

SENATE BILL No. 584

AN ACT concerning the Kansas department of agriculture; transferring certain powers and duties of the secretary of the department of health and environment to the secretary of agriculture; food service establishments, licensure; amending K.S.A. 36-501, 36-502, 36-504, 36-506, 36-507 and 36-510 and K.S.A. 2007 Supp. 36-503, 36-503, as amended by section 10 of 2008 Senate Bill No. 584, 36-515b and 74-592 and repealing the existing sections.

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

New Section 1. (a) Except as otherwise provided by this act, on and after October 1, 2008, all of the powers, duties and functions of the department of health and environment concerning food service and lodging are hereby transferred to and conferred and imposed upon, the secretary of agriculture.

(b) Except as otherwise provided by this act, on and after October 1, 2008, the secretary of agriculture shall be the successor in every way to the powers, duties and functions of the department of health and environment concerning food service and lodging in which the same were vested prior to October 1, 2008. Every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of agriculture shall be deemed to have the same force and effect as if performed by the department of health and environment, in which such powers, duties and functions were vested prior to October 1, 2008.

(c) All rules and regulations of the department of health and environment concerning food service and lodging in existence on October 1, 2008, shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture until revised, amended, revoked or nullified pursuant to law.

(d) All orders and directives of the department of health and environment concerning food service and lodging in existence on October 1, 2008, shall continue to be effective and shall be deemed to be orders and directives of the secretary of agriculture until revised, amended or nullified pursuant to law.

(e) The division of food safety shall be a continuation of the department of health and environment concerning food service and lodging.

New Sec. 2. (a) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

New Sec. 3. On and after October 1, 2008, the secretary of agriculture shall succeed to whatever right, title or interest the department of health and environment has acquired in any real property in this state concerning the functions transferred by this act, and the secretary of agriculture shall hold the same for and in the name of the state of Kansas. On and after October 1, 2008, whenever any statute, contract, deed or other document concerns the power or authority of the department of health and environment or the secretary of the department of health and environment concerning the functions transferred by this act to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

New Sec. 4. (a) Except as otherwise provided in this act, on October 1, 2008, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the department of health and environment concerning food service and lodging which are transferred by this act, or who become a part of the Kansas department of agriculture, or the powers, duties and functions of which are transferred to the Kansas department of agriculture, and who, in the opinion of the secretary of agriculture, are necessary to perform the powers, duties and functions of the Kansas department of agriculture, shall be transferred to, and shall become officers and employees of the Kansas department of agriculture.

(b) Officers and employees of the department of health and environment transferred by this act shall retain all retirement benefits and leave

balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. All transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this act shall affect the classified status of any transferred person employed by the department of health and environment prior to the date of transfer.

New Sec. 5. (a) On and after October 1, 2008, the Kansas department of agriculture shall serve as custodian for all agency records, as defined by the Kansas open records act, related to article 5 of chapter 36 of the Kansas Statutes Annotated, from which authority is transferred from the department of health and environment to the secretary of agriculture. The department of health and environment shall continue to serve as custodian, as defined by the Kansas open records act, for all agency records related to article 5 of chapter 36 of the Kansas Statutes Annotated generated prior to October 1, 2008. A request for records generated prior to October 1, 2008, pursuant to the Kansas open records act, may be made to the Kansas department of agriculture and it shall be forwarded to the department of health and environment upon receipt.

(b) The department of health and environment shall immediately make available to the Kansas department of agriculture upon request any records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the department of health and environment related to those functions transferred to the secretary of agriculture.

New Sec. 6. On October 1, 2008, the balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act are hereby transferred within the state treasury to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

Sec. 7. The provisions of sections 1 through 6, and amendments thereto, shall be effective on and after October 1, 2008.

New Sec. 8. (a) On and after the effective date of this act, and prior to July 1, 2008, the secretary of health and environment shall not make any expenditures for the fiscal year ending June 30, 2008, from funds or accounts appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act on October 1, 2008, without prior approval of the secretary of agriculture.

(b) On and after July 1, 2008, and prior to October 1, 2008, the secretary of health and environment shall not make any expenditures for the fiscal year ending June 30, 2009, from funds or accounts appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act on October 1, 2008, without prior approval of the secretary of agriculture.

Sec. 9. On and after October 1, 2008, K.S.A. 36-501 is hereby amended to read as follows: 36-501. As used in the food service and lodging act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "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) "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) "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 accommo-

dated, 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) “Lodging establishment” means a hotel, rooming 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) “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.

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

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

(l) “Secretary” means the secretary of ~~health and environment~~ *agriculture*.

(m) “Department” means the *Kansas* department of ~~health and environment~~ *agriculture*.

Sec. 10. On and after October 1, 2008, K.S.A. 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 ~~health and environment~~ *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, 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.

(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 \$3.

(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 \$35 and for every additional 10 rooms therein, an additional fee of \$5 shall be charged. All lodging establishments which are new, newly constructed 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 \$100 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.

Sec. 11. K.S.A. 2007 Supp. 36-503 is hereby amended to read as follows: 36-503. (a) It shall be unlawful for any person to engage in the business of conducting a food service establishment unless such person shall have in effect a valid license therefor issued by the secretary of health and environment, except that any food service establishment providing only a device for the convenience and operation by a customer for the purpose of heating prepackaged food with no provision for consumption of food on the premises, or any food service establishment licensed by the secretary pursuant to any other law and maintained in connection with any premises licensed by the secretary pursuant to any other law shall not be required to obtain a license under this section, nor shall any person engaged only in the serving of food on railway dining cars or in the occasional sale or serving of food be required to obtain a license hereunder. For the purpose of this section, the sale or serving of food in the same location less than seven days in any calendar year shall be construed as the occasional sale or serving of food. *For the purpose of this section, hotels that provide only complimentary food service to only that hotel's overnight guests shall not be required to purchase a food service license separate from the lodging establishment license. This exemption from licensing does not exempt any food service establishment inside the hotel from inspection or regulation.* Nothing in this act shall prevent the secretary of health and environment from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of health and environment or any authorized agent thereof except that no provision of this act shall be construed to authorize the secretary of health and environment to inspect or cause to be inspected under the provisions of this act any food service establishment licensed by the secretary of health and environment pursuant to any other law or maintained in connection with any premises licensed by the secretary pursuant to any other law which food service establishment is not required to obtain a license under this section.

(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, each of which shall be established in an amount fixed by rules and regulations adopted by the secretary of health and environment. Application fees 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. Such license fee shall not exceed \$200 and shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the food service establishment 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 food service establishment designated in the application, to determine that it complies with the standards for food service establishments promulgated pursuant to this act. If such food service establishment is found to be in compliance, 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.

(c) Every license issued hereunder shall be displayed conspicuously in the food service 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 \$3.

(d) Any person who, on the effective date of this act, has a valid license to operate a restaurant shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a food service establishment issued under the provisions of this act.

(e) A premises where prepackaged individual meals are distributed to persons eligible under the federal older Americans act shall not pay any fee prescribed under subsection (b).

Sec. 12 On and after October 1, 2008, K.S.A. 2007 Supp. 36-503, as amended by section 10 of 2008 Senate Bill No. 584, is hereby amended to read as follows: 36-503. (a) It shall be unlawful for any person to engage in the business of conducting a food service establishment unless such person shall have in effect a valid license therefor issued by the secretary of ~~health and environment~~ *agriculture*, except that any food service establishment providing only a device for the convenience and operation by a customer for the purpose of heating prepackaged food with no provision for consumption of food on the premises, or any food service establishment licensed by the secretary pursuant to any other law and maintained in connection with any premises licensed by the secretary pursuant to any other law shall not be required to obtain a license under this section, nor shall any person engaged only in the serving of food on railway dining cars or in the occasional sale or serving of food be required to obtain a license hereunder. For the purpose of this section, the sale or serving of food in the same location less than seven days in any calendar year shall be construed as the occasional sale or serving of food. For the purpose of this section, hotels that provide only complimentary food service to only that hotel's overnight guests shall not be required to purchase a food service license separate from the lodging establishment license. This exemption from licensing does not exempt any food service establishment inside the hotel from inspection or regulation. Nothing in this act shall prevent the secretary of ~~health and environment~~ *agriculture* from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of ~~health and environment~~ *agriculture* or any authorized agent thereof except that no provision of this act shall be construed to authorize the secretary of ~~health and environment~~ *agriculture* to inspect or cause to be inspected under the provisions of this act any food service establishment licensed by the secretary of ~~health and environment~~ *agriculture* pursuant to any other law or maintained in connection with any premises licensed by the secretary pursuant to any other law which food service establishment is not required to obtain a license under this section.

(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, each of which shall be established in an amount fixed by rules and regulations adopted by the secretary of ~~health and environment~~ *agriculture*. Application fees 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. Such license fee shall not exceed \$200 and shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the food service establishment 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 food service establishment designated in the application, to determine that it complies with the standards for food service establishments promulgated pursuant to this act. If such food service establishment is found to be in compliance, 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.

(c) Every license issued hereunder shall be displayed conspicuously in the food service 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 \$3.

(d) Any person who, on the effective date of this act, has a valid license to operate a restaurant shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a food service establishment issued under the provisions of this act.

(e) A premises where prepackaged individual meals are distributed to persons eligible under the federal older Americans act shall not pay any fee prescribed under subsection (b).

Sec. 13. On and after October 1, 2008, K.S.A. 36-504 is hereby amended to read as follows: 36-504. (a) It shall be unlawful for any person to engage in the business of conducting a food vending machine company unless such person shall have in effect a valid license therefor issued by the secretary of ~~health and environment~~ *agriculture*. Applications for such licenses shall be on forms prescribed by the secretary, and each such application shall specify the brand name and serial number of each food vending machine to be operated and serviced by the applicant during the period of licensure and shall be accompanied by an application fee in an amount fixed by rules and regulations adopted by the secretary of ~~health and environment~~ not to exceed \$100 and by the appropriate license fee required by subsection (b). Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the applicant and each food vending machine for which the applicant is to be licensed, to determine that they are in compliance with the applicable food service standards promulgated pursuant to this act. If the applicant and such machines are found to be in compliance with such standards, 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 thereof if a written request therefor is filed with the secretary within ~~twenty (20)~~ 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.

(b) The license fee for a food vending machine company shall be an amount equal to the product of the total number of food vending machines to be operated and serviced by the food vending machine company during the calendar year, multiplied by \$3, except that no food vending machine shall be included in such total number which is operated and serviced by a state institution or a public school.

(c) Every license issued hereunder shall be displayed conspicuously on the premises of the food vending machine company for which it is issued, and no such license shall be transferable to any other person nor shall such license be valid for the operation and service of any food vending machines other than those specified in the application for a license under subsection (a) or those additional food vending machines for which operation and servicing are authorized pursuant to subsection (f). 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 \$3.

(d) Each licensed food vending machine company shall keep a current record of the location of each food vending machine which such company is licensed to operate and service, and such record shall be available at any reasonable time to the secretary. Each licensed food vending machine company shall cause the name of such company, the service telephone number and such additional information as the secretary may require, to be displayed conspicuously on each food vending machine that such company is licensed to operate and service.

(e) Each licensed food vending machine company shall notify the secretary within 10 days of the brand name and serial number of all food vending machines that become inoperative and are thereafter disposed of by such company or that are obtained by such company for use in addition to those which the food vending machine company is currently licensed to operate and service. Except for food vending machines obtained through isolated or occasional purchases thereof from a licensed food vending machine company, food vending machine companies shall be licensed to operate and service only food vending machines which are

obtained from food vending machine dealers licensed pursuant to subsection (g).

(f) Whenever food vending machines are obtained by a licensed food vending machine company which are to be operated and serviced in addition to those currently authorized under the license, such company may apply to the secretary to include such additional machines under the license of such company. Such application shall be in the form prescribed by the secretary and each such application shall specify the brand name and serial number of each such additional machine and shall be accompanied by a fee of \$2 for each such additional machine. Prior to the issuance of such authorization, the secretary shall inspect or cause to be inspected each additional food vending machine to determine that it is in compliance with the applicable food service standards promulgated pursuant to this act. Only such additional machines which are in compliance with such standards shall be included under the license of such company.

(g) It shall be unlawful for any person to engage in business as a food vending machine dealer and to sell food vending machines to food vending machine companies licensed in this state unless such person shall have a valid license therefor issued by the secretary of health and environment. Applications for such licenses shall be on forms prescribed by the secretary and each such application shall be accompanied by the fee prescribed in this subsection. A person without this state may make application to the secretary for a license as a food vending machine dealer and be granted such a license by the secretary and thereafter shall be subject to all of the applicable provisions of this act and entitled to act as a licensed food vending machine dealer in this state, subject however, to such person filing proof with the application to the secretary of health and environment that such person has appointed the secretary of state of Kansas as agent for receipt of service of process relating to any matter or issue arising under this act. The fee for a food vending machine dealer's license for all or any part of any calendar year shall be \$25.

(h) A licensed food vending machine dealer shall report to the secretary of health and environment on or before the last day of each calendar month all sales of food vending machines made during the preceding month to Kansas vending machine companies, on forms prescribed by such secretary, showing the name and address of the purchaser, brand name and serial number of the machine and its sale price.

Sec. 14. On and after October 1, 2008, K.S.A. 36-506 is hereby amended to read as follows: 36-506. (a) The secretary of ~~health and environment, after consultation with the food service and lodging advisory committee, agriculture~~ shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of lodging establishments. 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.

(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. 15. On and after October 1, 2008, K.S.A. 36-507 is hereby amended to read as follows: 36-507. (a) The secretary of ~~health and environment, after consultation with the food service and lodging advisory committee,~~ *agriculture* shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of food service establishments. The food service standards promulgated by such rules and regulations shall relate to:

- (1) Preparation, sale, serving and storage of food;
- (2) water supply;
- (3) heating;
- (4) lighting;
- (5) ventilation;
- (6) toilet and other sanitary facilities;
- (7) conditions increasing the hazards of fire, accidents or other calamities;
- (8) sewage disposal; and
- (9) such other minimum conditions which the secretary deems necessary for the operation and maintenance of a food service establishment in a safe and sanitary manner.

(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 food service establishments. Such standards may be based upon or incorporate by reference specific editions, or portions thereof, of nationally recognized codes establishing food service standards. Such standards shall be applicable uniformly throughout the state, and any provision of an ordinance or resolution of any municipality, prescribing safety and sanitation standards for food service 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 food service standards which are more stringent than those established by the secretary: *Provided*, That no such ordinance or resolution shall be effective unless and until it has been approved by the secretary.

(c) In addition to the food service standards promulgated pursuant to this section, the secretary shall adopt rules and regulations establishing specific requirements for sanitary design, construction, location, servicing and operation of food vending machines. Such standards may be based upon, or may incorporate by reference, recommended vending sanitation codes of the United States public health service which are in existence on the effective date of this act.

Sec. 16. On and after October 1, 2008, K.S.A. 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 ~~health and environment~~ *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.

(c) Any food service establishment which is not required to be licensed under the provisions of this act, but which is licensed by the secretary pursuant to any other law, or which is maintained in connection with premises which are licensed by the secretary pursuant to any other law, shall be subject to the food service standards established pursuant to this act. In the discretion of the secretary, enforcement of such standards may be delegated to the personnel of the department who are responsible for enforcing the provisions of the law under which such food service establishment or premises are licensed. Failure of any such premises to comply with the food service standards promulgated pursuant to this act shall be grounds for the suspension or revocation of the license issued for the premises under such other law. The licensee shall not have any license revoked or suspended without first being given an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

Sec. 17. On and after October 1, 2008, K.S.A. 2007 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 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 ~~director of the division of health~~ *secretary of agriculture*, upon a finding that a person has violated any provision of the food service and lodging act or any rule and regulation adopted pursuant thereto, 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.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the ~~director of the division of health~~ *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 director and shall specify the reasons therefor.

(d) Any person 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 act for judicial review and civil enforcement of agency actions.

(e) 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. 18. On and after October 1, 2008, K.S.A. 2007 Supp. 74-592 is hereby amended to read as follows: 74-592. The secretary of agriculture and the secretary of health and environment shall provide for a mechanism for ongoing communication and access between the division of food safety, as established by this act, and the bureau of epidemiology K.S.A. 2007 Supp. 74-593, and amendments thereto, and the division of health at the department of health and environment. ~~In exercising their respective authorities under K.S.A. 36-501 et seq., and amendments thereto, the secretary of agriculture and the secretary of health and environment shall apply consistent standards, policies, protocols and procedures in the licensing, inspection and regulation of food service establishments, taking into account the relative risk posed by such establishments to public health and food safety. The department of health and environment shall be the lead agency for public health matters when human illness or disease occurs. The division of food safety and the division of health shall cooperate in the investigation of a food borne illness. Such cooperation includes regular and special inspections of establishments, timely notification of potential outbreaks, interview of facility personnel, food and ingredient sample collection and processing, records sharing, training and dissemination of information.~~

Sec. 19. K.S.A. 2007 Supp. 36-503 is hereby repealed.

Sec. 20. On and after October 1, 2008, K.S.A. 36-501, 36-502, 36-504, 36-506, 36-507 and 36-510 and K.S.A. 2007 Supp. 36-503, as amended by section 10 of 2008 Senate Bill No. 584, 36-515b and 74-592 are hereby repealed.

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

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

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

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

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

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

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

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

APPROVED \_\_\_\_\_

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