

CHAPTER 72
HOUSE BILL No. 2566

AN ACT concerning agriculture; amending K.S.A. 65-626, 65-635, 65-641, 65-653, 65-655, 65-656, 65-658, 65-665, 65-676, 65-679a, 65-683, 65-684, 65-685, 65-686 and 65-777 and K.S.A. 2009 Supp. 65-657, 65-771, 65-778 and 65-781 and repealing the existing sections.

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

Section 1. K.S.A. 65-626 is hereby amended to read as follows: 65-626. The secretary of ~~health and environment~~ *agriculture* is hereby authorized and directed to make such sanitary rules and regulations as are necessary in food and drug inspection and to carry out the provisions of this act; and any person or persons or associations violating the provisions of this act, or any rules and regulations adopted under the provisions of this act, shall upon conviction be fined in a sum not exceeding ~~one hundred dollars (\$100)~~ \$100.

Sec. 2. K.S.A. 65-635 is hereby amended to read as follows: 65-635. The ~~chief food and drug inspector~~ *secretary of agriculture*, as well as ~~his~~ inspectors, assistants, experts, analysts, or others appointed by ~~him~~ *the secretary*, shall have full rights of ingress and egress to the premises occupied by parties who manufacture, deal in or compound turpentine, linseed oil or flaxseed oil, and also shall have power and authority to open any tank, barrel, can or other vessel believed to contain such oil, turpentine, or products used in its manufacture, and to inspect the contents thereof, and to take therefrom samples for analysis, and in case any of the samples so taken shall prove on analysis to be adulterated in violation of the provisions of this act, it shall be the duty of the person securing the sample to proceed against the offender as herein provided.

Sec. 3. K.S.A. 65-641 is hereby amended to read as follows: 65-641. The secretary of ~~health and environment~~ *agriculture*, in connection with inspections of food service and lodging establishments, shall be charged with the enforcement of this act.

Sec. 4. K.S.A. 65-653 is hereby amended to read as follows: 65-653. It shall be the duty of the secretary of ~~health and environment~~ *agriculture* through the food and drug inspectors of the department of ~~health and environment~~ *agriculture* to enforce the provisions of this act.

Sec. 5. K.S.A. 65-655 is hereby amended to read as follows: 65-655. ~~This act~~ K.S.A. 65-619 through 65-690, and amendments thereto, may be cited as the Kansas food, drug and cosmetic act.

Sec. 6. K.S.A. 65-656 is hereby amended to read as follows: 65-656. For the purpose of this act: (a) The term "secretary" means the secretary of ~~health and environment~~ *agriculture*.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts or accessories. The term "drug" shall not include amygdalin (laetrile).

(e) The term "device," except when used in paragraph (k) of this section and in K.S.A. 65-657 (j), 65-665 (f), 65-669 (c) and (o), and 65-671 (c) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleaning, beautifying, promot-

ing attractiveness, or altering the appearance; and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(g) The term “official compendium” means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.

(h) The term “label” means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term “immediate container” does not include package liners.

(j) The term “labeling” means all labels and other written, printed or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combinations thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or materials with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term “advertisement” means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term “new drug” means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions. The term “new drug” shall not include amygdalin (laetrile).

(o) The term “contaminated with filth” applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this act regarding the selling of food, drug, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such articles for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term “pesticide chemical” means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an “economic poison” within the meaning of the agricultural chemicals act, K.S.A. 2-2202 as now enacted or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(r) The term “raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(s) The term “food additive” means any substance, the intended use

of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include: (1) A pesticide chemical in or on a raw agricultural commodity; or (2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the food additive amendment of 1958, pursuant to the federal act.

(t) (1) The term “color additive” means a material which — (A) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or (B) when added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with another substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act. (2) The term “color” includes black, white and intermediate grays. (3) Nothing in clause (1) (t) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(u) The term “imitation” shall mean any article made in the semblance of another, consisting of similar or dissimilar ingredients and being capable of being substituted for the imitated article without the knowledge of the consumer.

(v) The term “federal act” means the federal food, drug and cosmetic act (title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

Sec. 7. K.S.A. 2009 Supp. 65-657 is hereby amended to read as follows: 65-657. The following acts and the causing thereof within the state of Kansas are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of K.S.A. 65-666.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by K.S.A. 65-674.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of K.S.A. 65-660.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized, or required by regulations promulgated under the provisions of this act.

(k) The using of any person to such person's own advantage, or revealing, other than to the administrator or officers or employees of the department of ~~health and environment~~ *agriculture* or to the courts where relevant in any jurisdictional proceeding under this act, any information acquired under authority of this act concerning any method or process which constitutes a trade secret under the uniform trade secrets act (K.S.A. 60-3320 et seq. and amendments thereto) and as a trade secret is entitled to protection.

(l) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under K.S.A. 65-669a, as amended, or that such drug complies with the provisions of such section.

(m) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

(n) (1) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or (2) selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (1) hereof; or (3) making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

(o) Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

Sec. 8. K.S.A. 65-658 is hereby amended to read as follows: 65-658. In addition to the remedies hereinafter provided the secretary of ~~health and environment~~ *agriculture* is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining, any person from violating any provision of K.S.A. 65-657, as amended; irrespective of whether or not there exists an adequate remedy at law.

Sec. 9. K.S.A. 65-665 is hereby amended to read as follows: 65-665. A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) The name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. ~~Provided, That under clause (2) of this paragraph.~~ Reasonable variations shall be permitted, and exemptions as to small packages shall be established, by *rules and regulations* prescribed by the secretary of ~~health and environment~~ *agriculture*.

(f) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by K.S.A. 65-663, as amended, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided in K.S.A. 65-663, as amended, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container has been prescribed by regulations as provided by K.S.A. 65-663, as amended, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each: ~~Provided~~. *Except* that to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by *rules and* regulations promulgated by the secretary.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary determines to be, and by regulations prescribes, as necessary, in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives unless it bears labeling stating that fact: ~~Provided~~. *Except* that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by *rules and* regulations promulgated by the secretary.

(l) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

Sec. 10. K.S.A. 65-676 is hereby amended to read as follows: 65-676. The enforcement of the provisions of this act and all acts ancillary hereto shall be the duty of the ~~division of health of the department of health and environment~~ *department of agriculture*. The secretary is hereby authorized to appoint the necessary personnel to properly administer this act.

Sec. 11. K.S.A. 65-679a is hereby amended to read as follows: 65-679a. (a) Any dimethyl sulfoxide (DMSO) sold in this state other than by prescription shall be labeled by the manufacturer and seller. The label shall contain a description of all of the contents in the solution, a statement of purity, the percent of dimethyl sulfoxide (DMSO) in the solution and the manufacturer's name and address. Whenever dimethyl sulfoxide (DMSO) is sold or otherwise supplied, the seller or supplier shall give additional printed material, approved by the secretary, to the person receiving the dimethyl sulfoxide (DMSO) that provides adequate warning against use that may be dangerous to the health of the user.

(b) The secretary of ~~health and environment~~ *agriculture* may adopt rules and regulations necessary to administer the provisions of this section.

(c) This section shall be part of and supplemental to the Kansas food, drug and cosmetic act.

Sec. 12. K.S.A. 65-683 is hereby amended to read as follows: 65-683. The secretary of ~~health and environment~~ *agriculture* shall be charged with the administration and enforcement of the provisions of this act.

Sec. 13. K.S.A. 65-684 is hereby amended to read as follows: 65-684. In addition to the penalties provided in K.S.A. 65-682 the secretary of ~~health and environment~~ *agriculture* is hereby authorized to apply to the district court for, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of K.S.A. 65-681.

Sec. 14. K.S.A. 65-685 is hereby amended to read as follows: 65-685. It shall be the duty of each county or district attorney to whom the secretary of ~~health and environment~~ *agriculture* reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

Sec. 15. K.S.A. 65-686 is hereby amended to read as follows: 65-686. Nothing in this act shall be construed as requiring the secretary of ~~health and environment~~ *agriculture* to report for the institution of proceedings under this act, minor violations of this act, whenever the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Sec. 16. K.S.A. 2009 Supp. 65-771 is hereby amended to read as follows: 65-771. As used in this act:

(a) “Adulterated” has the same meaning as provided in K.S.A. 65-664, and amendments thereto.

(b) “*Bulk milk pick up tanker*” means a vehicle including the truck, tank and those appurtenances necessary for such vehicle’s use, used by a bulk milk hauler or sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station or transfer station.

(c) “Dairy manufacturing plants” means any place where dairy products, grade A milk or milk products are manufactured or prepared for sale or distribution, either at wholesale or retail. This term shall not include a licensed food service establishment which is licensed to manufacture homemade ice cream pursuant to this act.

(d) “Dairy products” means products which may be made from milk or cream for manufacturing purposes and which are not required to meet grade A standards, including butter, cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk, whole or skim, condensed whole milk, condensed skim milk, sweetened or plain, frozen dairy dessert, and frozen dairy dessert mixes and such other products as may be otherwise designated by rules and regulations.

(e) “Frozen dairy dessert” means and includes products containing milk or cream and other ingredients which are frozen or semi-frozen prior to consumption, such as ice cream, ice milk or sherbet, including frozen dairy desserts for special dietary purposes.

(f) “Frozen dairy dessert mix” means the pasteurized unfrozen combination of all ingredients with or without fruits, fruit juices, candy, nut meats, flavor or harmless color which makes a frozen dairy dessert.

(g) “Goat milk” means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5 % milkfat and not less than 7.5 % milk solids not fat. Goat milk shall be produced according to the sanitary standards of this act.

(h) “Grade A pasteurized milk” means pasteurized milk which has at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The milk shall meet the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk does not have at least a 90% survey rating.

(i) “Grade A pasteurized milk products” means all pasteurized milk products which have at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The pasteurized milk products shall meet the requirements for grade A under rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk products within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk products do not have at least a 90% survey rating.

(j) “Grade A raw milk for pasteurization” means milk having at least 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation, the raw milk meeting the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A

designation for a temporary time period on grade A raw milk for pasteurization within the statewide system of milk inspection and regulatory services, although such milk does not have at least a 90% survey rating.

~~(j)~~ (k) “Imminent health hazard” means any condition which involves milk, milk products, or dairy products, or any practice or procedure in the handling, transportation, storage, processing or manufacturing of a milk, milk product or dairy product which poses a significant threat of danger to the public health which should be corrected immediately to prevent injury or sickness and which should not be permitted to continue while a hearing or other proceeding is being conducted. An imminent health hazard may be declared at any point in a chain of events which ultimately may result in harm or danger to the public health. The occurrence of the final anticipated injury or other disease related condition shall not be a prerequisite for the establishment of the existence of an imminent health hazard.

~~(k)~~ (l) “In package form” means any commodity put up or packaged in any manner in advance of sale so as to constitute a unit quantity of the commodity for either wholesale or retail sale, exclusive of any auxiliary container enclosing such packages which individually conform to the requirements of this act.

~~(l)~~ (m) “Milk” means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8.25% milk solids not fat and not less than 3.25% milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized. Milk shall be interpreted to include goat milk.

~~(m)~~ (n) “Milk distributor” means any person who first sells or offers for sale in Kansas any packaged grade A pasteurized milk, milk product, or dairy product.

~~(n)~~ (o) “Milk hauler/sampler” means any person who collects official samples and may transport raw milk from a farm or raw milk products to or from a milk plant or both, receiving station or transfer station and has in their possession a permit from any state to sample such products.

~~(o)~~ (p) “Milk inspection and regulatory services” means the inspection, sampling, laboratory testing and the administrative procedures relating thereto, necessary to determine that the production, processing, distribution and sale of grade A milk, milk products, and dairy products comply with the requirements of this act and any rules and regulations adopted hereunder.

~~(p)~~ (q) “Milk or cream for manufacturing purposes” means raw milk or raw cream which is not subject to grade A standards and which is produced for processing and manufacturing into dairy products for human consumption. Milk for manufacturing purposes may contain less than 3.25% of butterfat and shall be delivered pure, sweet and clean.

~~(q)~~ (r) “Milk or cream receiving station” means any place where milk or cream may be received, collected, handled, processed, stored or collected and prepared for further transporting.

~~(r)~~ (s) “Milk or cream transfer station” means any place where milk or cream are transferred directly from one milk tank truck to another.

(t) “Milk plant” means any place, premises or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, ultrapasteurized, aseptically processed, condensed, dried, packaged or prepared for distribution.

~~(s)~~ (u) “Milk processor” means any person who operates any place, premises or establishment where grade A raw milk for pasteurization or milk or cream for manufacturing purposes is processed, pasteurized, bottled or prepared for distribution.

~~(t)~~ (v) “Milk producer” means any person who owns or operates a dairy farm and who provides, sells or offers for sale grade A raw milk for pasteurization or milk or cream for manufacturing purposes to a milk plant, receiving station or transfer station.

~~(u)~~ (w) “Milk products” means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, con-

concentrated milk, concentrated milk products, nonfat skim milk, reduced fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured reduced fat or lowfat milk, cultured nonfat skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat milk, acidified nonfat skim milk, low-sodium milk, low-sodium reduced fat or lowfat milk, low-sodium nonfat skim milk, lactose-reduced milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat skim milk, aseptically processed and packaged milk and milk products, milk, reduced fat or lowfat milk or nonfat skim milk with added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined herein. Milk products also include those dairy foods made by modifying the federally standardized products listed in this section in accordance with 21 C.F.R. 130.10, requirements for foods named by use of a nutrient content claim and a standardized term. Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein or if they are labeled as Grade A as adopted and described by rules and regulations promulgated under this act. Except as otherwise provided, the term milk shall not include dietary products, infant formula, ice cream or other desserts, butter or cheese.

(x) *“Milk tank truck” means the term used to describe both a bulk milk pick up tanker and a milk transport tank.*

(y) *“Milk tank truck cleaning facility” means any place, premises or establishment, other than a milk plant, receiving station or transfer station, where a milk tank truck is cleaned and sanitized.*

(z) *“Milk transport tank” means a vehicle including the truck and tank, used by a bulk milk hauler or sampler to transport bulk shipments of milk and milk products from a milk plant, receiving station or transfer station to another milk plant, receiving station or transfer station.*

(aa) *“Milk transportation company” means the person, business or entity responsible for a milk tank truck.*

~~(v)~~ (bb) *“Misbranded” has the same meaning as ascribed to it in K.S.A. 65-665, and amendments thereto.*

~~(w)~~ (cc) *“On-farm retail sales of milk or milk products” means the sale of milk or milk products on the farm by the producer from the production of the dairy herd to the final consumer, so long as the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm. The advertisement upon any such sign shall state that such milk or milk products are raw and shall be in letters of a uniform size. Each container in which any unpasteurized milk is sold or offered for sale shall be clearly labeled as ungraded raw milk.*

~~(x)~~ (dd) *“Pasteurized” has the same meaning as ascribed to it in 21 C.F.R. 131.3 and 135.3.*

~~(y)~~ (ee) *“Person” means any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.*

~~(z)~~ (ff) *“Plant fabricating single service articles” means any place which manufactures single service articles which are expected to come in contact with grade A milk or grade A milk products.*

~~(aa)~~ (gg) *“Secretary” means the secretary of the Kansas department of agriculture, or the secretary’s designee.*

~~(bb)~~ (hh) *“Single service article or container” means any container having a milk or milk product-contact surface and used in the packaging, handling, storage or servicing of grade A milk and is intended for one usage only.*

Sec. 17. K.S.A. 65-777 is hereby amended to read as follows: 65-777.

(a) The secretary, through the department of agriculture’s laboratory, may test any sample of milk, milk product or dairy product for bacteria or somatic cells or perform any other test required by this act or any rules and regulations promulgated under this act.

(b) The secretary is hereby authorized to establish by rules and regulations a schedule of fees for such tests performed by the laboratory ~~which are not performed for regulatory purposes.~~

Sec. 18. K.S.A. 2009 Supp. 65-778 is hereby amended to read as follows: 65-778. (a) Any person who engages in business as a dairy manufacturing plant shall first apply for and obtain a dairy manufacturing

plant license from the secretary and shall pay a license fee of \$120, or commencing July 1, 2002, and ending June 30, 2015, a license fee of ~~\$155~~ \$200.

(b) Any person who engages in business as a distributor of milk, milk products or dairy products shall first apply for and obtain a milk distributor license from the secretary and shall pay a license fee of \$120, or commencing July 1, 2002, and ending June 30, 2015, a license fee of ~~\$155~~ \$200. No milk distributor license shall be required for a licensed dairy manufacturing plant which distributes only those products which it manufactures.

(c) Any person who engages in business as a milk hauler shall first apply for and obtain a milk hauler license from the secretary and shall pay a license fee of \$25 or commencing July 1, 2002, and ending June 30, 2015, a license fee of \$35. As part of the application, the secretary may require the applicant to be tested regarding proper procedures for sampling, testing and weighing milk or cream and state laws and rules and regulations.

(d) Any person who operates a milk or cream transfer station or milk or cream receiving station shall first apply for and obtain a milk or cream station license from the secretary and shall pay a license fee of \$50, or commencing July 1, 2002, and ending June 30, 2015, a license fee of ~~\$65~~ \$100.

(e) Any person who engages in business as a manufacturer of single service dairy containers or manufacturer of single service dairy container closures shall first apply for and obtain a single service manufacturing license from the secretary and shall pay a license fee of \$50, or commencing July 1, 2002, and ending June 30, 2015, a license fee of ~~\$65~~ \$100.

(f) *Any person who operates a milk tank truck cleaning facility shall first apply for and obtain a milk tank truck cleaning facility license from the secretary and shall pay a license fee of \$100.*

(g) *Any license issued under this section shall be renewed annually.*

(h) The dairy manufacturing plant license, milk distributor license, *milk tank truck cleaning facility license*, milk or cream station license and single service manufacturing license shall expire on December 31 of the year for which it was issued unless suspended or revoked by the secretary pursuant to this act. The milk hauler license shall expire on June 30 following the date of issuance unless suspended or revoked by the secretary pursuant to this act.

~~(g)~~ (i) No license issued under this section shall be transferable. No license shall be renewed if any assessments or fees required under this act are delinquent.

~~(h)~~ (j) Each applicant for a license *or for the renewal of such license* shall submit an application on a form supplied by the secretary accompanied by the license fee. All licenses shall be conspicuously displayed in the applicant's place of business.

(k) *The secretary is authorized and directed to reduce any license fee in subsections (a) through (f) whenever the secretary determines that such fee is yielding more than is necessary for administering the provisions of this act. The secretary is authorized to increase any license fee in subsections (a) through (f), when such license fee is necessary to produce sufficient revenues for administering the provisions of this act. License fees in subsections (a) through (f) shall not be increased in excess of the amounts provided in this section.*

Sec. 19. K.S.A. 2009 Supp. 65-781 is hereby amended to read as follows: 65-781. The following fees for the statewide system of milk inspection and regulatory services are hereby established:

(a) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2015, a fee of \$.015 for each 100 pounds of milk produced by milk producers under Kansas grade A inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, milk processor or milk distributor to whom the milk is sold or delivered. Each cooperative, processor or distributor is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(b) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2015, a fee of ~~\$.015~~ \$.02 for each 100 pounds of packaged grade A pasteurized milk or milk products sold in Kansas at retail to the final consumer shall be paid. Each distributor is hereby charged with such fee

which shall be remitted to the secretary.

(c) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2015, a fee of ~~\$.015~~ \$.02 per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of Kansas which is processed into grade A milk or grade A milk products shall be paid. Each milk processor is hereby charged with such fee which shall be remitted to the secretary.

(d) A milk fee of \$.01, or commencing July 1, 2002, and ending June 30, 2015, a fee of \$.015 per 100 pounds of milk or cream for manufacturing purposes produced by milk producers under Kansas manufacturing grade milk inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, dairy manufacturing plant or any other person to whom the milk or cream for manufacturing purposes is sold or delivered. Each cooperative, dairy manufacturing plant or other person is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(e) A fee of \$.0075, or commencing July 1, 2002, and ending June 30, 2015, a fee of ~~\$.01~~ \$.02 per 100 pounds of Kansas produced milk or cream for manufacturing purposes or other Kansas produced milk delivered to a dairy manufacturing plant shall be paid on all Kansas milk used in the manufacturing of dairy products. As used in this subsection, the term dairy products shall not include any frozen dairy dessert or frozen dairy dessert mix. Each dairy manufacturing plant shall pay such fee which shall be remitted to the secretary.

(f) In lieu of the fee prescribed in subsection (e), a fee of \$1, or commencing July 1, 2002, and ending June 30, 2015, a fee of ~~\$1.50~~ \$2 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix shall be paid by the manufacturer thereof. Each manufacturer of frozen dairy dessert or frozen dairy dessert mix is hereby charged with such fee which shall be remitted to the secretary. Frozen dairy dessert mix which is further processed into the corresponding frozen dairy dessert by the manufacturer of the frozen dairy dessert mix shall not be subject to the fee required by this subsection.

(g) A fee of \$1, or commencing July 1, 2002, and ending June 30, 2015, a fee of ~~\$1.50~~ \$2 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix imported for retail sale in Kansas shall be paid by the milk distributor who imports these products.

(h) *A fee of \$50 for the annual inspection of a milk tank truck as required by this act. The milk transportation company that owns or leases the milk tank truck shall pay such fee which shall be remitted to the secretary.*

(i) If any fee computed pursuant to subsection (a) through (e) is less than \$2.50, then the sum of \$2.50 shall be paid in lieu of the computed fee. If any fee computed pursuant to subsection (f) or (g) is less than \$7.50, a minimum fee of \$7.50 shall be paid in lieu of the computed fee.

~~(j)~~ (j) All fees established herein shall be paid to the secretary in the following manner:

(1) The fees established in subsections (a) *and* (c) through (e) shall be remitted on or before the 30th day of each month for the calendar month immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the quantities upon which the remittance is based.

(2) The fees established in subsections (b), (f) and (g) shall be remitted on April 30, July 31, October 31 and January 31 for the three calendar months immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the ~~quantity of frozen dairy dessert or frozen dairy dessert mix~~ quantities upon which the remittance is based.

(3) *The fee established in subsection (h) shall be remitted within 60 days from the date of inspection.*

~~(k)~~ (k) Any person who fails to remit all or any part of the required fee or to submit the required report by the date due may be assessed an additional charge equal to 1% of the amount of delinquent fees for each day after the date due, or \$5, whichever amount is greater.

(l) *The secretary is hereby authorized and directed to reduce any inspection fee in subsections (a) through (h) whenever the secretary determines that such fee is yielding more than is necessary for administering the provisions of this act. The secretary is authorized to increase any inspection fee in subsections (a) through (h) when such inspection fee is*

necessary to produce sufficient revenues for administering the provisions of this act. License fees in subsections (a) through (h) shall not be increased in excess of the amounts provided in this section.

Sec. 20. K.S.A. 65-626, 65-635, 65-641, 65-653, 65-655, 65-656, 65-658, 65-665, 65-676, 65-679a, 65-683, 65-684, 65-685, 65-686 and 65-777 and K.S.A. 2009 Supp. 65-657, 65-771, 65-778 and 65-781 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 6, 2010.
