

Senate Substitute for HOUSE BILL No. 2730

AN ACT concerning the department of agriculture; relating to the duties of the secretary of agriculture; inspections; licensing; amending K.S.A. 36-505, 36-515a, 36-517, 65-660, 65-674, 65-682, 65-6a34 and 65-6a41 and K.S.A. 2011 Supp. 36-501, 36-502, 36-506, 36-510, 36-515, 36-515b, 36-518, 36-519, 36-520, 65-655, 65-656, 65-657, 65-658, 65-685, 65-688, 65-689, 65-690, 65-6a18, 65-6a20 and 65-6a31 and repealing the existing sections; also repealing K.S.A. 36-508, 36-511, 36-513, 36-515c, 65-619, 65-620, 65-621, 65-622, 65-623, 65-624, 65-625, 65-631, 65-632, 65-633, 65-634, 65-637, 65-638, 65-639, 65-640, 65-642, 65-651, 65-652, 65-654, 65-659, 65-661, 65-666, 65-667, 65-677 and 65-681 and K.S.A. 2011 Supp. 36-503, 36-504, 36-507, 36-509, 65-626, 65-635, 65-641, 65-653, 65-673, 65-676, 65-683, 65-684, 65-686, 74-591, 74-592, 74-593, 74-594, 74-595, 74-596, 74-596a, 74-597, 74-598, 74-5,101 and 74-5,102.

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

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

(b) (1) The secretary shall inspect or cause to be inspected every licensed food establishment or food processing plant in this state. If upon inspection, the secretary determines that a food establishment or food processing plant does not comply with rules and regulations, the secretary shall give written or electronic notice to the owner, proprietor, or agent in charge of such food establishment or food processing plant. In giving notice, the secretary shall specify changes necessary for complete compliance, and the secretary shall designate a time period for achieving compliance. The prescribed time period shall not be less than 10 days, unless the secretary believes time is essential to protect public health and safety. If time is essential to protect public health and safety, the secretary may designate a shorter period for compliance. Also, in giving notice, the secretary shall state that if compliance is not achieved within the time prescribed, the license for the food establishment or food processing plant shall be subject to suspension or revocation.

(2) When a licensee of any food establishment or food processing plant receives notice of noncompliance, the licensee may apply to the secretary to extend the time period for achieving compliance. Upon review of any such application, the secretary may deny the application or the secretary may modify the time period for compliance.

(3) After the secretary has issued the notice of noncompliance, the secretary may inspect to determine if the food establishment or food processing plant has achieved compliance within the prescribed time. If the food establishment or food processing plant is noncompliant, the secretary, after providing notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, may suspend or revoke the issued license.

(c) If after providing notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary determines 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. The secretary may take such affirmative action when in the secretary's judgment affirmative action carries out the purposes of the vio-

lated or potentially violated provision of this act or rules and regulations or order issued thereunder.

(d) Any party 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.

New Sec. 2. (a) The secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of this act, and the rules and regulations adopted thereunder whenever the secretary shall determine that such municipality has adequate personnel to provide proper enforcement. Any municipality entering into a contract with the secretary to enforce statutes, rules or regulations shall act as an agent of the secretary in carrying out such duties. No such municipality shall charge any facility a fee for services performed as an agent of the secretary under such contract, which is in addition to and separate from, any fee such facility is required to pay to the secretary under the provisions of this act. Such municipality shall enforce such standards within the municipality as designated by contract. Any inspection of any premises by officers, employees or agents of any such municipality, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if performed by the secretary.

(b) The secretary and the state fire marshal are hereby authorized and empowered to enter into a contract authorizing the state fire marshal or the fire marshal's deputies or lawful agents to enforce all or any portion of the standards promulgated pursuant to this act. Such contract shall designate specific facilities or types of facilities wherein such authority may be exercised. Any inspection of such facilities by the state fire marshal or the fire marshal's lawful agents to determine compliance with standards established pursuant to this act, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if performed by the secretary. Such contract also may provide similar authority for the secretary with respect to enforcement of all or any portion of the Kansas fire prevention code in specified facilities or types of facilities. Any inspection of such establishments by the secretary to determine compliance with the Kansas fire prevention code shall have the same force and effect as if performed by the state fire marshal or the fire marshal's deputies or lawful agents.

Sec. 3. K.S.A. 2011 Supp. 36-501 is hereby amended to read as follows: 36-501. (a) *K.S.A. 36-501 through 36-520, and amendments thereto, shall be known and may be cited as the lodging inspection act.*

(b) As used in the ~~food service and lodging inspection~~ act, the following words and phrases shall have the *following* meanings—~~respectively ascribed to them herein~~:

~~(a)~~(1) "Hotel" means every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a cabin camp, tourist cabin, motel or other type of lodging unit.

~~(b)~~(2) "Rooming house" means every building or other structure which is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, but which does not maintain common facilities for the serving or preparation of food for such guests.

~~(c)~~(3) "Boarding house" means every building or other structure which is kept, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, and which maintains common facilities for the serving or preparation of food for such guests. The term "boarding house" shall not include facilities licensed under paragraph (5) of subsection (a) of K.S.A. 75-3307b, and amendments thereto.

~~(d)~~(4) "Lodging establishment" means a hotel, rooming house, *guest house* or boarding house.

~~(e)~~ "Food service establishment" means any place in which food is served or is prepared for sale or service on the premises or elsewhere.

Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

~~(f)~~(5) “Food” means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use or for sale, in whole or in part, for human consumption.

~~(g)~~ “Food vending machine” means any self-service device which, upon insertion of a coin, coins or tokens, or by other similar means, dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation but shall not include any vending machine dispensing only bottled or canned soft drinks, or prepackaged and nonpotentially hazardous food, chewing gum, nuts or candies.

~~(h)~~ “Food vending machine company” means any person who is in the business of operating and servicing food vending machines.

~~(i)~~ “Food vending machine dealer” means any manufacturer, remanufacturer or distributor of food vending machines who sells food vending machines to food vending machine companies *has the same meaning as provided in K.S.A. 65-656, and amendments thereto.*

(6) “Guest house” means every building or other structure which is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests. A guest house shall accommodate no more than seven guests in no more than three rooms furnished with sleeping accommodations, regardless of whether common facilities for the serving or preparation of food are maintained.

~~(j)~~(7) “Person” means an individual, partnership, corporation or other association of persons.

~~(k)~~(8) “Municipality” means any city or county of this state.

~~(l)~~(9) “Secretary” means the secretary of agriculture *and the secretary’s authorized representatives.*

~~(m)~~(10) “Department” means the Kansas department of agriculture.

Sec. 4. K.S.A. 2011 Supp. 36-502 is hereby amended to read as follows: 36-502. (a) It shall be unlawful for any person to engage in the business of conducting a lodging establishment unless such person shall have in effect a valid license therefor issued by the secretary of agriculture. Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by the appropriate license fee required by subsection (c) ~~of this section.~~ Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the lodging establishment designated in the application, to determine that it complies with the standards for lodging establishments promulgated pursuant to this act. If such lodging establishment is found to be in compliance, *and the completed application and accompanying fees have been submitted,* the secretary shall issue the license. ~~If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held~~ *If such lodging establishment is found not to be in compliance, the secretary shall deny such application after providing notice and opportunity for a hearing* in accordance with the provisions of the Kansas administrative procedure act.

(b) Each license shall designate whether the licensed lodging unit is a hotel, rooming house or boarding house. Any person obtaining a license to engage in the business of conducting a rooming house or boarding house shall not have the right to use the name “hotel” in connection with such business. Every license issued hereunder shall be displayed conspicuously in the lodging establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$5.

(c) The fee for a license to conduct a lodging establishment in this state for all or any part of any calendar year shall be \$30, except that the fee for any lodging establishment containing 10 sleeping rooms shall be \$40 and for every additional 10 rooms therein, an additional fee of \$10 shall be charged. All lodging establishments which are newly constructed, newly converted to use as a lodging establishment or have a change of ownership shall pay an application fee which may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed \$200 in addition to the license fee.

(d) ~~Any person who, on the effective date of this act, has a valid license to operate a hotel or rooming house shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a lodging establishment issued under the provisions of this act.~~ Any lodging establishment that also has a food establishment license shall have a fee set by rule and regulation of the secretary. Such fee shall not exceed the fees for lodging establishments as provided in subsection (c).

(e) A guest house shall not be required to have a lodging license, but such guest house shall be required to be inspected if the secretary receives a complaint concerning such guest house and shall be subject to the temporary closure provisions of subsection (b) of K.S.A. 36-515a, and amendments thereto.

(f) A lodging establishment operated in connection with any premises licensed, registered or permitted by the secretary of health and environment, the secretary of social and rehabilitation services, the secretary of corrections or the secretary of aging, which is inspected and regulated pursuant to the respective law or rule and regulation of such secretary, shall not require a license as provided in this section, and the secretary of agriculture shall not be authorized to inspect or cause such premises to be inspected. This subsection shall not apply to a lodging establishment whose primary function is not in connection with any premises licensed, registered or permitted pursuant to the respective law or rule and regulation of such secretary.

Sec. 5. K.S.A. 36-505 is hereby amended to read as follows: 36-505. Except as otherwise provided in this section, any license issued under the provisions of this act shall expire on ~~December 31~~ of the year in which it is issued ~~March 31 following the date of issuance~~, and may be renewed by making application to the secretary on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary and shall be accompanied by the license fee required for the issuance of an original license. ~~Prior to the renewal of any such license, the secretary shall inspect or cause to be inspected the licensed premises or food vending machines which are to be operated and serviced under authority of a license issued under this act to determine the compliance of such premises with the applicable standards promulgated pursuant to this act. Lodging establishments shall not be required to be inspected prior to license renewal. If an inspection of the premises is required and such inspection is not made prior to the expiration date of the license sought to be renewed, such license shall be valid until the inspection has been made and the secretary has granted or denied the application for renewal. No license shall be renewed unless and until the licensed premises for which it is issued is found to be in compliance with the applicable standards promulgated pursuant to this act. A food vending machine dealer license shall be renewed without inspection. If the secretary shall refuse to renew any license, the secretary shall give written notice thereof to the licensee, specifying the changes or alterations necessary in the establishment to effect complete compliance with the applicable standards and stating that, if such compliance is effected within the period of time designated in the notice, the license shall be renewed. If the licensee fails to effect complete compliance with the applicable standards within the time prescribed in such notice, the application for renewal of a license shall be denied, and the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon; if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act. If, for any~~

reason, a licensee fails to renew a license prior to the expiration date ~~thereof~~, the licensee may obtain a renewal of such license within 30 days following the expiration date ~~thereof~~, by complying with the foregoing provisions of this section and paying a ~~restoration fee in the amount of \$10-\$25 late fee~~. *If the licensee does not renew within the 30-day period, then the license is treated as expired and the licensee must apply for a new license.*

Sec. 6. K.S.A. 2011 Supp. 36-506 is hereby amended to read as follows: 36-506. (a) *The secretary is hereby authorized and empowered to administer and enforce the provisions of the lodging inspection act, and rules and regulations adopted thereunder.* The secretary ~~of agriculture~~ shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of lodging establishments *and the administration and enforcement thereof.* ~~The lodging standards promulgated by~~ Such rules and regulations shall relate to:

- (1) Water supply;
- (2) heating;
- (3) lighting;
- (4) ventilation;
- (5) toilet and other sanitary facilities;
- (6) conditions increasing the hazards of fire, accidents or other calamities;
- (7) bedding and furnishings;
- (8) sewage disposal; ~~and~~
- (9) such other minimum conditions which the secretary deems necessary for the operation and maintenance of a lodging establishment in a safe and sanitary manner; *and*
- (10) *licensure of lodging establishments and fees related to the licensure and inspection thereof.*

(b) The standards promulgated pursuant to the rules and regulations adopted hereunder shall be designed to ensure the health, comfort and safety of the guests in lodging establishments. Such standards may be based upon or incorporate by reference specific editions, or portions thereof, of nationally recognized codes establishing lodging standards. Such standards shall be applicable uniformly throughout the state, except that the secretary may establish different standards for each of the various classes of lodging establishments. Any provision of an ordinance or resolution of any municipality, prescribing safety and sanitation standards for lodging establishments, which does not conform to the minimum standards promulgated by the secretary pursuant to this section, shall be null and void; but nothing herein shall be construed as precluding any municipality from establishing by ordinance or resolution standards which are more stringent than those established by the secretary.

Sec. 7. K.S.A. 2011 Supp. 36-510 is hereby amended to read as follows: 36-510. (a) The secretary shall be responsible for the enforcement of the lodging ~~and food service~~ standards promulgated pursuant to this act, but the secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of all or any portion of such standards, whenever the secretary shall determine that such municipality has adequate personnel to provide proper enforcement. Any municipality entering into a contract with the secretary to enforce such standards shall act as an agent of the secretary in carrying out such duties, and no such municipality shall charge any lodging establishment ~~or food service establishments~~ a fee for services performed as an agent of the secretary under such contract which is in addition to and separate from any fee such establishment is required to pay to the secretary under the provisions of this act. Such municipality shall enforce such standards within such municipalities of this state as are designated in the contract. Any inspection of lodging ~~or food service~~ establishments by officers, employees or agents of any such municipality, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

(b) The secretary and the state fire marshal are hereby authorized and empowered to enter into a contract authorizing the state fire marshal and the fire marshal's deputies or lawful agents to enforce all or any portion of the lodging ~~or food service~~ standards promulgated pursuant to this act. Such contract shall designate specific lodging ~~or food service~~

establishments, or types of lodging ~~or food service~~ establishments, wherein such authority may be exercised. Any inspection of such establishments by the state fire marshal or the fire marshal's deputies or lawful agents, to determine compliance with lodging ~~or food service~~ standards established pursuant to this act, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

Such contract also may provide similar authority for the secretary ~~of agriculture~~ and the secretary's officers, employees and agents with respect to enforcement of all or any portion of the Kansas fire prevention code in specified lodging ~~or food service~~ establishments, or in types of lodging ~~or food service~~ establishments. Any inspection of such establishments by the secretary, or the secretary's officers, employees and agents, to determine compliance with the Kansas fire prevention code, shall have the same force and effect as if performed by the state fire marshal or the marshal's deputies and agents.

Sec. 8. K.S.A. 2011 Supp. 36-515 is hereby amended to read as follows: 36-515. (a) After notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may deny, suspend, revoke, refuse to renew or modify the license to operate ~~a food service establishment, a lodging establishment or food vending machines~~ if the licensee ~~has~~:

(1) ~~failed to comply with the standards, provisions or requirements established pursuant to this act, or~~

(2) ~~failed to comply with any provision or requirement of the Kansas food service and lodging act, and amendments thereto, or any rule or regulation adopted thereunder.~~

(b) ~~Upon conviction, any person who violates any provision of this act shall be guilty of a class C misdemeanor, except that upon any subsequent conviction such person shall be guilty of a class B misdemeanor~~ *the lodging inspection act, or any rule or regulation adopted thereunder.*

(c) ~~(b)~~ The secretary may seek injunctive relief from the appropriate district court to enjoin any operator of a ~~food service establishment, lodging establishment or food vending machine company~~ from conducting business when such operator has:

(1) Failed to make application for or to obtain a license for such purpose as required by the ~~food service and lodging inspection act;~~

(2) ~~or when had~~ such license ~~has been~~ suspended, *denied* or revoked;

or

(3) *failed to comply with the standards established pursuant to the lodging inspection act, or rules and regulations adopted thereunder.*

Sec. 9. K.S.A. 36-515a is hereby amended to read as follows: 36-515a.

(a) If the secretary finds that the public health or safety is endangered by the continued operation of a lodging establishment ~~or food service establishment~~, the secretary may suspend temporarily the license of such establishment, *or if the lodging establishment is a guest house, order the temporary closure thereof*, without notice or hearing in accordance with the emergency ~~adjudication procedures of the~~ provisions of the Kansas administrative procedure act.

(b) In no case shall a temporary suspension of a license *or closure of a guest house* under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the ~~licensee lodging establishment~~ shall be reinstated to full licensure *or, if such lodging establishment is a guest house, allowed to reopen*, unless the secretary has suspended or revoked the license, ~~after notice and hearing obtained an injunction against such licensee or operator~~, or the license has expired as otherwise provided under the ~~food service and lodging inspection act.~~

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

Sec. 10. K.S.A. 2011 Supp. 36-515b is hereby amended to read as follows: 36-515b. (a) Any person who violates any provision of the ~~food service and lodging inspection act~~ or any rule and regulation adopted pursuant thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in an amount not to exceed \$500 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The secretary ~~of agriculture~~, upon a finding that a person has

violated any provision of the ~~food service and lodging inspection~~ *inspection* act or any rule and regulation adopted pursuant thereto, *after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act*, may impose a civil penalty within the limits provided in this section upon such person, which civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed.

~~(e) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary of agriculture to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, 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 of the secretary and shall specify the reasons therefor.~~

~~(d)(c)~~ Any ~~person-party~~ aggrieved by an 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.

~~(e)(d)~~ Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of 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.

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

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

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

Sec. 12. K.S.A. 2011 Supp. 36-518 is hereby amended to read as follows: 36-518. (a) *Except as provided in subsections (e) and (f) of K.S.A. 36-502, and amendments thereto*, the secretary shall inspect or cause to be inspected every lodging establishment in this state. Any lodging establishment in this state shall be inspected upon receipt of a complaint indicating that ~~a~~ *such* lodging establishment does not comply with the applicable standards promulgated in the *lodging inspection act* or rules and regulations ~~of the secretary adopted thereunder~~. The secretary or the secretary's lawful agent shall have the right of entry and access thereto, at any reasonable time.

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

(1) ~~The notice shall~~ Order the establishment to comply with the applicable standards within a period of time specified in the notice, which shall be not less than 10 days, except that a shorter period of time may

be provided in the notice whenever the secretary believes it essential to protect the public health and safety; *and*

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

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

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

~~(d)(e)~~ (e) The secretary is authorized to receive lodging inspection reports from qualified individuals, private entities or public entities to determine compliance with lodging standards promulgated pursuant to the *food service and lodging inspection act*, and amendments thereto. The secretary is authorized to promulgate such rules and regulations as are necessary to receive such inspection reports. ~~Such rules and regulations shall be promulgated on or before July 1, 2010.~~

~~(c)~~ This section shall be a part of and supplemental to the *food service and lodging act*.

Sec. 13. K.S.A. 2011 Supp. 36-519 is hereby amended to read as follows: 36-519. ~~(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 the *food service and lodging inspection act*, and amendments thereto, or any rules and regulations or ~~order orders~~ issued thereunder, the secretary, *after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act*, 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 orders~~ issued thereunder. ~~Any such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.~~

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

Sec. 14. K.S.A. 2011 Supp. 36-520 is hereby amended to read as follows: 36-520. There is hereby created the lodging fee fund. The secretary shall remit all license fees received by the secretary under the provisions of K.S.A. 36-502, and amendments thereto, and all license renewal fees for lodging establishments under K.S.A. 36-505, and amendments thereto, to the state treasurer in accordance with the provisions of 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 lodging fee fund. All expenditures from the lodging fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary ~~of agriculture~~ or by a person designated by the secretary. ~~This section shall be a part of and supplemental to the food service and lodging act.~~

Sec. 15. K.S.A. 2011 Supp. 65-655 is hereby amended to read as follows: 65-655. K.S.A. 65-619 through 65-690, and *sections 1 and 2, and*

amendments thereto, may be cited as the Kansas food, drug and cosmetic act.

Sec. 16. K.S.A. 2011 Supp. 65-656 is hereby amended to read as follows: 65-656. For the purpose of this act: ~~(a) The term~~

(a) “Secretary” means the secretary of agriculture *or the secretary’s authorized representatives*.

(b) ~~The term~~ “Person” ~~includes~~ means an individual, partnership, governmental entity, corporation, ~~and~~ or association of persons.

(c) ~~The term~~ “Food” means: (1) Articles used for food or drink for ~~man~~ humans 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~~ humans or other animals; ~~and~~ (3) articles ~~(, other than food)~~, intended to affect the structure or any function of the body of ~~man~~ humans or other animals; and (4) articles intended for use as a component of any article specified in ~~clause~~ paragraph (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 as used in subsection (j) of K.S.A. 65-657 (j), subsection (f) of K.S.A. 65-665 (f), subsection (c) and (o) of K.S.A. 65-669 (e) and (o), and subsection (c) of K.S.A. 65-671 (e), and amendments thereto~~, 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~~ humans or other animals; or ~~(2)~~ to affect the structure or any function of the body of ~~man~~ humans 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, promoting 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.~~

~~(k)~~ (k) ~~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)(l)~~ 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)(m)~~ 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)(n)~~ 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”~~ a “pesticide” within the meaning of the agricultural chemicals act, K.S.A. 2-2202 as now enacted or as hereafter amended, and amendments thereto, and which is used in the production, storage, or transportation of raw agricultural commodities.

~~(r)(o)~~ 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)(p)~~ 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.~~ “Food additive” 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)(q)~~ (1) The term “Color additive” means a material ~~which~~ —(A) 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 of, 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)~~ this subsection 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)~~(r) ~~The term “Imitation” shall mean~~ means 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)~~(s) ~~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.*

(t) “Department” means the Kansas department of agriculture.

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

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

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

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

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

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

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

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

(aa) “Municipality” means any city or county of this state.

(bb) “Processing” means the handling of a food, drug, cosmetic or device, including the production, manufacturing, packaging, packing and labeling of such item.

(cc) “Sample” means a small quantity of food and does not include a meal or entree.

(dd) “Storage” means holding for distribution or processing.

Sec. 17. K.S.A. 2011 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~~ processing, storage or distribution 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)~~(d) The dissemination of any false advertisement.

~~(f)~~(e) The refusal to permit entry ~~or~~, inspection; ~~or to permit the~~ taking of a sample, as authorized by K.S.A. 65-674, *and amendments thereto*.

~~(g)~~(f) 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~~ *such person* received in good faith the food, drug, device; or cosmetic.

~~(h)~~(g) The removal or disposal of a detained or embargoed article in violation of K.S.A. 65-660, *and amendments thereto*.

~~(i)~~(h) 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)~~(i) Forging, counterfeiting, simulating; or falsely representing, or without proper authority using any mark, stamp, tag, label; or other identification ~~device~~ *method* authorized; or required by *rules and* regulations promulgated under the provisions of this act.

~~(k)~~(j) 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 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 ~~of~~, K.S.A. 60-3320 *et seq.*, and amendments thereto, and as a trade secret is entitled to protection.

~~(l)~~(k) 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~~ *and amendments thereto*, or that such drug complies with the provisions of such section.

~~(m)~~(l) 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)~~(m) (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~~ *paragraph (1)*; 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)~~(n) 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.

(o) *Knowingly killing, selling, trading, exchanging or offering to sell, trade or exchange any diseased animal for human consumption, except immediate slaughter under state or federal meat and poultry inspection.*

(p) *Knowingly purchasing or otherwise obtaining possession of any diseased animal for the purpose and with the intent of disposing the same for food, except immediate slaughter under state or federal meat and poultry inspection.*

(q) *Offering or exposing for sale at retail, for human consumption,*

any slaughtered wild or domestic fowl, rabbit, squirrel or other small animal unless the entrails, crops and other offensive parts are properly drawn and removed and the carcass is cooled to 41 degrees fahrenheit or less within four hours of slaughter and held at such temperature until delivery to the end consumer.

(r) Failing to protect slaughtered fresh meats, fish, fowl or game for human consumption from dust, flies and other vermin or substance which may injuriously affect it. Protection shall be required at any wholesale or retail food establishment or food processing plant and for peddlers transporting such goods from place to place.

Sec. 18. K.S.A. 2011 Supp. 65-658 is hereby amended to read as follows: 65-658. In addition to the remedies ~~hereinafter~~ provided by the food, drug and cosmetic act, the secretary of 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~~ and the court may grant, a temporary or permanent injunction restraining any person from violating any provision of ~~K.S.A. 65-657, as amended~~ the food, drug and cosmetic act; irrespective of whether or not there exists an adequate remedy at law.

Sec. 19. K.S.A. 65-660 is hereby amended to read as follows: 65-660. (a) Whenever ~~a duly authorized agent~~ of the secretary finds or has probable cause to believe, that any food, drug, device; or cosmetic is adulterated, *contains any substance injurious to public health, is offered in violation of any of the provisions of the food, drug and cosmetic act or rules and regulations adopted thereunder*, or so misbranded as to be dangerous or fraudulent, within the meaning of this act, ~~he~~ the secretary shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, ~~and warning.~~ *Such tag or marking shall warn all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to the secretary. It shall be unlawful for any person to remove such tag or marking from a detained or embargoed article or remove or dispose of such detained or embargoed article by sale or otherwise without such the permission of the secretary.*

(b) When an article detained or embargoed under subsection (a) has been found by ~~such agent~~ to be adulterated; or misbranded, ~~he shall~~ petition the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

~~(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent. Provided, That when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the secretary. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the secretary that the article is no longer in violation of this act, and that the expenses of such supervision have been paid. Provided further, That No action shall be instituted under this act for any alleged misbranding if there is pending in any court, state or federal, a proceeding under this act based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (1) When such misbranding has been the basis of a prior judgment in favor of the state of Kansas or the United States, in a criminal, injunction, or condemnation proceeding under this act, or (2) when the administrator has probable cause to believe from facts found without hearing by him or any officer or employee of the agency that the misbranded article is dangerous to health, or that the labeling of the misbranded~~

article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of proceedings is limited as above provided, the proceeding pending or instituted shall, on application of the claimant seasonably made, be removed for trial to any district court agreed upon by stipulation between the parties, or in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court after giving the county attorney reasonable notice and opportunity to be heard shall by order, unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, to which the case shall be removed for trial. Upon demand of either party any issue of fact joined in any such case shall be tried by jury. Provided further, When proceedings under this section involving the same claimant and the same issues of adulteration or misbranding are pending in two or more jurisdictions, such pending proceedings upon application of the claimant seasonably made to the court of one jurisdiction, shall be consolidated for trial by order of such court and tried in (1) Any district selected by the claimant where one such proceeding is pending, or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time the claimant may apply to the court of one such jurisdiction and such court, after giving reasonable notice to the county attorney and opportunity to be heard, shall by order unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, in which all such pending proceedings shall be consolidated for trial and tried. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the case covered thereby. Provided further, The court at any time after seizure up to a reasonable time before trial, shall by order allow any party to a condemnation proceeding, his attorney or agent to obtain a representative sample of the article seized and as regards fresh fruits or fresh vegetables, a true copy of the analyses on which the proceeding is based and the identifying marks or numbers, if any of the packages from which the samples analyzed were obtained.

(d) Whenever the secretary or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the secretary, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food *the secretary shall issue an order establishing measures to prevent further contamination or threat to the public health. The secretary may order the destruction of contaminated food, drugs, devices or cosmetics if no alternative assures that further contamination or health hazards are averted.*

(c) *If the secretary finds that an article so detained or embargoed is not adulterated or misbranded, the secretary shall remove the tag or other marking. Any order issued pursuant to subsection (b) or (c) shall be subject to review in accordance with the Kansas judicial review act. Nothing in this section shall be construed as limiting the right of the secretary to proceed as authorized by other sections of this act.*

Sec. 20. K.S.A. 65-674 is hereby amended to read as follows: 65-674. (a) The secretary or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment location in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce *processed, stored or distributed*, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose: (1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this act are being violated, and (2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the secretary to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this act is being violated *following purposes:*

(1) *To inspect any location, products or equipment subject to the pro-*

visions of the food, drug and cosmetic act and rules and regulations adopted thereunder;

(2) to inspect or sample food, drugs, devices or cosmetics reported to be adulterated or a threat to public health;

(3) to inspect or investigate complaints of violations of the provisions of the food, drug and cosmetic act and rules and regulations adopted thereunder; or

(4) to sample products.

(b) If the secretary is denied access to any location where such access is sought for the purposes as provided in subsection (a), the secretary may apply to any court of competent jurisdiction for a search warrant authorizing access to such location for such purpose. Upon such application and a showing of cause therefor, the court shall issue such search warrant.

Sec. 21. K.S.A. 65-682 is hereby amended to read as follows: 65-682. ~~Any person violating or failing to comply with any of the provisions of this act shall be deemed guilty of a class C misdemeanor.~~ (a) The secretary, after providing notice and an opportunity for a hearing in accordance with provisions of the Kansas administrative procedure act, may impose a civil penalty in an amount of not more than \$1,000 per violation of the food, drug and cosmetic act or rule and regulation adopted, or order issued thereunder. In the case of a continuing violation, each day such violation continues shall be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law.

(b) Any party aggrieved by an order of the secretary as provided in subsection (a) may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(c) Any penalty recovered pursuant to the provisions of subsection (a) shall be remitted to the state treasurer in accordance with the provisions of 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.

(d) Any person who recklessly or intentionally violates the provisions of the food, drug and cosmetic act, or rules and regulations adopted thereunder, shall be guilty of a class A, nonperson misdemeanor.

Sec. 22. K.S.A. 2011 Supp. 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 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. The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the state. In the event a county or district attorney refuses to act, the attorney general shall so act.~~

Sec. 23. K.S.A. 2011 Supp. 65-688 is hereby amended to read as follows: 65-688. (a) As used in this section and K.S.A. 65-689, and amendments thereto:

(1) ~~“Retail food store” means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines.~~

(2) ~~“Food processing plant” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. “Food processing plant” shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail.~~

(3) ~~“Food” means a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.~~

(4) ~~“Secretary” means the secretary of agriculture.~~

~~(b)(a)~~ In order to reimburse the state of Kansas for inspections by the secretary of agriculture of retail food stores of food establishments and food processing plants, the secretary of agriculture shall adopt rules and regulations establishing a graduated inspection application and license fee schedule to cover all of the cost of inspection of retail food

~~stores-food establishments and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location.~~

(b) *The cost of the application fee for each food establishment and food processing plant location shall not exceed \$350.*

(c) *The cost of the annual license fee for each food establishment shall be as follows:*

(1) *No more than \$250 for any food establishment of less than 5,000 square feet;*

(2) *no more than \$300 for any food establishment of 5,000 square feet or more but less than 10,000 square feet;*

(3) *no more than \$500 for any food establishment of 10,000 square feet or more but less than 50,000 square feet; and*

(4) *no more than \$750 for any food establishment of 50,000 square feet or more.*

(d) *The cost of the annual license fee for each food processing plant shall be as follows:*

(1) *No more than \$200 for any food processing plant of less than 5,000 square feet; and*

(2) *no more than \$400 for any food processing plant of 5,000 square feet or more.*

(e) *In determining the square footage of a food establishment or food processing plant, the secretary shall only consider areas within the walls of the structure or covered by the roof of such structure in which dining, food preparation or food storage occurs. A banquet hall or ballroom in a lodging establishment, as defined in K.S.A. 36-501, and amendments thereto, that is not set with permanent or semi-permanent seating for the serving of food shall not be considered when determining such square footage.*

(f) *Any location that meets the definition of a food processing plant and a food establishment, as such terms are defined in K.S.A. 65-655, and amendments thereto, shall be required to obtain a license as both a food processing plant and a food establishment.*

(g) *Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for ~~retail food stores-food establishments~~ or food processing plants by amending the rules and regulations which fix the fees, as the case may be.*

(h) *Elementary and secondary education facilities that have school lunch programs subject to the national school lunch act, 42 U.S.C. § 1751 et seq., shall not be subject to the provisions of subsections (b) and (c)(1) through (c)(4) but shall have separate application and license fees as established by rules and regulations of the secretary.*

~~(e)~~(i) *There is hereby created the food safety fee fund. All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund. All expenditures from the food safety fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.*

~~(d)~~(j) *The secretary of ~~agriculture~~ shall adopt rules and regulations necessary to carry out the provisions of this section including establishing minimum conditions necessary to operate and maintain a ~~retail food store~~ or a food establishment or food processing plant in a safe and sanitary manner, and establishing enforcement provisions necessary to effect complete compliance with such standards, provisions, rules and regulations.*

Sec. 24. K.S.A. 2011 Supp. 65-689 is hereby amended to read as follows: 65-689. (a) It shall be unlawful for any person to engage in the business of conducting a ~~retail food store-food establishment~~ or food proc-

essing plant unless such person shall have in effect a valid license therefor issued by the secretary. ~~For the purpose of this section, the sale of food in the same location less than seven days in any calendar year shall be construed as the occasional sale of food. Nothing in this act shall prevent the secretary from inspecting any retail food store or food processing plant when a complaint against such retail food store or food processing plant is transmitted to the secretary or any authorized agent thereof.~~

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee. ~~Application fees may be adjusted in accordance with the type of retail food store or food processing plant or based on other criteria as determined by the secretary. Such license fee shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the retail food store and food processing plant inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the retail food store-food establishment or food processing plant designated in the application, to determine that it complies with rules and regulations adopted pursuant to subsection (d) of K.S.A. 65-688, the food, drug and cosmetic act, and amendments thereto. If the retail food establishment store or food processing plant is found to be in compliance, and the completed application and accompanying fees have been submitted, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act. If the food establishment or food processing plant is found not to be in compliance, the secretary shall deny the application for a license after providing notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.~~

(c) Every license issued hereunder shall be displayed conspicuously in the ~~retail food store-food establishment~~ or food processing plant for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$5.

(d) *A license shall not be required by:*

(1) A plant or facility registered or licensed by the department of agriculture pursuant to article 7 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, or licensed or registered by the department of agriculture pursuant to article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall not be required to obtain a separate license pursuant to this section: *if the inspections conducted under the respective acts encompass all operations of the facility.*

(2) *Registered nonprofit organization that provides food without charge solely to people who are food insecure, including, but not limited to, soup kitchens and food pantries.*

(3) *A location where prepackaged individual meals are distributed to persons eligible under the federal older Americans act.*

(4) *A person who produces food for distribution directly to the end consumer, if such food does not require time and temperature control for safety or specialized processing, as determined by the secretary.*

(5) *A person who serves food exclusively on interstate conveyances or common carriers.*

(6) *A person operating a food establishment for less than seven days in any calendar year.*

(7) *A person who prepares, serves or sells food for the sole purpose of soliciting funds to be used for community or humanitarian purposes or educational or youth activities.*

(8) *A person operating a food vending machine, if the food vending machine company:*

(A) *Is licensed as a food establishment, or if located in another state, licensed according to the laws of such state;*

(B) *maintains, and makes available to the secretary, a current record of the location of each food vending machine it operates or services; and*

(C) *conspicuously displays the company name, phone number and any additional information the secretary may require on each such vending machine.*

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

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

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

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

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

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

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

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

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

(b) ~~In no case shall a temporary suspension of a license or temporary closure under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the licensee shall be reinstated to full licensure or allowed to reopen unless the secretary has denied, suspended or revoked the license, after notice and hearing obtained an injunction against such licensee, or the license has expired as otherwise provided under the Kansas food, drug and cosmetic act, and amendments thereto, or any rules and regulations or orders issued thereunder.~~

(c) ~~The secretary, after providing notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, may deny, suspend, modify, revoke or refuse to renew any license as provided in the food, drug and cosmetic act or rules and regulations adopted thereunder, if the secretary determines that such applicant or licensee has:~~

(1) ~~Been convicted of or pleaded guilty to a criminal violation of any provision of the food, drug and cosmetic act;~~

(2) ~~failed to comply with any provision or requirement of the act or any rule and regulation or order adopted or issued thereunder;~~

(3) ~~interfered with the secretary's ability to carry out inspections or the administration of the act, or any rule and regulation adopted thereunder; or~~

(4) ~~denied the secretary access to any premises required to be in-~~

spected under the provisions of the act or any rule and regulation adopted thereunder.

New Sec. 26. (a) The secretary may make provision for voluntary inspection for animals other than livestock, poultry or rabbits which can or may be used in and for the preparation of meat or meat products, poultry or poultry products and establish such fees to cover the cost of providing such voluntary inspection services. The secretary shall consider adequate and efficient staffing and expertise prior to providing voluntary inspection services.

(b) A person requesting voluntary inspection services shall submit a request for inspection services on a form provided by the secretary.

(c) The secretary may refuse to provide voluntary inspection services due to staffing, inspector expertise or any other good cause shown. Priority in scheduling inspection services shall be given for inspection services mandated by the meat and poultry inspection act.

(d) The secretary may prescribe rules and regulations for the implementation of this section.

(e) This section shall be a part of and supplemental to the meat and poultry inspection act.

New Sec. 27. (a) No operation requiring inspection under article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, may be conducted unless it is conducted under the supervision of a representative of the secretary. All slaughtering of animals shall be done:

(1) Under the direct supervision of a representative of the secretary; and

(2) with reasonable speed, considering the official establishment's facilities.

The secretary may implement inspection procedures for processing operations that are different from the inspection procedures for slaughter operations. Processing procedures may include procedures that allow for varied frequency of inspection depending on the processing operations conducted.

(b) Each official establishment applying the mark of inspection shall submit a work schedule to the secretary for approval upon the occurrence of any of the following:

(1) Prior to the inauguration of the inspection.

(2) When a change in work schedule is requested, except for minor deviations from a daily operating schedule approved by the area supervisor.

(3) Upon request by a representative of the secretary.

Work schedules shall specify the daily clock hours of inspected operations.

(c) The secretary shall take into account the efficient and effective use of inspection personnel when approving work schedules. The secretary shall consult with the establishments involved when designating work schedules.

(d) Establishments shall maintain consistent work schedules. The secretary may prescribe by rules and regulations the process by which an establishment may request a change in its work schedule.

(e) This section shall be a part of and supplemental to the meat and poultry inspection act.

Sec. 28. K.S.A. 2011 Supp. 65-6a18 is hereby amended to read as follows: 65-6a18. As used in this act:

(a) "Secretary" means the secretary of agriculture.

(b) "Person" means any individual, partnership, firm, corporation, association or other business unit or governmental entity.

(c) ~~"Meat broker"~~ "Broker" means any person, firm or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat or meat food products of livestock on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person.

(d) ~~"Poultry products broker"~~ means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person. "Public warehouseman" means any person engaged in the business of storing for commerce

any meat, meat products, poultry or poultry products without assuming ownership of the product in storage.

(e) “Animal food manufacturer” means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of livestock, domestic rabbits or poultry.

(f) “Intrastate commerce” means commerce within the state of Kansas.

(g) “Meat food product” means any product capable of use as human food which is made wholly or in part from any meat or other portions of the carcasses of any livestock or domestic rabbits, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry and which are exempted from definition as a meat food product by the secretary under such conditions as the secretary may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products.

(h) “Poultry” means any domesticated bird, whether live or dead.

(i) “Poultry product” means any poultry carcass, or part thereof or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry and which are exempted by the secretary from definition as a poultry product under such conditions as the secretary may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(j) “Capable of use as human food” means any carcass, or part or product of a carcass, of any animal unless it is denatured or otherwise identified as required by regulations adopted by the ~~state board of agriculture~~ *secretary* to deter its use as human food or it is naturally inedible by humans.

(k) “Prepared” means ~~slaughtered, canned, salted, rendered, boned, cut up or otherwise manufactured~~ or processed.

(l) “Adulterated” means any carcass, or part thereof, any meat or meat food product, or any poultry or poultry product under one or more of the following circumstances:

(1) If the product bears or contains any poisonous or deleterious substance which may render it injurious to health, except that if the substance is not an added substance, the product shall not be considered adulterated if the quantity of such substance on or in the product does not render it injurious to health;

(2) (A) if the product bears or contains, by reason of administration by feeding or by injection of any substance to the live animal or otherwise, any added poisonous or added deleterious substance, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which, in the judgment of the secretary, may make the product unfit for human food;

(B) if the product is, in whole or in part, a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of rules and regulations adopted by the ~~secretary of agriculture~~;

(C) if the product bears or contains any food additive which is deemed unsafe in accordance with rules and regulations adopted by the ~~secretary of agriculture~~;

(D) if the product bears or contains any color additive which is deemed unsafe in accordance with rules and regulations adopted by the ~~secretary of agriculture~~; or

(E) any such product which is not adulterated under ~~provisions (B), (C) or (D)~~ *subsection (l)(2)(B), (l)(2)(C) or (l)(2)(D)* shall nevertheless be deemed adulterated if the use of the pesticide chemical, the food additive or the color additive on or in such product is prohibited by rules and regulations of the ~~secretary of agriculture~~ in establishments at which inspection is maintained under this act;

(3) if the product consists, in whole or in part, of any filthy, putrid or decomposed substance or is for any other reason unsound, unhealthful, unwholesome or otherwise unfit for human food;

(4) if the product has been prepared, packed or held under insanitary

conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

(5) if the product is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(6) if the container for the product is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if the product has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to rules and regulations adopted by the secretary of agriculture;

(8) (A) if any valuable constituent on or in the product has been, in whole or in part, omitted or abstracted therefrom;

(B) if any substance has been extracted and substitution made therefor, in whole or in part, or if any damage to, or inferiority of, the product has been concealed in any manner; or

(C) if any substance has been added to such product, or if any substance has been mixed or packed therewith, so as (i) to increase the bulk or weight of the product (ii) to reduce the quality or strength of the product or (iii) to make the product appear better or of greater value than it is, except that this provision does not apply to any cured or smoked pork product by reason of its containing added water; or

(9) if the product is a margarine containing animal fat and if any of the raw material used therein consisted, in whole or in part, of any filthy, putrid or decomposed substance.

(m) “Misbranded” means any carcass, part thereof, meat or meat food product, or poultry or poultry product, under any one or more of the following circumstances:

(1) If the labeling on the product or product container is false or misleading in any particular;

(2) if the product is offered for sale under the name of another food;

(3) if the product 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;

(4) if the container on the product is so made, formed or filled as to be misleading;

(5) if the product is in a package or other container, unless it bears a label showing (A) the name and place of business of the manufacturer, packer or distributor and (B) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; under ~~clause (A) of this provision~~ ~~subsection (m)(5)(A)~~, reasonable variations may be permitted and exemptions as to small packages may be established by rules and regulations adopted by the secretary of agriculture;

(6) if any word, statement or other information, which is required by or under authority of this act to appear on the label or other labeling for the product, 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;

(7) if the product purports to be, or is represented to be, a food for which a definition and standard of identity or composition has been prescribed by rules and regulations of the secretary of agriculture, unless (A) it conforms to such definition and standard and (B) the label thereon bears the name of the food specified in the definition and standard, and insofar as may be required by such rules and regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food;

(8) if the product purports to be, or is represented to be, a food for which a standard of fill of container has been prescribed by rules and regulations of the secretary of agriculture and if such product falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such rules and regulations specify, a statement that it falls below such standard;

(9) if the product is not subject to ~~provision (7)~~ ~~subsection (m)(7)~~, unless its label bears (A) the common or usual name of the food, if there is any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except that spices, fla-

vorings and colorings, when authorized by the secretary, may be designated as spices, flavorings and colorings without naming each; to the extent that compliance with the requirements of clause (B) of this provision is impracticable or results in deception or unfair competition, exemptions shall be established by rules and regulations adopted by the secretary of agriculture;

(10) if the product purports to be, or is represented to be, for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the secretary, after consultation with the secretary of agriculture of the United States, determines to be, and by rules and regulations adopted by the secretary of agriculture are prescribed to be, necessary in order to fully inform a purchaser as to its value for such uses;

(11) if the product bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; to the extent that compliance with the requirements of this provision is impracticable, exemptions shall be established by rules and regulations adopted by the secretary of agriculture; or

(12) if the product fails to bear directly thereon, or on the product container, as the secretary of agriculture may prescribe by rules and regulations, the inspection legend unrestricted by any of the foregoing and such other information as the secretary of agriculture may require in such rules and regulations to assure that the product will not have any false or misleading labeling and that the public will be informed of the manner of handling required to maintain the product in a wholesome condition.

(n) “Label” means a display of written, printed or graphic matter upon the immediate container (not including package liners) of any article.

(o) “Labeling” means all labels and other written, printed or graphic matter (1) upon any article or any of its containers or wrappers or (2) accompanying the article.

(p) “Federal meat inspection act” means the act so entitled, approved March 4, 1907, (21 U.S.C.A. § 601 *et seq.*, 34 Stat. 1260) as amended by the federal wholesome meat act (8 Stat. 584).

(q) “Federal food, drug and cosmetic act” means the act so entitled, approved June 25, 1938, (21 U.S.C.A. § 301 *et seq.*, 52 Stat. 1040) and ~~acts amendatory thereof or supplementary amendments~~ thereto.

(r) “Federal poultry products inspection act” means the act so entitled, approved August 28, 1957, (21 U.S.C.A. §. 451 *et seq.*, 71 Stat. 441) as amended by the federal wholesome poultry products act (82 Stat. 791).

(s) “Pesticide chemical,” “food additive,” “color additive” and “raw agricultural commodity” have the meanings for purposes of this act as ascribed thereto under K.S.A. 65-656, and amendments thereto.

(t) “Official mark” means the official inspection legend or any other symbol prescribed by rules and regulations of the ~~state board of agriculture~~ *secretary* to identify the status of any article or animal under this act.

(u) “Official inspection legend” means any symbol prescribed by rules and regulations of the secretary of agriculture showing that an article was inspected and passed in accordance with this act.

(v) “Official certificate” means any certificate prescribed by rules and regulations of the secretary of agriculture for issuance by an inspector or other person performing official functions under this act.

(w) “Official device” means any device prescribed or authorized by the secretary of agriculture for use in applying any official mark.

(x) ~~“Slaughterhouse”~~ “Slaughter facility” means any ~~plant facility or section thereof~~ *plant facility or section thereof* which carries on the slaughter and dressing of animals ~~but which does not engage in the further processing of meat into meat food products.~~

(y) ~~“Packing plant” or “packing house”~~ “Processing facility” means any ~~installation processing facility or section thereof~~ *installation processing facility or section thereof* that packs, cans, salts, renders, bones, cuts up or otherwise manufactures meat or poultry into meat food products or poultry products.

(z) “Buffalo” means the American buffalo or bison (*Bos*, *Bison bison* or *Bison americanus*).

(aa) “Livestock” means cattle, buffaloes, sheep, swine, goats, domesticated deer, all creatures of the ratite family that are not indigenous to this state, including but not limited to ostriches, emus and rheas or horses,

mules or other equines. Livestock shall not include buffalo or domesticated deer slaughtered for sport or recreational purpose.

~~(bb) “Slaughter facility” means a slaughterhouse or poultry dressing plant.~~

~~(cc) “Processing facility” means a packing house, sausage plant or poultry packing plant.~~

(bb) “Wholesaler” means any person engaged in the distribution of inspected and passed meat, meat products, poultry or poultry products. Wholesalers may not further process or repackage product.

(cc) “Humane slaughter act” means K.S.A. 47-1401 et seq., and amendments thereto, and rules and regulations adopted thereunder.

(dd) “Domesticated deer” means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

Sec. 29. K.S.A. 2011 Supp. 65-6a20 is hereby amended to read as follows: 65-6a20. (a) For the purpose of preventing the use in intrastate commerce of meat and meat food products and poultry and poultry products which are adulterated, the secretary shall make an examination and inspection, by inspectors appointed for such purpose, of all livestock, domestic rabbits and poultry before such livestock, domestic rabbits and poultry are allowed to enter into any slaughtering, ~~packing, canning~~ processing or similar establishment in this state in which slaughtering and preparation of meat or meat food products or poultry and poultry products of such animals are conducted for intrastate commerce. All livestock, domestic rabbits and poultry found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other livestock, domestic rabbits and poultry. When slaughtered as provided in this section, the carcasses of such livestock, domestic rabbits or poultry shall be subject to a careful examination and inspection as provided by the rules and regulations adopted by the secretary ~~of agriculture~~.

(b) For the purpose of preventing the inhumane slaughtering or inhumane handling in connection with slaughter of livestock, domestic rabbits or poultry, the secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which livestock, domestic rabbits or poultry are slaughtered and handled in connection with slaughter in establishments registered or required to be registered under this act.

(c) The secretary may prescribe rules and regulations for the implementation of this section.

Sec. 30. K.S.A. 2011 Supp. 65-6a31 is hereby amended to read as follows: 65-6a31. (a) The provisions of this act shall not apply:

(1) To the slaughtering by any person of animals of such person’s own raising or to the preparing by the slaughterer or to the transporting in intrastate commerce of the carcasses, parts thereof, meat food products or poultry products of such animals exclusively for use or consumption by such person, members of such person’s household, former members of such household or such person’s nonpaying guests and employees;

(2) to any person operating a retail store or similar retail type business who prepares only inspected and passed carcasses, parts thereof, meat food products or poultry products for sale to consumers at retail in normal retail quantities; or prepares inspected carcasses, parts thereof, meat food products or poultry products, owned by the consumer and prepared for such consumer’s consumption or the consumption of such consumer’s household members, nonpaying guests and employees; or

(3) to any person operating a restaurant who prepares only inspected and passed carcasses, parts thereof, meat food products or poultry products for human consumption.

(b) (1) Only those provisions of this act relating to registration, humane slaughter and humane handling in connection with slaughter, sanitation and adulteration shall apply:

(A) To a person custom slaughtering livestock, domestic rabbits or poultry delivered by the owner thereof for such slaughter, including the custom preparation by such slaughterer and the transportation in intrastate commerce of the carcasses, parts thereof, meat food products or poultry products of such animals exclusively for use or consumption by

the owner, the members of the owner's household or the owner's non-paying guests and employees; or

(B) to the custom preparation by any person, firm or corporation of carcasses, parts thereof, meat or meat food products, derived from the slaughter by any person of livestock of such person's own raising, or from game animals which are delivered by the owner thereof for such custom preparation and transportation in intrastate commerce of such custom prepared articles, exclusively for use in the household of the owner by the owner and the members of the owner's household and the owner's nonpaying guests and employees.

(2) In cases where such person, firm or corporation engages in such custom operations at an establishment at which inspection under the Kansas meat and poultry inspection act is maintained, the secretary may exempt from such inspection at such establishment any animals slaughtered or any meat or meat food products otherwise prepared on such custom basis, except that custom operations at any establishment shall be exempt from inspection requirements as provided by this section only if the establishment complies with rules and regulations adopted by the secretary of agriculture to assure that any carcasses, parts thereof, meat or meat food products wherever handled on a custom basis, or any containers or packages containing such articles, are separated at all times from carcasses, parts thereof, meat or meat food products prepared for sale and that all such articles prepared on a custom basis, or any containers or packages containing such articles, are plainly marked "not for sale" immediately after being prepared and kept so identified until delivered to the owner and that the establishment conducting the custom operation is maintained and operated in a sanitary manner.

(c) Only those provisions of this act relating to sanitation and adulteration shall apply to a person operating a food locker plant who: (1) Prepares meat, meat food products, poultry or poultry products which have been inspected and passed and which are being prepared and sold in normal retail quantities; or (2) prepares such meat, meat products, poultry or poultry products for the owner thereof.

(d) Notwithstanding any other provision of this section, any carcasses, parts thereof, meat, or meat products prepared on a custom basis, or any containers or packages containing such articles, shall be plainly marked "Not for Sale" immediately after being prepared and kept so identified until delivered to the owner.

Sec. 31. K.S.A. 65-6a34 is hereby amended to read as follows: 65-6a34. (a) No person shall: (1) Engage in business, in or for intrastate commerce, as a ~~meat~~ broker or animal food manufacturer; (2) engage in business in such commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any livestock, domestic rabbits or poultry, whether intended for human food or other purposes; or (3) engage in business as a public warehouseman storing any such articles in or for such commerce, without first having registered with the secretary such person's name and the address of each place of business at which, and all trade names under which, such person conducts such business and having paid the \$25 registration fee established by this section, if applicable.

(b) No person shall engage in business or operate a ~~packing house, sausage plant, poultry packing plant, slaughterhouse or poultry dressing plant~~ as a slaughter or processing facility solely on a custom basis as described by subsection (b)(1) of K.S.A. 65-6a31, and amendments thereto; a slaughter facility, processing facility, state-owned slaughter or processing facility operated in conjunction with education and research and located at institutions under the jurisdiction of the state board of regents, or slaughter or processing facility operated in conjunction with education and research and located at a public secondary school without registering such person's name and place of business with the secretary, and paying the \$25 registration fee established by this section.

~~(c) Except as provided in subsection (c)(6):~~

~~(1) An annual registration fee of \$50 shall be charged for the registration of each meat broker, poultry product broker, animal food manufacturer, seasonal poultry packing or dressing plant, state-owned slaughter or processing facility operated in conjunction with education and research and located at institutions under the jurisdiction of the state board of regents, or slaughter or processing facility operated in conjunction with~~

education and research and located at a public secondary school, and each such registration shall expire on December 31 of each year.

~~(2) Except for persons who register under paragraph (1) of this subsection (c), an annual registration fee of \$150 shall be charged for the registration of each slaughter facility which slaughters 300 animal units or less annually, and such registration shall expire on December 31 of each year.~~

~~(3) An annual registration fee of \$200 shall be charged for the registration of each slaughter or processing facility which operates solely on a custom basis as defined by subsection (b)(1) of K.S.A. 65-6a31 and amendments thereto, and such registration shall expire on December 31 of each year.~~

~~(4) Except for those persons who have registered under paragraphs (1), (2) or (3) of this subsection (c), an annual registration fee of \$250 shall be charged for each processing facility and each slaughter facility which slaughters more than 300 animal units annually, and such registration shall expire on December 31 of each year.~~

~~(5) As used in this subsection (c), animal units shall be computed by using one unit for each bovine, bison, horse, mule or other equine, .6 unit for each swine, .4 unit for each sheep or goat and as specified by rule and regulation for other animal units.~~

~~(6) Persons who become subject to registration under this section after January 1 shall pay an amount equal to $\frac{1}{12}$ of the annual registration fee which would have been due for a full year, multiplied by the number of full calendar months remaining in the registration year and adjusted to the nearest dollar amount.~~

~~(d)(c) Any person whose completed application for renewal of a registration required by this section is not received by January 15 of the year of renewal shall be subject to a reinstatement fee which shall be paid in addition to the required registration fee. If the completed application for renewal of a registration required by this section is received by the secretary after January 15 and on or before January 31 of the year of renewal, the reinstatement fee shall be \$10. If the completed application for renewal of a registration required by this section is received after January 31 of the year of renewal, the amount of the reinstatement fee shall be increased at the rate of \$25 per month for each additional month or fraction thereof. No registration required by this section shall be reinstated if it has been delinquent for one year. No registration required by this section shall be issued until all applicable reinstatement fees, if any, have been paid.~~

Sec. 32. K.S.A. 65-6a41 is hereby amended to read as follows: 65-6a41. *(a) Any person registered or required to be registered under the provisions of K.S.A. 65-6a34, and amendments thereto, shall keep records that fully and accurately disclose transactions related to animals prepared for and capable of use as human food. Nothing in this section shall affect the exemptions established in K.S.A. 65-6a31, and amendments thereto. All persons, firms and corporations subject to such requirements, at all reasonable times upon request by the secretary, shall provide access to their places of business and provide an opportunity to examine the facilities, inventory and records thereof and to copy all such records.*

(b) Any record required to be maintained by this section shall be maintained for a period of time as the secretary shall prescribe by rules and regulations.

(c) It shall be unlawful for any person to refuse to furnish, on request of a representative of the secretary, the name and address of the person from whom ~~he~~ such person received any article or animal which does not meet the requirements of this act, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to ~~him~~ such person.

Sec. 33. K.S.A. 36-505, 36-508, 36-511, 36-513, 36-515a, 36-515c, 36-517, 65-619, 65-620, 65-621, 65-622, 65-623, 65-624, 65-625, 65-631, 65-632, 65-633, 65-634, 65-637, 65-638, 65-639, 65-640, 65-642, 65-651, 65-652, 65-654, 65-659, 65-660, 65-661, 65-666, 65-667, 65-674, 65-677, 65-681, 65-682, 65-6a34 and 65-6a41 and K.S.A. 2011 Supp. 36-501, 36-502, 36-503, 36-504, 36-506, 36-507, 36-509, 36-510, 36-515, 36-515b, 36-518, 36-519, 36-520, 65-626, 65-635, 65-641, 65-653, 65-655, 65-656, 65-657, 65-658, 65-673, 65-676, 65-683, 65-684, 65-685, 65-686, 65-688,

65-689, 65-690, 65-6a18, 65-6a20, 65-6a31, 74-591, 74-592, 74-593, 74-594, 74-595, 74-596, 74-596a, 74-597, 74-598, 74-5,101 and 74-5,102 are hereby repealed.

Sec. 34. 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 HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.