

CHAPTER 48

SENATE BILL No. 557
(Amended by Chapter 150)

AN ACT concerning the Kansas department of agriculture; amending K.S.A. 36-504 and 65-689 and K.S.A. 2007 Supp. 65-688, 65-6a30, 74-581, 74-596, 74-597 and 74-598 and repealing the existing sections.

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

New Section 1. (a) In addition to the specific powers and duties conferred upon the secretary of agriculture by the laws of this state, the secretary is 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 hereby authorized to adopt rules and regulations necessary to carry out the provisions of this section.

New Sec. 2. (a) Except as otherwise provided in this section, any license issued under the provisions of K.S.A. 65-689, and amendments thereto, and section 3, 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 of agriculture on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary of agriculture 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 of agriculture is hereby authorized to adopt rules and regulations to establish an inspection frequency taking into account the relative risk posed by such establishments to public health and food safety.

New Sec. 3. (a) The secretary of agriculture is hereby authorized to adopt 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 pursuant to K.S.A. 2007 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, and amendments thereto, that is licensed pursuant to this section shall not be required to obtain a separate license pursuant to K.S.A. 36-503, and amendments thereto.

New Sec. 4. All rules and regulations, orders and directives of the secretary of agriculture which relate to the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, 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.

Sec. 5. K.S.A. 36-504 is hereby amended to read as follows: 36-504. (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.

Sec. 6. K.S.A. 2007 Supp. 65-688 is hereby amended to read as follows: 65-688. (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.*

Sec. 7. K.S.A. 65-689 is hereby amended to read as follows: 65-689.

(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 K.S.A. 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.

(d) *A plant registered by the department of agriculture pursuant to article 7 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, or licensed or registered by the department of agriculture pursuant to article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall not be required to obtain a separate license pursuant to this section.*

Sec. 8. K.S.A. 2007 Supp. 65-6a30 is hereby amended to read as follows: 65-6a30. (a) There shall be established by the secretary of agriculture a meat and poultry inspection program to enforce the provisions of the Kansas meat and poultry inspection act. The program shall be under the supervision of the secretary of agriculture and the secretary shall appoint such personnel as may be necessary for the proper administration of the Kansas meat and poultry inspection act.

(b) The secretary of agriculture shall make provision for the examination and inspection of all livestock, domestic rabbits and poultry, as provided for under the Kansas meat and poultry inspection act, and of all carcasses and parts thereof, of all meats and meat food products thereof, of all poultry and poultry products thereof and of the sanitary conditions of all establishments in which such carcasses, parts of carcasses and products are prepared. Authorized representatives of the secretary shall refuse to stamp, mark, tag or label any carcass or any part thereof or any meat food product therefrom which is prepared in any establishment until the carcass or part thereof or meat food product has actually been inspected and found to be not adulterated.

(c) The authorized representatives of the secretary shall perform such other duties as are provided by this act and by the rules and regulations adopted by the secretary of agriculture.

(d) The secretary of agriculture shall adopt and amend from time to time such rules and regulations as are necessary for the efficient execution of the provisions of this act. *On and after January 1, 2009, the secretary shall not promulgate or enforce any such rules and regulations that are more stringent, restrictive or expansive than required by federal law or any rule and regulation adopted by the United States department of agriculture. If the secretary determines that a more stringent, restrictive or expansive rule and regulation is necessary, the secretary may implement the rule and regulation only after approval by an act of the legislature.*

(e) All inspections and examinations made under this act shall be made in the manner described in the rules and regulations adopted by the secretary of agriculture and shall not be inconsistent with the provisions of this act.

Sec. 9. K.S.A. 2007 Supp. 74-581 is hereby amended to read as follows: 74-581. (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 de-

partment 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, *and amendments thereto*;

(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), (b), and (c) (1), (2) and (3) above.

(b) *The secretary of agriculture is hereby authorized to adopt rules and regulations as 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).*

Sec. 10. K.S.A. 2007 Supp. 74-596 is hereby amended to read as follows: 74-596. (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. 2007 Supp. 74-581~~, and amendments thereto, or the rules and regulations adopted *thereunder*, 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. 2007 Supp. 74-581~~, and amendments thereto, or the rules and regulations adopted *thereunder*, in an intentional ~~and~~ or reckless manner shall be guilty of a class A, non-person 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. 2007 Supp. 74-581~~, and amendments thereto, *or the rules and regulations adopted thereunder*, 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. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder~~, by injunction.

Sec. 11. K.S.A. 2007 Supp. 74-597 is hereby amended to read as follows: 74-597. 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. 2007 Supp. 74-581, and amend-*

ments thereto, and the rules and regulations established under this act adopted thereunder. 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 this act transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder,~~ 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. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder;~~ 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. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder;~~ 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. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder.~~

Sec. 12. K.S.A. 2007 Supp. 74-598 is hereby amended to read as follows: 74-598. (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. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder,~~ 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. 2007 Supp. 74-581, and amendments thereto,~~ or any rule and regulation ~~promulgated adopted~~ 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. 2007 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. 2007 Supp. 74-581, and amendments thereto,~~ or any rule and regulation adopted thereunder; 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. 2007 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 procedure 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.

Sec. 13. K.S.A. 36-504 and 65-689 and K.S.A. 2007 Supp. 65-688, 65-6a30, 74-581, 74-596, 74-597 and 74-598 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2008.
