

SENATE BILL No. 346

AN ACT concerning agriculture; relating to milk and dairy products; allowing on-farm retail sale of milk and milk products; extending certain milk and dairy license fees; authorizing the secretary of agriculture to declare an imminent health hazard; authorizing civil penalties for certain dairy law violations; relating to animals; transporting animals into the state; authorizing the animal health commissioner to assess a civil penalty for violations relating thereto; amending K.S.A. 47-607c, 65-771, 65-778, 65-781, 65-786 and 65-788 and repealing the existing sections.

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

New Section 1. (a) Except as provided in article 7 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and in rules and regulations adopted by the secretary hereunder, the secretary shall apply the definitions and standards of identity ascribed to milk and dairy products by the federal food and drug administration.

(b) 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 and may have been adjusted by separating part of the milkfat therefrom or by adding cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk or nonfat dry milk thereto. Goat milk may be homogenized.

(c) Milk that is not goat milk shall contain not less than 3.25% milkfat and not less than 8.25% milk solids not fat. Milk may have been adjusted by separating part of the milkfat therefrom or by adding cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk or nonfat dry milk thereto. Milk may be homogenized.

(d) Milk or cream for manufacturing purposes may contain less than 3.25% butterfat and shall be delivered pure, sweet and clean.

(e) Grade A pasteurized milk, grade A pasteurized milk products and grade A milk for pasteurization 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, even if such grade A pasteurized milk does not have at least a 90% survey rating.

New Sec. 2. (a) The on-farm retail sale of milk or milk products shall be lawful, so long as each container of unpasteurized raw milk sold or offered for sale bears a label that is clearly visible and states the following or its equivalent in a clearly visible font size: "Raw milk and Unpasteurized".

(b) Any person who engages in the on-farm retail sale of milk or milk products may advertise such milk or milk products. Any such advertisement shall not be false or misleading and shall state that such milk or milk products are raw and unpasteurized. If such advertisement is in print or other written or visual form, this statement shall be clearly visible.

(c) In addition to any other remedies available under the act, the secretary may issue a civil penalty pursuant to K.S.A. 65-788, and amendments thereto, against any person who violates this section.

Sec. 3. K.S.A. 47-607c is hereby amended to read as follows: 47-607c. ~~(a) Any person or persons violating or failing who intentionally or knowingly violates or intentionally or knowingly fails to comply with the provisions of this act shall be deemed guilty of a class C nonperson misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not less than thirty (30) days nor more than one (1) year, or by both such fine and imprisonment.~~

*(b) In addition to any other penalty provided by law, any person who violates K.S.A. 47-607, and amendments thereto, the special permit*

*requirements of K.S.A. 47-607a, and amendments thereto, or rules and regulations promulgated pursuant to K.S.A. 47-607d, and amendments thereto, may incur a civil penalty in an amount not less than \$100 nor more than \$1,000 for each shipment into the state.*

*(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the animal health commissioner to the person who committed the violation. Such order shall state the violation, the civil penalty to be imposed and the right of the person to appeal to the commissioner. Within 20 days of such notification, any such person may make written request to the commissioner for a hearing in accordance with the Kansas administrative procedure act.*

*(d) Any civil penalty recovered pursuant to this section shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.*

*(e) The animal health commissioner may require that any records related to animals and the suspected transportation of such animals into the state in violation of K.S.A. 47-607, and amendments thereto, the special permit requirements of K.S.A. 47-607a, and amendments thereto, or rules and regulations promulgated pursuant to K.S.A. 47-607d, and amendments thereto, in the possession of any person be submitted to the commissioner for review within a reasonable time. Failure to cooperate with any such request shall be considered a violation of this act.*

Sec. 4. K.S.A. 65-771 is hereby amended to read as follows: 65-771. As used in this act:

(a) "Adulterated" ~~has means 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~~ "Dairy manufacturing plants" does not include a licensed food service establishment ~~which that~~ is licensed to manufacture homemade ice cream pursuant to this act.

(d) "Dairy products" means products ~~which that~~ may be made from milk or cream for manufacturing purposes and ~~which~~ are not required to meet grade A standards, ~~including.~~ "Dairy products" includes 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 that~~ 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 that~~ 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)(g)~~ "Grade A pasteurized milk" means pasteurized milk ~~which that~~ 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)(h)~~ "Grade A pasteurized milk products" means all pasteurized milk products ~~which that~~ 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.~~

~~(i)(i)~~ "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.~~

~~(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.

~~(j)~~ "Imminent health hazard" means any condition that involves milk, milk products or dairy products, or any practice or procedure in the handling, transportation, storage, processing or manufacturing of milk, milk product or dairy product that poses a significant threat of danger to the public health that should be corrected immediately to prevent injury or sickness and that should not be permitted to continue while a hearing or other proceeding is being conducted.

~~(k)~~ "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 that~~ individually conform to the requirements of this act.

~~(m)(l)~~ "Milk" means the lacteal secretion, practically free from

colostrum, obtained by the complete milking of one or more healthy cows. ~~Milk that is in hooved mammals. Except for on-farm retail sale of milk or milk products, milk sold 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.~~

(~~h~~)(m) "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.

(~~h~~)(n) "~~Milk hauler/sampler~~ *hauler or 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.

(~~h~~)(o) "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.

(~~h~~)(p) "Milk or cream for manufacturing purposes" means raw milk or raw cream ~~which that~~ 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.~~

(~~h~~)(q) "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.

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

(~~h~~)(s) "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.

(~~h~~)(t) "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.

(~~h~~)(u) "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.

(~~h~~)(v) "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, 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~~ *includes* 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 that~~ 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 products"~~ *does* not include dietary products, infant formula, ice cream or other desserts, butter or cheese.

~~(x)~~(w) "Milk tank truck" means the term used to describe both a bulk milk pick up tanker and a milk transport tank.

~~(y)~~(x) "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)~~(y) "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)~~(z) "Milk transportation company" means the person, business or entity responsible for a milk tank truck.

~~(bb)~~(aa) "Misbranded" ~~has means~~ the same meaning as ascribed to ~~it~~ *as provided* in K.S.A. 65-665, and amendments thereto.

~~(cc)~~(bb) "On-farm retail sales of milk or milk products" means the sale of *unpasteurized raw* milk or *unpasteurized raw* 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.~~

~~(dd)~~(cc) "Pasteurized" ~~has means~~ the same meaning as ascribed to ~~it~~ *as provided* in 21 C.F.R. §§ 131.3 and 135.3.

~~(ee)~~(dd) "Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.

~~(ff)~~(ee) "Plant fabricating single service articles" means any place ~~which that~~ manufactures single service articles ~~which that~~ are expected to come in contact with grade A milk or grade A milk products.

~~(gg)~~(ff) "Secretary" means the secretary of the Kansas department of agriculture, or the secretary's designee.

~~(hh)~~(gg) "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. 5. K.S.A. 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, ~~2023~~ 2028, a license fee of \$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, ~~2023~~ 2028, a license fee of \$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, ~~2023~~ 2028, 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, ~~2023~~ 2028, a license fee of \$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, ~~2023~~ 2028, a license fee of \$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.

(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.

(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 shall reduce any license fee in subsections (a) through (f) by adopting rules and regulations whenever the secretary determines that such fee is yielding more than is necessary for administering the provisions of this act. The secretary may increase any license fee in subsections (a) through (f) by adopting rules and regulations 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 maximum amounts provided in this section.

Sec. 6. K.S.A. 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, ~~2023~~ 2028, 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, ~~2023~~ 2028, a fee of \$.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~~ \$.0075, or commencing July 1, 2002, and ending June 30, ~~2023~~ 2028, a fee of \$.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~~ *that* is processed into grade A milk ~~or~~, grade A milk products *or other dairy products* shall be paid. Each milk processor is hereby charged with such fee, which shall be remitted to the secretary. This fee shall not be paid if the milk is processed or manufactured at the dairy where such milk is produced and less than 7,000,000 pounds of milk are processed annually.

(d) A milk fee of \$.01, or commencing July 1, 2002, and ending June 30, ~~2023~~ 2028, 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, ~~2023~~ 2028, a fee of \$.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"~~ *does* 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. This fee shall not be paid if the milk is processed or manufactured at the dairy where such milk is produced and less than 7,000,000 pounds of milk are processed annually.

(f) In lieu of the fee prescribed in subsection (e), a fee of \$1, or commencing July 1, 2002, and ending June 30, ~~2023~~ 2028, a fee of \$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, ~~2023~~ 2028, a fee of \$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) 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 30<sup>th</sup> 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 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) 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 shall reduce any inspection fee in subsections (a) through (h) by adopting rules and regulations whenever the secretary determines that such fee is yielding more than is necessary for administering the provisions of this act. The secretary may increase any inspection fee in subsections (a) through (h) by adopting rules and regulations 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 maximum amounts provided in this section.

Sec. 7. K.S.A. 65-786 is hereby amended to read as follows: 65-786. (a) If the secretary determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of this act or any rules and regulations or order issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder. Any such hearing shall be held by the secretary or a presiding officer from the office of administrative hearings.

(b) If the secretary makes written findings of fact that there is a situation involving an immediate danger to the public health, safety or welfare or that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the secretary may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order, the secretary shall promptly notify the person subject to the order that:

- (1) It has been entered;
- (2) the reasons therefor; and
- (3) that upon written request from the person subject to the order within 15 days after service of the order the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any such hearing shall be held by the secretary or presiding officer from the office of



administrative hearings. If no hearing is requested and none is ordered by the secretary, the order will remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered the secretary, after giving notice of and opportunity for hearings to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order.

*(c) When necessary to protect the public health, an imminent health hazard may be declared by the secretary at any point in a chain of events that 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 and the use of any authority granted pursuant to this act, including any action taken pursuant to subsection (a) or (b) or K.S.A. 65-780a or 65-785, and amendments thereto.*

Sec. 8. K.S.A. 65-788 is hereby amended to read as follows: 65-788. (a) Any licensee or any employee or agent thereof who violates any provision of this act or any rules and regulations promulgated thereunder *and any person who violates section 1, and amendments thereto*, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$300 for each violation and, in the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary to the licensee who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the licensee to appeal to the secretary. Any such licensee within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

*(c) Any ~~licensee~~ person subject to and aggrieved by a final order of the secretary made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.*

(d) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer, deposited in the state treasury and credited to the state general fund.

Sec. 9. K.S.A. 47-607c, 65-771, 65-778, 65-781, 65-786 and 65-788 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

\_\_\_\_\_

SENATE concurred in  
HOUSE amendments \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*