUATION SHEET

Minutes of the Senate Agriculture Committee at 8:30 a.m. on February 17, 2009 in Room 446-N of the Capitol.

Raney Gilliland, Kansas Legislative Research Department, briefed the Committee on **SB 256 - Creating the pesticide safety education fee fund**, which will be heard tomorrow. This bill would create a pesticide safety and education fee fund. The monies credited to this new fund would be expended solely for costs incurred by the Kansas cooperative extension service in coordination with the KDA to provide short courses and publications regarding the safe application of pesticides. Mr. Gilliland mentioned a technical issue on line 27 and 28 in reference to K.S.A. 2- 443a which should be K.S.A. 2-2443a.

The next meeting is scheduled for February 18, 2009.

The meeting adjourned at 9:00 a.m.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-17-09

NAME	REPRESENTING
LANE LETOURNEAU	KDA
Tiffany Lee	KLA
Travis Rynth	KLA
Spencer Jacobs	KLA
Ruska Jensen	KLA
Lahl <del>St</del>	KLA
Perry Briggs	KLA
Cham Mullmir	KLA
Chris Boyd	KLA
Derek Nilsson	KLA
Sharon Bremer	KLA
Burke Giggis	KDA - DWR
Annem Grossnickel	KLA
Paige Alexander	KLA
Mich Mayer	KLA
Ruth <del>Cooper</del>	KLA
Ch <del>Thompson</del>	KLA
Chad B. <del>Smith</del>	KLA
Bradley Greenwood	KLA

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-17-09

NAME	REPRESENTING
Garet Farney	KLA
Erik Peterson	KLA
Woody Moses	KAMA
John Dudley	Ks Livst Ass'n
Ryan Higbie	KS Livst Ass'n
Scarlett Higgins	KS Livst Ass'n
Steve Morris	KDA
Julie Emler	KDA
Brett Berry	"
Erik Wischer	KDA
Steve Swaffar	KFB
Kent Astren	KFB
Jason Darland	Pinegar + Smith
Sean Miller	CAPITOL STRATEGIES

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Session of 2009

## SENATE BILL No. 203

By Committee on Agriculture

2-4

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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

Senate Agriculture Committee  
2-17-09  
Attachment 1

1 license for such establishment will be suspended or revoked, effective 20  
2 days after the date such notice is sent, unless within such time the licensee  
3 files with the secretary a written request for a hearing on the proposed  
4 suspension or revocation. All hearings pursuant to this section shall be  
5 conducted in accordance with the provisions of the Kansas administrative  
6 procedure act.

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

9 New Sec. 2. (a) If the secretary determines after notice and oppor-  
10 tunity for a hearing that any person has engaged in or is engaging in any  
11 act or practice constituting a violation of any provision of the food service  
12 and lodging act, and amendments thereto, or any rules and regulations  
13 or order issued thereunder, the secretary may require that such person  
14 cease and desist from the unlawful act or practice and take such affir-  
15 mative action as in the judgment of the secretary will carry out the pur-  
16 poses of the violated or potentially violated provision of this act or rules  
17 and regulations or order issued thereunder. Any such hearing shall be  
18 held in accordance with the provisions of the Kansas administrative pro-  
19 cedure act.

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

22 New Sec. 3. If the secretary of agriculture determines after notice  
23 and opportunity for a hearing that any person has engaged in or is en-  
24 gaging in any act or practice constituting a violation of any of the provi-  
25 sions transferred to and imposed upon the department of agriculture and  
26 secretary of agriculture pursuant to K.S.A. 2008 Supp. 74-581, and  
27 amendments thereto, or any rules and regulations or orders issued there-  
28 under, the secretary may require that such person cease and desist from  
29 the unlawful act or practice and take such affirmative action as in the  
30 judgment of the secretary will carry out the purposes of the violated or  
31 potentially violated provision or rules and regulations or orders issued  
32 thereunder. Any such hearing shall be held in accordance with the pro-  
33 visions of the Kansas administrative procedure act.

34 New Sec. 4. (a) If the secretary of agriculture finds that the public  
35 health or safety is endangered by the continued operation of a food proc-  
36 essing plant or retail food store, the secretary may suspend, temporarily,  
37 the license of such establishment without notice or hearing in accordance  
38 with the emergency adjudication procedures of the provisions of the Kan-  
39 sas administrative procedure act.

40 (b) In no case shall a temporary suspension of a license under this  
41 section be in effect for a period of time in excess of 90 days. At the end  
42 of such period of time, the licensee shall be reinstated to full licensure  
43 unless the secretary has suspended or revoked the license, after notice

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

1 and hearing, or the license has expired as otherwise provided under the  
2 Kansas food, drug and cosmetic act, and amendments thereto, or any  
3 rules and regulations or orders issued thereunder.

4 Sec. 5. K.S.A. 2008 Supp. 36-503 is hereby amended to read as fol-  
5 lows: 36-503. (a) It shall be unlawful for any person to engage in the  
6 business of conducting a food service establishment unless such person  
7 shall have in effect a valid license therefor issued by the secretary of  
8 agriculture, except that any food service establishment providing only a  
9 device for the convenience and operation by a customer for the purpose  
10 of heating prepackaged food with no provision for consumption of food  
11 on the premises, or any food service establishment licensed by the sec-  
12 retary pursuant to any other law and maintained in connection with any  
13 premises licensed by the secretary pursuant to any other law shall not be  
14 required to obtain a license under this section, nor shall any person en-  
15 gaged only in the serving of food on railway dining cars or in the occasional  
16 sale or serving of food *shall not* be required to obtain a license ~~hereunder~~  
17 *under this section*. For the purpose of this section, the sale or serving of  
18 food in the same location less than seven days in any calendar year shall  
19 be construed as the occasional sale or serving of food. For the purpose  
20 of this section, hotels that provide only complimentary food service to  
21 only that hotel's overnight guests shall not be required to purchase a food  
22 service license separate from the lodging establishment license. This ex-  
23 emption from licensing does not exempt any food service establishment  
24 inside the hotel from inspection or regulation. Nothing in this act shall  
25 prevent the secretary of agriculture from inspecting any food service es-  
26 tablishment when a complaint against such food service establishment is  
27 transmitted to the secretary of agriculture or any authorized agent thereof  
28 except that no provision of this act shall be construed to authorize the  
29 secretary of agriculture to inspect or cause to be inspected under the  
30 provisions of this act any food service establishment licensed by the sec-  
31 retary of agriculture pursuant to any other law or maintained in connec-  
32 tion with any premises licensed by the secretary pursuant to any other  
33 law which food service establishment is not required to obtain a license  
34 under this section.

35 (b) *A food service establishment operated in connection with any*  
36 *premises licensed, registered or permitted by the department of health*  
37 *and environment pursuant to any other law, which is inspected and reg-*  
38 *ulated pursuant to that law, shall not be required to obtain a license under*  
39 *subsection (a). No provision of this act authorizes the secretary of agri-*  
40 *culture to inspect or cause to be inspected such food service establishment*  
41 *under the provisions of this act. Such food service establishment shall be*  
42 *subject to the food service standards established pursuant to this act. En-*  
43 *forcement of such standards shall be by the agency responsible for li-*

Any person, not otherwise required to be licensed under this section, who prepares, serves or sells food for the sole purpose of soliciting funds to be used for community projects, educational and youth activities, or humanitarian purposes shall not be subject to licensing under this section.

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1 ~~censing such food service establishment or premises. Failure to comply~~  
2 ~~with the food service standards promulgated pursuant to this act shall be~~  
3 ~~grounds for the suspension or revocation of the license, registration or~~  
4 ~~permit which is issued for the premises under such other law. No license,~~  
5 ~~registration or permit shall be revoked or suspended unless the agency~~  
6 ~~first provides notice and opportunity for a hearing in accordance with~~  
7 ~~the Kansas administrative procedure act. This exemption shall not apply~~  
8 ~~to a food service establishment whose primary function is not operated in~~  
9 ~~connection with any premises licensed, registered or permitted pursuant~~  
10 ~~to such other law.~~

11 ~~(b)~~ (c) Applications for ~~such~~ licenses under subsection (a) shall be  
12 made on forms prescribed by the secretary, and each such application  
13 shall be accompanied by an application fee and by a license fee, each of  
14 which shall be established in an amount fixed by rules and regulations  
15 adopted by the secretary of agriculture. Application fees may be adjusted  
16 in accordance with the type of establishment or based on other criteria  
17 as determined by the secretary, but in no event shall any application fee  
18 exceed \$200. Such license fee shall not exceed \$200 and shall be fixed in  
19 an amount which, together with the application fee, is sufficient to defray  
20 the cost of administering the food service establishment inspection and  
21 licensure activities of the secretary. Prior to the issuance of any such  
22 license, the secretary shall inspect or cause to be inspected the food serv-  
23 ice establishment designated in the application, to determine that it com-  
24 plies with the standards for food service establishments promulgated pur-  
25 suant to this act. If such food service establishment is found to be in  
26 compliance, the secretary shall issue the license. If the application for  
27 license is denied, the secretary shall give written notice thereof to the  
28 applicant, stating also that the applicant is entitled to a hearing thereon  
29 if a written request therefor is filed with the secretary within 20 days of  
30 the date such notice is sent. Such hearing shall be held in accordance  
31 with the provisions of the Kansas administrative procedure act.

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

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

42 (e) A premises where prepackaged individual meals are distributed  
43 to persons eligible under the federal older Americans act shall not pay