

As Amended by House Committee

Session of 2010

SENATE BILL No. 395

By Committee on Agriculture

1-19

10 AN ACT concerning agriculture; relating to milk, milk products and dairy
11 products; relating to fees and licensing requirements; amending K.S.A.
12 65-777 and K.S.A. 2009 Supp. 65-771, 65-778 and 65-781 and repeal-
13 ing the existing sections.

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

16 Section 1. K.S.A. 2009 Supp. 65-771 is hereby amended to read as
17 follows: 65-771. As used in this act:

18 (a) “Adulterated” has the same meaning as provided in K.S.A. 65-
19 664, and amendments thereto.

20 (b) “Bulk milk pick up tanker” means a vehicle including the truck,
21 tank and those appurtenances necessary for such vehicle’s use, used by a
22 bulk milk hauler or sampler to transport bulk raw milk for pasteurization
23 from a dairy farm to a milk plant, receiving station or transfer station.

24 (c) “Dairy manufacturing plants” means any place where dairy prod-
25 ucts, grade A milk or milk products are manufactured or prepared for
26 sale or distribution, either at wholesale or retail. This term shall not in-
27 clude a licensed food service establishment which is licensed to manu-
28 facture homemade ice cream pursuant to this act.

29 ~~(c)~~ (d) “Dairy products” means products which may be made from
30 milk or cream for manufacturing purposes and which are not required to
31 meet grade A standards, including butter, cheese, dry whole milk, nonfat
32 dry milk, dry buttermilk, dry whey, evaporated milk, whole or skim, con-
33 densed whole milk, condensed skim milk, sweetened or plain, frozen dairy
34 dessert, and frozen dairy dessert mixes and such other products as may
35 be otherwise designated by rules and regulations.

36 ~~(d)~~ (e) “Frozen dairy dessert” means and includes products contain-
37 ing milk or cream and other ingredients which are frozen or semi-frozen
38 prior to consumption, such as ice cream, ice milk or sherbet, including
39 frozen dairy desserts for special dietary purposes.

40 ~~(e)~~ (f) “Frozen dairy dessert mix” means the pasteurized unfrozen
41 combination of all ingredients with or without fruits, fruit juices, candy,
42 nut meats, flavor or harmless color which makes a frozen dairy dessert.

43 ~~(f)~~ (g) “Goat milk” means the normal lacteal secretion, practically free

1 of colostrum, obtained by the complete milking of one or more healthy
2 goats. Goat milk sold in retail packages shall contain not less than 2.5 %
3 milkfat and not less than 7.5 % milk solids not fat. Goat milk shall be
4 produced according to the sanitary standards of this act.

5 ~~(g)~~ (h) “Grade A pasteurized milk” means pasteurized milk which has
6 at least a 90% survey rating, as determined by a survey of the source
7 conducted by the secretary pursuant to the survey rating methods for
8 conducting surveys of the status of milk sanitation. The milk shall meet
9 the requirements for grade A under the rules and regulations adopted
10 pursuant to this act. The secretary may authorize the use of the grade A
11 designation for a temporary time period on grade A pasteurized milk
12 within the statewide system of milk inspection and regulatory services,
13 although such grade A pasteurized milk does not have at least a 90%
14 survey rating.

15 ~~(h)~~ (i) “Grade A pasteurized milk products” means all pasteurized
16 milk products which have at least a 90% survey rating, as determined by
17 a survey of the source conducted by the secretary pursuant to the survey
18 rating methods for conducting surveys of the status of milk sanitation.
19 The pasteurized milk products shall meet the requirements for grade A
20 under rules and regulations adopted pursuant to this act. The secretary
21 may authorize the use of the grade A designation for a temporary time
22 period on grade A pasteurized milk products within the statewide system
23 of milk inspection and regulatory services, although such grade A pas-
24 teurized milk products do not have at least a 90% survey rating.

25 ~~(i)~~ (j) “Grade A raw milk for pasteurization” means milk having at
26 least 90% survey rating, as determined by a survey of the source con-
27 ducted by the secretary pursuant to the survey rating methods for con-
28 ducting surveys of the status of milk sanitation, the raw milk meeting the
29 requirements for grade A under the rules and regulations adopted pur-
30 suant to this act. The secretary may authorize the use of the grade A
31 designation for a temporary time period on grade A raw milk for pas-
32 teurization within the statewide system of milk inspection and regulatory
33 services, although such milk does not have at least a 90% survey rating.

34 ~~(j)~~ (k) “Imminent health hazard” means any condition which involves
35 milk, milk products, or dairy products, or any practice or procedure in
36 the handling, transportation, storage, processing or manufacturing of a
37 milk, milk product or dairy product which poses a significant threat of
38 danger to the public health which should be corrected immediately to
39 prevent injury or sickness and which should not be permitted to continue
40 while a hearing or other proceeding is being conducted. An imminent
41 health hazard may be declared at any point in a chain of events which
42 ultimately may result in harm or danger to the public health. The occur-
43 rence of the final anticipated injury or other disease related condition

1 shall not be a prerequisite for the establishment of the existence of an
2 imminent health hazard.

3 ~~(k)~~ (l) “In package form” means any commodity put up or packaged
4 in any manner in advance of sale so as to constitute a unit quantity of the
5 commodity for either wholesale or retail sale, exclusive of any auxiliary
6 container enclosing such packages which individually conform to the
7 requirements of this act.

8 ~~(h)~~ (m) “Milk” means the lacteal secretion, practically free from co-
9 lostrum, obtained by the complete milking of one or more healthy cows.
10 Milk that is in final package form for beverage use shall have been pas-
11 teurized or ultrapasteurized, and shall contain not less than 8.25% milk
12 solids not fat and not less than 3.25% milkfat. Milk may have been ad-
13 justed by separating part of the milkfat therefrom, or by adding thereto
14 cream, concentrated milk, dry whole milk, skim milk, concentrated skim
15 milk, or nonfat dry milk. Milk may be homogenized. Milk shall be inter-
16 preted to include goat milk.

17 ~~(m)~~ (n) “Milk distributor” means any person who first sells or offers
18 for sale in Kansas any packaged grade A pasteurized milk, milk product,
19 or dairy product.

20 ~~(n)~~ (o) “Milk hauler/sampler” means any person who collects official
21 samples and may transport raw milk from a farm or raw milk products to
22 or from a milk plant or both, receiving station or transfer station and has
23 in their possession a permit from any state to sample such products.

24 ~~(o)~~ (p) “Milk inspection and regulatory services” means the inspec-
25 tion, sampling, laboratory testing and the administrative procedures re-
26 lating thereto, necessary to determine that the production, processing,
27 distribution and sale of grade A milk, milk products, and dairy products
28 comply with the requirements of this act and any rules and regulations
29 adopted hereunder.

30 ~~(p)~~ (q) “Milk or cream for manufacturing purposes” means raw milk
31 or raw cream which is not subject to grade A standards and which is
32 produced for processing and manufacturing into dairy products for hu-
33 man consumption. Milk for manufacturing purposes may contain less than
34 3.25% of butterfat and shall be delivered pure, sweet and clean.

35 ~~(q)~~ (r) “Milk or cream receiving station” means any place where milk
36 or cream may be received, collected, handled, processed, stored or col-
37 lected and prepared for further transporting.

38 ~~(r)~~ (s) “Milk or cream transfer station” means any place where milk
39 or cream are transferred directly from one milk tank truck to another.

40 (t) “Milk plant” means any place, premises or establishment where
41 milk or milk products are collected, handled, processed, stored, pasteur-
42 ized, ultrapasteurized, aseptically processed, condensed, dried, packaged
43 or prepared for distribution.

- 1 ~~(s)~~ (u) “Milk processor” means any person who operates any place,
2 premises or establishment where grade A raw milk for pasteurization or
3 milk or cream for manufacturing purposes is processed, pasteurized, bot-
4 tled or prepared for distribution.
- 5 ~~(t)~~ (v) “Milk producer” means any person who owns or operates a
6 dairy farm and who provides, sells or offers for sale grade A raw milk for
7 pasteurization or milk or cream for manufacturing purposes to a milk
8 plant, receiving station or transfer station.
- 9 ~~(w)~~ (w) “Milk products” means cream, light cream, light whipping
10 cream, heavy cream, heavy whipping cream, whipped cream, whipped
11 light cream, sour cream, acidified sour cream, cultured sour cream, half-
12 and-half, sour half-and-half, acidified sour half-and-half, cultured sour
13 half-and-half, reconstituted or recombined milk and milk products, con-
14 centrated milk, concentrated milk products, nonfat skim milk, reduced
15 fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured
16 milk, cultured reduced fat or lowfat milk, cultured nonfat skim milk, yo-
17 gurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or
18 lowfat milk, acidified nonfat skim milk, low-sodium milk, low-sodium re-
19 duced fat or lowfat milk, low-sodium nonfat skim milk, lactose-reduced
20 milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat
21 skim milk, aseptically processed and packaged milk and milk products,
22 milk, reduced fat or lowfat milk or nonfat skim milk with added safe and
23 suitable microbial organisms and any other milk product made by the
24 addition or subtraction of milkfat or addition of safe and suitable optional
25 ingredients for protein, vitamin or mineral fortification of milk products
26 defined herein. Milk products also include those dairy foods made by
27 modifying the federally standardized products listed in this section in
28 accordance with 21 C.F.R. 130.10, requirements for foods named by use
29 of a nutrient content claim and a standardized term. Milk and milk prod-
30 ucts which have been retort processed after packaging or which have been
31 concentrated, condensed or dried are included in this definition only if
32 they are used as an ingredient to produce any milk or milk product de-
33 fined herein or if they are labeled as Grade A as adopted and described
34 by rules and regulations promulgated under this act. Except as otherwise
35 provided, the term milk shall not include dietary products, infant formula,
36 ice cream or other desserts, butter or cheese.
- 37 (x) “Milk tank truck” means the term used to describe both a bulk
38 milk pick up tanker and a milk transport tank.
- 39 (y) “Milk tank truck cleaning facility” means any place, premises or
40 establishment, other than a milk plant, receiving station or transfer sta-
41 tion, where a milk tank truck is cleaned and sanitized.
- 42 (z) “Milk transport tank” means a vehicle including the truck and
43 tank, used by a bulk milk hauler or sampler to transport bulk shipments

1 of milk and milk products from a milk plant, receiving station or transfer
2 station to another milk plant, receiving station or transfer station.

3 (aa) “Milk transportation company” means the person, business or
4 entity responsible for a milk tank truck.

5 ~~(bb)~~ (bb) “Misbranded” has the same meaning as ascribed to it in
6 K.S.A. 65-665, and amendments thereto.

7 ~~(cc)~~ (cc) “On-farm retail sales of milk or milk products” means the
8 sale of milk or milk products on the farm by the producer from the pro-
9 duction of the dairy herd to the final consumer, so long as the person
10 making such sales does not promote the sale of milk or milk products to
11 the public in any manner other than by the erection of a sign upon the
12 premises of the dairy farm. The advertisement upon any such sign shall
13 state that such milk or milk products are raw and shall be in letters of a
14 uniform size. Each container in which any unpasteurized milk is sold or
15 offered for sale shall be clearly labeled as ungraded raw milk.

16 ~~(dd)~~ (dd) “Pasteurized” has the same meaning as ascribed to it in 21
17 C.F.R. 131.3 and 135.3.

18 ~~(ee)~~ (ee) “Person” means any individual, plant operator, partnership,
19 corporation, company, firm, trustee, association or institution.

20 ~~(ff)~~ (ff) “Plant fabricating single service articles” means any place
21 which manufactures single service articles which are expected to come in
22 contact with grade A milk or grade A milk products.

23 ~~(gg)~~ (gg) “Secretary” means the secretary of the Kansas department
24 of agriculture, or the secretary’s designee.

25 ~~(hh)~~ (hh) “Single service article or container” means any container
26 having a milk or milk product-contact surface and used in the packaging,
27 handling, storage or servicing of grade A milk and is intended for one
28 usage only.

29 Sec. 2. K.S.A. 65-777 is hereby amended to read as follows: 65-777.

30 (a) The secretary, through the department of agriculture’s laboratory, may
31 test any sample of milk, milk product or dairy product for bacteria or
32 somatic cells or perform any other test required by this act or any rules
33 and regulations promulgated under this act.

34 (b) The secretary is hereby authorized to establish by rules and reg-
35 ulations a schedule of fees for such tests performed by the laboratory
36 ~~which are not performed for regulatory purposes.~~

37 Sec. 3. K.S.A. 2009 Supp. 65-778 is hereby amended to read as fol-
38 lows: 65-778. (a) Any person who engages in business as a dairy manu-
39 facturing plant shall first apply for and obtain a dairy manufacturing plant
40 license from the secretary and shall pay a license fee of \$120, or com-
41 mencing July 1, 2002, and ending June 30, 2015, a license fee of ~~\$155~~
42 \$200.

43 (b) Any person who engages in business as a distributor of milk, milk

1 products or dairy products shall first apply for and obtain a milk distrib-
2 utor license from the secretary and shall pay a license fee of \$120, or
3 commencing July 1, 2002, and ending June 30, 2015, a license fee of ~~\$155~~
4 \$200. No milk distributor license shall be required for a licensed dairy
5 manufacturing plant which distributes only those products which it
6 manufactures.

7 (c) Any person who engages in business as a milk hauler shall first
8 apply for and obtain a milk hauler license from the secretary and shall
9 pay a license fee of \$25 or commencing July 1, 2002, and ending June
10 30, 2015, a license fee of \$35. As part of the application, the secretary
11 may require the applicant to be tested regarding proper procedures for
12 sampling, testing and weighing milk or cream and state laws and rules
13 and regulations.

14 (d) Any person who operates a milk or cream transfer station or milk
15 or cream receiving station shall first apply for and obtain a milk or cream
16 station license from the secretary and shall pay a license fee of \$50, or
17 commencing July 1, 2002, and ending June 30, 2015, a license fee of ~~\$65~~
18 \$100.

19 (e) Any person who engages in business as a manufacturer of single
20 service dairy containers or manufacturer of single service dairy container
21 closures shall first apply for and obtain a single service manufacturing
22 license from the secretary and shall pay a license fee of \$50, or com-
23 mencing July 1, 2002, and ending June 30, 2015, a license fee of ~~\$65~~
24 \$100.

25 (f) *Any person who operates a milk tank truck cleaning facility shall*
26 *first apply for and obtain a milk tank truck cleaning facility license from*
27 *the secretary and shall pay a license fee of \$100.*

28 (g) *Any license issued under this section shall be renewed annually.*

29 (h) The dairy manufacturing plant license, milk distributor license,
30 *milk tank truck cleaning facility license*, milk or cream station license and
31 single service manufacturing license shall expire on December 31 of the
32 year for which it was issued unless suspended or revoked by the secretary
33 pursuant to this act. The milk hauler license shall expire on June 30 fol-
34 lowing the date of issuance unless suspended or revoked by the secretary
35 pursuant to this act.

36 ~~(g)~~ (i) No license issued under this section shall be transferable. No
37 license shall be renewed if any assessments or fees required under this
38 act are delinquent.

39 ~~(h)~~ (j) Each applicant for a license *or for the renewal of such license*
40 shall submit an application on a form supplied by the secretary accom-
41 panied by the license fee. All licenses shall be conspicuously displayed in
42 the applicant's place of business.

43 (k) ~~(1) Upon a finding that the moneys generated by such license fees~~

~~as described in subsections (a) through (f) are in excess of the cost required to administer the provisions of this act, the secretary is authorized to reduce any such license fee to an amount necessary to carry out the provisions of this act.~~

~~(2) Upon a finding that the moneys generated by such license fees as described in subsections (a) through (f) are below the cost required to administer the provisions of this act, the secretary is authorized to increase any such license fee, or restore partially or fully a previously reduced license fee, to an amount necessary to carry out the provisions of this act.~~

The secretary is authorized and directed to reduce any license fee in subsections (a) through (f) whenever the secretary determines that such fee is yielding more than is necessary for administering the provisions of this act. The secretary is authorized to increase any license fee in subsections (a) through (f), when such license fee is necessary to produce sufficient revenues for administering the provisions of this act. License fees in subsections (a) through (f) shall not be increased in excess of the amounts provided in this section.

Sec. 4. K.S.A. 2009 Supp. 65-781 is hereby amended to read as follows: 65-781. The following fees for the statewide system of milk inspection and regulatory services are hereby established:

(a) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2015, a fee of \$.015 for each 100 pounds of milk produced by milk producers under Kansas grade A inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, milk processor or milk distributor to whom the milk is sold or delivered. Each cooperative, processor or distributor is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(b) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2015, a fee of ~~\$.015~~ \$.02 for each 100 pounds of packaged grade A pasteurized milk or milk products sold in Kansas at retail to the final consumer shall be paid. Each distributor is hereby charged with such fee which shall be remitted to the secretary.

(c) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2015, a fee of ~~\$.015~~ \$.02 per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of Kansas which is processed into grade A milk or grade A milk products shall be paid. Each milk processor is hereby charged with such fee which shall be remitted to the secretary.

(d) A milk fee of \$.01, or commencing July 1, 2002, and ending June 30, 2015, a fee of \$.015 per 100 pounds of milk or cream for manufacturing purposes produced by milk producers under Kansas manufacturing

1 grade milk inspection shall be paid. Each producer is hereby charged
2 with such fee which shall be paid to the milk producers' cooperative, dairy
3 manufacturing plant or any other person to whom the milk or cream for
4 manufacturing purposes is sold or delivered. Each cooperative, dairy
5 manufacturing plant or other person is hereby charged with the duty of
6 collecting such fees which shall be remitted to the secretary.

7 (e) A fee of \$.0075, or commencing July 1, 2002, and ending June
8 30, 2015, a fee of ~~\$.01~~ \$.02 per 100 pounds of Kansas produced milk or
9 cream for manufacturing purposes or other Kansas produced milk deliv-
10 ered to a dairy manufacturing plant shall be paid on all Kansas milk used
11 in the manufacturing of dairy products. As used in this subsection, the
12 term dairy products shall not include any frozen dairy dessert or frozen
13 dairy dessert mix. Each dairy manufacturing plant shall pay such fee
14 which shall be remitted to the secretary.

15 (f) In lieu of the fee prescribed in subsection (e), a fee of \$1, or
16 commencing July 1, 2002, and ending June 30, 2015, a fee of ~~\$1.50~~ \$2
17 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix
18 shall be paid by the manufacturer thereof. Each manufacturer of frozen
19 dairy dessert or frozen dairy dessert mix is hereby charged with such fee
20 which shall be remitted to the secretary. Frozen dairy dessert mix which
21 is further processed into the corresponding frozen dairy dessert by the
22 manufacturer of the frozen dairy dessert mix shall not be subject to the
23 fee required by this subsection.

24 (g) A fee of \$1, or commencing July 1, 2002, and ending June 30,
25 2015, a fee of ~~\$1.50~~ \$2 per thousand gallons of frozen dairy dessert or
26 frozen dairy dessert mix imported for retail sale in Kansas shall be paid
27 by the milk distributor who imports these products.

28 (h) *A fee of ~~\$100~~ \$50 for the annual inspection of a milk tank truck*
29 *as required by this act. The milk transportation company that owns or*
30 *leases the milk tank truck shall pay such fee which shall be remitted to*
31 *the secretary.*

32 (i) If any fee computed pursuant to subsection (a) through (e) is less
33 than \$2.50, then the sum of \$2.50 shall be paid in lieu of the computed
34 fee. If any fee computed pursuant to subsection (f) or (g) is less than
35 \$7.50, a minimum fee of \$7.50 shall be paid in lieu of the computed fee.

36 ~~(j)~~ (j) All fees established herein shall be paid to the secretary in the
37 following manner:

38 (1) The fees established in subsections (a) *and* (c) through (e) shall
39 be remitted on or before the 30th day of each month for the calendar
40 month immediately preceding and shall be accompanied by a report, in
41 the form prescribed by the secretary, indicating the quantities upon which
42 the remittance is based.

43 (2) The fees established in subsections (b), (f) and (g) shall be remit-

1 ted on April 30, July 31, October 31 and January 31 for the three calendar
2 months immediately preceding and shall be accompanied by a report, in
3 the form prescribed by the secretary, indicating the ~~quantity of frozen~~
4 ~~dairy dessert or frozen dairy dessert mix~~ quantities upon which the re-
5 mittance is based.

6 (3) *The fee established in subsection (h) shall be remitted within 60*
7 *days from the date of inspection.*

8 ~~(j)~~ (k) Any person who fails to remit all or any part of the required
9 fee or to submit the required report by the date due may be assessed an
10 additional charge equal to 1% of the amount of delinquent fees for each
11 day after the date due, or \$5, whichever amount is greater.

12 ~~(l) (1) Upon a finding that the moneys generated by such license fees~~
13 ~~as described in subsections (a) through (f) are in excess of the cost required~~
14 ~~to administer the provisions of this act, the secretary is authorized to~~
15 ~~reduce any such license fee to an amount necessary to carry out the pro-~~
16 ~~visions of this act.~~

17 ~~(2) Upon a finding that the moneys generated by such license fees as~~
18 ~~described in subsections (a) through (f) are below the cost required to~~
19 ~~administer the provisions of this act, the secretary is authorized to in-~~
20 ~~crease any such license fee, or restore partially or fully a previously re-~~
21 ~~duced license fee, to an amount necessary to carry out the provisions of~~
22 ~~this act.~~ **The secretary is hereby authorized and directed to reduce**
23 **any inspection fee in subsections (a) through (h) whenever the sec-**
24 **retary determines that such fee is yielding more than is necessary**
25 **for administering the provisions of this act. The secretary is au-**
26 **thorized to increase any inspection fee in subsections (a) through**
27 **(h) when such inspection fee is necessary to produce sufficient rev-**
28 **enues for administering the provisions of this act. License fees in**
29 **subsection (a) through (h) shall not be increased in excess of the**
30 **amounts provided in this section.**

31 Sec. 5. K.S.A. 65-777 and K.S.A. 2009 Supp. 65-771, 65-778 and 65-
32 781 are hereby repealed.

33 Sec. 6. This act shall take effect and be in force from and after its
34 publication in the statute book.