

3
4 **SENATE BILL No. 419**

5
6 By Committee on Public Health and Welfare

7
8 1-23
9

10 AN ACT concerning retail food stores and food processing plants; relat-
11 ing to the enforcement authority of the secretary of the department
12 of health and environment; **amending K.S.A. 2001 Supp. 65-688**
13 **and repealing the existing section.**

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 **New** Section 1. Any license issued under the provisions of K.S.A.
17 2001 Supp. 65-689, and amendments thereto, may be renewed by making
18 application to the secretary on or before the expiration date. The secretary
19 shall adopt by rules and regulations the prescribed expiration date of any
20 license issued under the provisions of K.S.A. 2001 Supp. 65-689, and
21 amendments thereto. Application for renewal of a license shall be made
22 on a form prescribed by the secretary and shall be accompanied by the
23 license fee required for the issuance of an original license. If the secretary
24 shall refuse to renew any license, the secretary shall give written notice
25 to the licensee specifying the changes or alterations necessary in the es-
26 tablishment to effect complete compliance with the applicable standards
27 and stating that if such compliance is effected within the period of time
28 designated in the notice, the license shall be renewed. If the licensee fails
29 to effect complete compliance with the applicable standards within the
30 time prescribed in such notice, the application for renewal of a license
31 shall be denied and the secretary shall give written notice thereof to the
32 applicant, stating also that the applicant is entitled to a hearing thereon
33 if a written request therefor is filed with the secretary within 20 days of
34 the date such notice is sent. Such hearing shall be held in accordance
35 with the provisions of the Kansas administrative procedure act. If, for any
36 reason, a licensee fails to renew a license prior to the expiration date, the
37 licensee may obtain a renewal of such license within 30 days following
38 the expiration date, by complying with the provisions of this section and
39 paying a restoration fee in the amount of \$10.

40 **New** Sec. 2. (a) The secretary shall inspect or cause to be inspected,
41 at least once annually, every retail food store and food processing plant
42 in this state. **The secretary shall have the authority to contract with**
43 **other entities to conduct inspections of retail food stores and food**

1 ***processing plants in this state.*** For such inspections the secretary or
2 the secretary's lawful agent shall have the right of entry and access
3 thereto, at any reasonable time. Whenever, upon inspection, it shall be
4 determined that any retail food store or food processing plant does not
5 comply with the rules and regulations of the secretary adopted pursuant
6 to K.S.A. 65-673, and amendments thereto, it shall be the duty of the
7 secretary to give written notice to the owner, proprietor or agent in charge
8 of such retail food store or food processing plant of the changes or alter-
9 ations necessary to effect complete compliance with such regulations.
10 Such notice shall provide that the retail food store or food processing
11 plant shall be brought into compliance with the applicable standards
12 within a period of time specified in the notice, which shall be not less
13 than 10 days, except that a shorter period of time for compliance may be
14 provided in the notice whenever the secretary believes it essential to
15 protect the public health and safety. Such notice shall also state that if
16 compliance with the applicable standards is not effected within the time
17 period prescribed, the license for such retail food store or food processing
18 plant shall be subject to suspension or revocation. The licensee of any
19 retail food store or food processing plant, for which a notice of noncom-
20 pliance is given pursuant to this section, may apply to the secretary for
21 an extension of the time prescribed in the notice for compliance with the
22 applicable rules and regulations. Upon review of any such application, the
23 secretary may grant or deny such application or modify the provisions of
24 any such notice with respect to the time for compliance with any of the
25 particulars stated therein. Upon reinspection of any retail food store or
26 food processing plant for which a notice of noncompliance has been is-
27 sued pursuant to this section, if such retail food store or food processing
28 plant is found to be in noncompliance with the rules and regulations
29 adopted by the secretary pursuant to K.S.A. 65-673, and amendments
30 thereto, the secretary may suspend or revoke the license for such retail
31 food store or food processing plant, effective 20 days after the date such
32 notice is sent, unless the licensee files with the secretary a written request
33 for a hearing on the proposed suspension or revocation within such time.

34 (b) If the secretary finds that the public health or safety is endangered
35 by the continued operation of a retail food store or food processing plant,
36 the secretary may suspend the license of such establishment temporarily
37 without notice or hearing in accordance with the emergency adjudication
38 procedures of the provisions of the Kansas administrative procedure act.

39 (c) In no case shall a temporary suspension of a license under this
40 section be in effect for a period of time in excess of 90 days. At the end
41 of such period of time, the license shall be reinstated unless the secretary
42 has suspended or revoked the license, after notice and hearing, or the
43 license has expired.

1 **New** Sec. 3. (a) Any person who violates any provision of K.S.A. 2001
2 Supp. 65-688 or 65-689, and amendments thereto, or any rules and reg-
3 ulations adopted pursuant thereto, in addition to any other penalty pro-
4 vided by law, may incur a civil penalty imposed under subsection (b) in
5 an amount not to exceed \$500 for each violation and, in the case of a
6 continuing violation, every day such violation continues shall be deemed
7 a separate violation.

8 (b) The director of the division of health, upon a finding that a person
9 has violated any provision of K.S.A. 2001 Supp. 65-688 or 65-689, and
10 amendments thereto, or any rules and regulations adopted pursuant
11 thereto, may impose a civil penalty within the limits provided in this
12 section upon such person, which civil penalty shall be in an amount to
13 constitute an actual and substantial economic deterrent to the violation
14 for which the civil penalty is assessed.

15 (c) No civil penalty shall be imposed pursuant to this section except
16 upon the written order of the director of the division of health to the
17 person who committed the violation. Such order shall state the violation,
18 the penalty to be imposed and the right of such person to appeal to the
19 secretary. Any such person may make a written request to the secretary
20 for a hearing in accordance with the provisions of the Kansas administra-
21 tive procedure act within 20 days after notification. The secretary shall
22 affirm, reverse or modify the order of the director and shall specify the
23 reasons therefor.

24 (d) The secretary may seek injunctive relief from the appropriate dis-
25 trict court to enjoin any operator of a retail food store or food processing
26 plant from conducting business when such operator has failed to make
27 application for or to obtain a license for such purpose as required by
28 K.S.A. 2001 Supp. 65-689 or when such license has been suspended or
29 revoked.

30 (e) Any person aggrieved by an order of the secretary made under
31 this section may appeal such order to the district court in the manner
32 provided by the act for judicial review and civil enforcement of agency
33 actions.

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

37 **New** Sec. 4. Proceedings under this act shall be conducted in ac-
38 cordance with the Kansas administrative procedure act.

39 **Sec. 5. K.S.A. 2001 Supp. 65-688 is hereby amended to read as**
40 **follows: 65-688. (a) As used in sections 2 through 4 this section and**
41 **K.S.A. 2001 Supp. 65-689, and amendments thereto:**

42 (1) **“Retail food store” means any establishment or section of an**
43 **establishment where food and food products are offered to the con-**

1 *sumer and intended for off-premises consumption. The term in-*
2 *cludes delicatessens that offer prepared food in bulk quantities*
3 *only. The term does not include roadside markets that offer only*
4 *fresh fruits and vegetables for sale, food service establishments or*
5 *food and beverage vending machines.*

6 (2) **“Food processing plant” means a commercial operation that**
7 **manufactures, packages, labels or stores food for human consump-**
8 **tion and does not provide food directly to the consumer.** *“Food proc-*
9 *essing plant” does not mean a plant which is registered by the department*
10 *of agriculture under article 7 of chapter 65 of the Kansas Statutes An-*
11 *notated or which is licensed by the department of agriculture under article*
12 *6a of chapter 65 of the Kansas Statutes Annotated.*

13 (3) **“Secretary” means the secretary of health and environment.**

14 (b) **In order to reimburse the state of Kansas for inspections by**
15 **the secretary of health and environment of retail food stores and**
16 **food processing plants, the secretary of health and environment**
17 **shall adopt rules and regulations establishing a graduated inspec-**
18 **tion fee schedule to cover all of the cost of inspection of retail food**
19 **stores and food processing plants which shall not exceed \$200 per**
20 **calendar year for each retail food store and food processing plant**
21 **location. Whenever the secretary determines that the total amount**
22 **of revenue derived from the fees collected pursuant to this section**
23 **are insufficient to carry out the purposes for which the fees are**
24 **collected, the secretary may amend such rules and regulations to**
25 **increase the amount of the fee or fees, except that the amount of any**
26 **fee shall not exceed the maximum amount authorized by this sub-**
27 **section. Whenever the amount of fees collected pursuant to this sub-**
28 **section provides revenue in excess of the amount necessary to carry**
29 **out the purposes for which such fees are collected, it shall be the**
30 **duty of the secretary to decrease the amount of the fees prescribed**
31 **for retail food stores or food processing plants by amending the**
32 **rules and regulations which fix the fees, as the case may be.**

33 (c) **All moneys received as fees under this section shall be re-**
34 **mitted to the state treasurer at least monthly. Upon receipt of each**
35 **such remittance, the state treasurer shall deposit the entire amount**
36 **in the state treasury to the credit of the food inspection fee fund.**

37 (d) **The secretary of health and environment shall adopt rules**
38 **and regulations necessary to carry out the provisions of this section.**

39 **Sec. 6. K.S.A. 2001 Supp. 65-688 is hereby repealed.**

40 ~~Sec. 57.7.~~ This act shall take effect and be in force from and after its
41 publication in the statute book.