

HOUSE BILL No. 2730

By Committee on Agriculture and Natural Resources

2-10

Proposed Amendments to HB 2730 by
Kansas Department of Agriculture

3/14/12

Senate Committee on Agriculture
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Office of Revisor of Statutes

1 AN ACT concerning food and lodging; relating to inspections and
2 licensing; amending K.S.A. 36-505, 36-515a, 36-517, 65-660, 65-674
3 and 65-682 and K.S.A. 2011 Supp. 36-501, 36-502, 36-506, 36-510,
4 36-515, 36-515b, 36-518, 36-519, 36-520, 65-655, 65-656, 65-657, 65-
5 658, 65-685, 65-688, 65-689 and 65-690 and repealing the existing
6 sections; also repealing K.S.A. 36-508, 36-511, 36-513, 36-515c, 65-
7 619, 65-620, 65-621, 65-622, 65-623, 65-624, 65-625, 65-631, 65-632,
8 65-633, 65-634, 65-637, 65-638, 65-639, 65-640, 65-642, 65-651, 65-
9 652, 65-654, 65-659, 65-661, 65-666, 65-667, 65-668, 65-669, 65-
10 669a, 65-670, 65-671, 65-677 and 65-681 and K.S.A. 2011 Supp. 36-
11 503, 36-504, 36-507, 36-509, 65-626, 65-635, 65-641, 65-653, 65-673,
12 65-676, 65-683, 65-684, 65-686, 74-591, 74-592, 74-593, 74-594, 74-
13 595, 74-596, 74-596a, 74-597, 74-598, 74-5,101 and 74-5,102.
14

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

16 New Section 1. (a) Except as otherwise provided in this section, any
17 license issued under the provisions of this act shall expire on March 31
18 following the date of issuance. Licensees may renew licenses by applying
19 to the secretary on or before the expiration date. Application for renewal of
20 a license shall be made on a form prescribed by the secretary and shall be
21 accompanied by the license fee required for the issuance of an original
22 license. If the secretary refuses to renew any license, the secretary shall
23 give written notice thereof to the licensee. In giving written notice, the
24 secretary shall specify changes necessary for complete compliance with
25 rules and regulations, and the secretary shall state that if compliance is
26 achieved within the time designated then the license shall be renewed. If
27 the licensee fails to achieve complete compliance within the prescribed
28 time, the secretary, after notice and an opportunity for a hearing in
29 accordance with the Kansas administrative procedure act, shall deny the
30 application for a license. If for any reason, a licensee fails to renew a
31 license prior to the expiration date, the licensee may obtain a renewal of
32 such license within 30 days following the expiration date. In order to
33 renew a license during this thirty-day period, the licensee must comply
34 with the foregoing provisions of this section and pay a \$25 late fee. If the
35 licensee does not renew within the thirty-day period, then the license is
36 treated as expired, and the licensee must apply for a new license.

1 under this section may appeal such order to the district court in the manner
2 provided by the Kansas judicial review act.

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

8 (f) ~~This section shall be a part of and supplemental to the food service
9 and lodging act.~~

10 Sec. 11. K.S.A. 36-517 is hereby amended to read as follows: 36-517.
11 (a) Every licensed lodging establishment designated as a hotel shall
12 provide at no additional charge to deaf and hearing impaired guests, upon
13 request of such guests, portable smoke detectors of the type suitable for
14 providing visual warning to such guests, or a room equipped with fixed
15 visual warning smoke detectors or a ground floor guest room accessible to
16 the out-of-doors. Each licensed lodging establishment designated as a
17 hotel shall have available for such guests not less than one portable visual
18 warning smoke detector, or one room equipped with a fixed visual warning
19 smoke detector or one ground floor guest room accessible to the out-of-
20 doors for each 50 guest rooms of such lodging establishment, except that
21 no such lodging establishment designated as a hotel shall be required to
22 have more than a total of six portable visual warning smoke detectors, or
23 six rooms equipped with fixed visual warning smoke detectors or six
24 ground floor guest rooms accessible to the out-of-doors nor shall any such
25 lodging establishment have less than one such smoke detector, or one
26 room equipped with a fixed visual warning smoke detector or one ground
27 floor guest room accessible to the out-of-doors.

28 (b) ~~This section shall be part of and supplemental to the food service
29 and lodging act.~~

30 Sec. 12. K.S.A. 2011 Supp. 36-518 is hereby amended to read as
31 follows: 36-518. (a) *Except as provided in subsections (e) and (f) of*
32 *K.S.A. 36-502, and amendments thereto, the secretary shall inspect or*
33 *cause to be inspected every lodging establishment in this state. Any*
34 *lodging establishment in this state shall be inspected upon receipt of a*
35 *complaint indicating that a such lodging establishment does not comply*
36 *with the applicable standards promulgated in the lodging inspection act or*
37 *rules and regulations of the secretary adopted thereunder. The secretary or*
38 *the secretary's lawful agent shall have the right of entry and access thereto,*
39 *at any reasonable time. ~~If the secretary is denied access to any premises-~~*
40 *~~where such access was sought for the purposes authorized, the secretary-~~*
41 *~~may apply to any court of competent jurisdiction for a search warrant-~~*
42 *~~authorizing access to such premises for such purposes. Upon application-~~*
43 *~~and a showing of cause therefor, the court may issue such search~~*

Strike all in line 39 after the period; strike all in
lines 40 through 43; and on page 12, strike all in
line 1.

1 ~~WHEREAS~~

2 (b) Whenever, upon inspection, it is determined that any lodging
3 establishment does not comply with the applicable standards promulgated
4 in the *lodging inspection act* or rules and regulations of the secretary
5 adopted thereunder, the secretary shall give written or *electronic* notice to
6 the owner, proprietor, licensee or agent in charge of such establishment of
7 the changes or alterations necessary to comply with such standards. Such
8 notice shall:

9 (1) The notice shall Order the establishment to comply with the
10 applicable standards within a period of time specified in the notice, which
11 shall be not less than 10 days, except that a shorter period of time may be
12 provided in the notice whenever the secretary believes it essential to
13 protect the public health and safety; and

14 (2) The notice also shall state that the license for such establishment,
15 if applicable, shall be subject to suspension or revocation for failure to
16 comply with the applicable standards within the time specified.

17 (3) (c) The licensee or operator of any establishment given a notice
18 pursuant to this section may apply to the secretary for an extension of the
19 time specified in the notice. The secretary shall review such application
20 and may grant or deny such application or modify the provisions of the
21 notice with respect to the time for compliance with any of the particulars
22 stated in the notice.

23 (e) (d) Upon reinspection of any lodging establishment given a notice
24 pursuant to this section, if it is determined that such establishment does not
25 comply with the applicable standards promulgated in the *lodging*
26 *inspection act* and rules and regulations of the secretary adopted
27 thereunder, the secretary, after providing notice and an opportunity for
28 a hearing in accordance with the provisions of the Kansas
29 administrative procedure act, may suspend or revoke the license issued
30 for such establishment. If the secretary suspends or revokes the license, the
31 secretary shall send written notice to the licensee that the license for such
32 establishment will be suspended or revoked, effective 20 days after the
33 date such notice is sent, unless within such time the licensee files with the
34 secretary a written request for a hearing on the proposed suspension or
35 revocation. All hearings pursuant to this section shall be conducted in
36 accordance with the notice and hearing provisions of the Kansas
37 administrative procedure act.

38 (d) The secretary is authorized to receive lodging inspection reports
39 from qualified individuals, private entities or public entities to determine
40 compliance with lodging standards promulgated pursuant to the food-
41 service and lodging *inspection act*, and amendments thereto. The secretary
42 is authorized to promulgate such rules and regulations as are necessary to
43 receive such inspection reports. Such rules and regulations shall be

1 (v) (s) The term "Federal act" means the federal food, drug and
2 cosmetic act (title 21 U.S.C. § 301 et seq.; 52 Stat. 1040 et seq.)

3 (t) "Department" means the Kansas department of agriculture.

4 (u) "Distribution" means the provision of food, drug, cosmetic or
5 device to another person and includes selling, offering for sale, giving,
6 supplying, transporting, applying and dispensing.

7 (v) "Food establishment" means any place in which food is prepared,
8 served or offered for sale or service on the premises or elsewhere. "Food
9 establishment" does not include roadside markets that offer only whole
10 fresh fruits, nuts and vegetables for sale. "Food establishment" includes,
11 but is not limited to:

12 (1) Eating or drinking establishments, fixed or mobile restaurants,
13 coffee shops, cafeterias, short-order cafes, luncheonettes, tea rooms,
14 grills, sandwich shops, soda fountains, taverns, private clubs, roadside
15 stands, industrial-feeding establishments, catering kitchens, commissaries
16 and any other private, public or nonprofit organizations routinely serving
17 food; and

18 (2) grocery stores, convenience stores, bakeries and operations
19 where food is provided for the public with or without charge.

20 (w) "Food processing plant" means a commercial operation that
21 processes or stores food for human consumption and provides food for
22 distribution to other business entities at other locations, including other
23 food processing plants and food establishments. "Food processing plant"
24 does not include any operation or individual beekeeper that produces and
25 distributes honey to other business entities if the producer does not
26 process the honey beyond extraction from the comb.

27 (x) "Food vending machine" means any self-service device, which,
28 upon payment, dispenses unit servings of food, either in bulk or in
29 packages. Such device shall not necessitate replenishing between each
30 vending operation. "Food vending machine" does not include any vending
31 machine dispensing only canned or bottled soft drinks or prepackaged
32 food that does not require temperature control for safety.

33 (y) "Food vending machine company" means any person in the
34 business of operating and servicing food vending machines.

35 (z) "Location" means a physical address, or absent an address, the
36 geographical area within 300 feet of a food establishment or food
37 processing plant. In the case of a mobile food establishment housed in a
38 trailer, such trailer shall be considered a food establishment with its own
39 location. In the case of a mobile food establishment that is not housed in a
40 trailer, the equipment used for storage, preparation or offering of food
41 shall be considered a food establishment with its own location.

42 (aa) "Municipality" means any city or county of this state.

43 (bb) "Processing" means the handling of a food, drug, cosmetic or

locations

1 of the location of each food vending machine it operates or services; and
2 (C) conspicuously displays the company name, phone number and
3 any additional information the secretary may require on each such
4 vending machine.

5 (9) A person providing only complimentary coffee to its patrons
6 whose primary business is unrelated to operating a food establishment or
7 food processing plant.

8 (10) A person operating a farm winery, as defined in K.S.A. 41-102,
9 and amendments thereto, who does not produce or offer any food products
10 other than wine produced at such farm winery.

11 (11) A retailer, as defined in K.S.A. 41-102, and amendments thereto,
12 that sells only alcoholic liquors and cereal malt beverages.

13 (12) A food establishment that sells or offers for sale only packaged
14 foods that are non-hazardous and are received directly from a licensed
15 food production facility in packaged form, if such food establishment
16 contains less than 200 cubic feet as measured pursuant to subsection (e) of
17 K.S.A. 65-688, and amendments thereto.

18 (13) A person who provides food samples, without charge, to
19 promote, advertise or compliment the sale of food or associated food
20 preparation equipment.

21 (e) The exemption provided to those entities provided in subsection
22 (d) shall not be exempt from inspection or regulation when a violation is
23 observed or reported to the secretary.

24 (f) A food establishment operated in connection with any premises
25 licensed, registered or permitted by the secretary of health and
26 environment, the secretary of social and rehabilitation services, the
27 secretary of corrections or the secretary of aging, which is inspected and
28 regulated pursuant to the respective law or rule and regulation of such
29 secretary, shall not require a license, and the secretary of agriculture shall
30 not be authorized to inspect or cause such premises to be inspected. This
31 subsection shall not apply to a food establishment whose primary function
32 is not in connection with any premises licensed, registered or permitted
33 pursuant to the respective law or rule and regulation of such secretary.

34 Sec. 25. K.S.A. 2011 Supp. 65-690 is hereby amended to read as
35 follows: 65-690. (a) If the secretary of agriculture finds that the public
36 health or safety is endangered by the continued operation of a food
37 processing plant or retail food-store food establishment, the secretary may
38 temporarily suspend, temporarily, the license of such establishment or
39 order the temporary closure of such establishment without notice or
40 hearing in accordance with the emergency adjudication procedures of the
41 provisions of the Kansas administrative procedure act.

42 (b) In no case shall a temporary suspension of a license or temporary
43 closure under this section be in effect for a period of time in excess of 90

(14) A guest house, as defined in K.S.A.
36-501, and amendments thereto.