

## HOUSE BILL No. 2730

By Committee on Agriculture and Natural Resources

2-10

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

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

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

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

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

21 (3) After the secretary has issued the notice of noncompliance, the  
22 secretary may inspect to determine if the food establishment or food  
23 processing plant has achieved compliance within the prescribed time. If  
24 the food establishment or food processing plant is noncompliant, the  
25 secretary, after following the Kansas administrative procedure act, may  
26 suspend or revoke the issued license.

27 (c) If after following the Kansas administrative procedure act, the  
28 secretary determines that any person has engaged in or is engaging in any  
29 act or practice constituting a violation of any provision of this act, or any  
30 rules and regulations or order issued thereunder, the secretary may require  
31 that such person cease and desist from the unlawful act or practice. The  
32 secretary may take such affirmative action when in the secretary's  
33 judgment affirmative action carries out the purposes of the violated or  
34 potentially violated provision of this act or rules and regulations or order  
35 issued thereunder.

36 (d) Any party aggrieved by a final order of the secretary made under  
37 this section may appeal such order to the district court in the manner  
38 provided by the Kansas judicial review act.

39 New Sec. 2. (a) The secretary is hereby authorized and empowered to  
40 contract with the governing body of any municipality for the enforcement  
41 of this act, and the rules and regulations adopted thereunder whenever the  
42 secretary shall determine that such municipality has adequate personnel to  
43 provide proper enforcement. Any municipality entering into a contract

1 with the secretary to enforce statutes, rules or regulations shall act as an  
2 agent of the secretary in carrying out such duties. No such municipality  
3 shall charge any facility a fee for services performed as an agent of the  
4 secretary under such contract, which is in addition to and separate from,  
5 any fee such facility is required to pay to the secretary under the provisions  
6 of this act. Such municipality shall enforce such standards within the  
7 municipality as designated by contract. Any inspection of any premises by  
8 officers, employees or agents of any such municipality, and any notice of  
9 noncompliance issued as a result of any such inspection, shall have the  
10 same force and effect as if performed by the secretary.

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

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

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

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

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

1 serving or preparation of food for such guests.

2 ~~(e) (3) "Boarding house" means every building or other structure~~  
3 ~~which is kept, maintained, advertised or held out to the public to be a place~~  
4 ~~where sleeping accommodations are furnished for pay to transient or~~  
5 ~~permanent guests and in which eight or more guests may be~~  
6 ~~accommodated, and which maintains common facilities for the serving or~~  
7 ~~preparation of food for such guests. The term "boarding house" shall not~~  
8 ~~include facilities licensed under paragraph (5) of subsection (a) of K.S.A.~~  
9 ~~75-3307b, and amendments thereto.~~

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

12 ~~(e) "Food service establishment" means any place in which food is~~  
13 ~~served or is prepared for sale or service on the premises or elsewhere.~~  
14 ~~Such term shall include, but not be limited to, fixed or mobile restaurant,~~  
15 ~~coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room,~~  
16 ~~sandwich shop, soda fountain, tavern, private club, roadside stand,~~  
17 ~~industrial-feeding establishment, catering kitchen, commissary and any~~  
18 ~~other private, public or nonprofit organization or institution routinely~~  
19 ~~serving food and any other eating or drinking establishment or operation~~  
20 ~~where food is served or provided for the public with or without charge.~~

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

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

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

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

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

1       (+) (7) "Person" means an individual, partnership, corporation or other  
2 association of persons.

3       (~~+~~) (8) "Municipality" means any city or county of this state.

4       (+) (9) "Secretary" means the secretary of agriculture *and the*  
5 *secretary's authorized representatives.*

6       (~~+~~) (10) "Department" means the Kansas department of agriculture.

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

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

37       (c) The fee for a license to conduct a lodging establishment in this  
38 state for all or any part of any calendar year shall be \$30, except that the  
39 fee for any lodging establishment containing 10 sleeping rooms shall be  
40 \$40 and for every additional 10 rooms therein, an additional fee of \$10  
41 shall be charged. All lodging establishments which are newly constructed,  
42 newly converted to use as a lodging establishment or have a change of  
43 ownership shall pay an application fee which may be adjusted in

1 accordance with the type of establishment or based on other criteria as  
2 determined by the secretary, but in no event shall any application fee  
3 exceed \$200 in addition to the license fee.

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

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

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

28 Sec. 5. K.S.A. 36-505 is hereby amended to read as follows: 36-505.  
29 Except as otherwise provided in this section, any license issued under the  
30 provisions of this act shall expire on ~~December 31~~ *March 31 following the*  
31 *date of issuance of the year in which it is issued*, and may be renewed by  
32 making application to the secretary on or before the expiration date.  
33 Application for renewal of a license shall be made on a form prescribed by  
34 the secretary and shall be accompanied by the license fee required for the  
35 issuance of an original license. ~~Prior to the renewal of any such license, the~~  
36 ~~secretary shall inspect or cause to be inspected the licensed premises or~~  
37 ~~food vending machines which are to be operated and serviced under~~  
38 ~~authority of a license issued under this act to determine the compliance of~~  
39 ~~such premises with the applicable standards promulgated pursuant to this~~  
40 ~~act. Lodging establishments shall not be required to be inspected prior to~~  
41 ~~license renewal. If an inspection of the premises is required and such~~  
42 ~~inspection is not made prior to the expiration date of the license sought to~~  
43 ~~be renewed, such license shall be valid until the inspection has been made~~

1 and the secretary has granted or denied the application for renewal. No  
2 license shall be renewed unless and until the licensed premises for which it  
3 is issued is found to be in compliance with the applicable standards  
4 promulgated pursuant to this act. A food vending machine dealer license  
5 shall be renewed without inspection. If the secretary shall refuse to renew  
6 any license, the secretary shall give written notice thereof to the licensee,  
7 specifying the changes or alterations necessary in the establishment to  
8 effect complete compliance with the applicable standards and stating that,  
9 if such compliance is effected within the period of time designated in the  
10 notice, the license shall be renewed. If the licensee fails to effect complete  
11 compliance with the applicable standards within the time prescribed in  
12 such notice, the application for renewal of a license shall be denied, and  
13 the secretary shall give written notice thereof to the applicant, stating also  
14 that the applicant is entitled to a hearing thereon, if a written request  
15 therefor is filed with the secretary within 20 days of the date such notice is  
16 sent. Such hearing shall be held in accordance with the provisions of the  
17 Kansas administrative procedure act. If, for any reason, a licensee fails to  
18 renew a license prior to the expiration date thereof, the licensee may obtain  
19 a renewal of such license within 30 days following the expiration date  
20 thereof, by complying with the foregoing provisions of this section and  
21 paying a restoration fee in the amount of \$10 \$25 late fee. If the licensee  
22 does not renew within the 30-day period, then the license is treated as  
23 expired and the licensee must apply for a new license.

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

- 32 (1) Water supply;
- 33 (2) heating;
- 34 (3) lighting;
- 35 (4) ventilation;
- 36 (5) toilet and other sanitary facilities;
- 37 (6) conditions increasing the hazards of fire, accidents or other  
38 calamities;
- 39 (7) bedding and furnishings;
- 40 (8) sewage disposal; ~~and~~
- 41 (9) such other minimum conditions which the secretary deems  
42 necessary for the operation and maintenance of a lodging establishment in  
43 a safe and sanitary manner.; *and*

1       (10) *licensure of lodging establishments and fees related to the*  
2 *licensure and inspection thereof.*

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

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

36       (b) The secretary and the state fire marshal are hereby authorized and  
37 empowered to enter into a contract authorizing the state fire marshal and  
38 the fire marshal's deputies or lawful agents to enforce all or any portion of  
39 the lodging ~~or food service~~ standards promulgated pursuant to this act.  
40 Such contract shall designate specific lodging ~~or food service~~  
41 establishments, or types of lodging ~~or food service~~ establishments, wherein  
42 such authority may be exercised. Any inspection of such establishments by  
43 the state fire marshal or the fire marshal's deputies or lawful agents, to



1 determine compliance with lodging ~~or food service~~ standards established  
2 pursuant to this act, and any notice of noncompliance issued as a result of  
3 any such inspection, shall have the same force and effect as if such had  
4 been done by the secretary.

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

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

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

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

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

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

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

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

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

40 Sec. 9. K.S.A. 36-515a is hereby amended to read as follows: 36-  
41 515a. (a) If the secretary finds that the public health or safety is  
42 endangered by the continued operation of a lodging establishment ~~or food~~  
43 ~~service establishment~~, the secretary may suspend temporarily the license

1 of such establishment, *or if the lodging establishment is a guest house,*  
2 *order the temporary closure thereof,* without notice or hearing in  
3 accordance with the emergency adjudication procedures of the provisions  
4 of the Kansas administrative procedure act.

5 (b) In no case shall a temporary suspension of a license *or closure of*  
6 *a guest house* under this section be in effect for a period of time in excess  
7 of 90 days. At the end of such period of time, the licensee *lodging*  
8 *establishment* shall be reinstated to full licensure *or, if such lodging*  
9 *establishment is a guest house, allowed to reopen,* unless the secretary has  
10 suspended or revoked the license, ~~after notice and hearing obtained an~~  
11 ~~injunction against such licensee or operator,~~ or the license has expired as  
12 otherwise provided under the ~~food service and lodging inspection act.~~ *All*  
13 *suspensions and revocations as provided in this subsection shall be made*  
14 *after notice and opportunity for a hearing in accordance with the*  
15 *provisions of the Kansas administrative procedure act.*

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

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

25 (b) The secretary ~~of agriculture,~~ upon a finding that a person has  
26 violated any provision of the ~~food service and lodging inspection act~~ or  
27 any rule and regulation adopted pursuant thereto, *after notice and an*  
28 *opportunity for a hearing in accordance with the Kansas administrative*  
29 *procedure act,* may impose a civil penalty within the limits provided in  
30 this section upon such person, which civil penalty shall be in an amount to  
31 constitute an actual and substantial economic deterrent to the violation for  
32 which the civil penalty is assessed.

33 ~~(e) No civil penalty shall be imposed pursuant to this section except~~  
34 ~~upon the written order of the secretary of agriculture to the person who~~  
35 ~~committed the violation. Such order shall state the violation, the penalty to~~  
36 ~~be imposed and the right of such person to appeal to the secretary. Any~~  
37 ~~such person, within 20 days after notification, may make written request to~~  
38 ~~the secretary for a hearing in accordance with the provisions of the Kansas~~  
39 ~~administrative procedure act. The secretary shall affirm, reverse or modify~~  
40 ~~the order of the secretary and shall specify the reasons therefor.~~

41 ~~(d)~~ (c) Any person party aggrieved by an order of the secretary made  
42 under this section may appeal such order to the district court in the manner  
43 provided by the Kansas judicial review act.

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

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

8       Sec. 11. K.S.A. 36-517 is hereby amended to read as follows: 36-517.

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

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

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

41       (b) Whenever, upon inspection, it is determined that any lodging  
42 establishment does not comply with the applicable standards promulgated  
43 in the *lodging inspection act or rules and regulations of the secretary*

1 *adopted thereunder*, the secretary shall give written *or electronic* notice to  
2 the owner, proprietor, *licensee* or agent in charge of such establishment of  
3 the changes or alterations necessary to comply with such standards. *Such*  
4 *notice shall:*

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

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

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

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

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

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

41 Sec. 13. K.S.A. 2011 Supp. 36-519 is hereby amended to read as  
42 follows: 36-519. ~~(a)~~ If the secretary determines ~~after notice and~~  
43 ~~opportunity for a hearing~~ that any person has engaged in or is engaging in

1 any act or practice constituting a violation of any provision of the ~~food~~  
2 ~~service and lodging inspection~~ act, and amendments thereto, or any rules  
3 and regulations or ~~order~~ orders issued thereunder, the secretary, *after*  
4 *notice and an opportunity for a hearing in accordance with the Kansas*  
5 *administrative procedure act*, may require that such person cease and  
6 desist from the unlawful act or practice and take such affirmative action as  
7 in the judgment of the secretary will carry out the purposes of the violated  
8 or potentially violated provision of this act or rules and regulations or  
9 ~~order~~ orders issued thereunder. ~~Any such hearing shall be held in~~  
10 ~~accordance with the provisions of the Kansas administrative procedure act.~~

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

13 Sec. 14. K.S.A. 2011 Supp. 36-520 is hereby amended to read as  
14 follows: 36-520. There is hereby created the lodging fee fund. The  
15 secretary shall remit all license fees received by the secretary under the  
16 provisions of K.S.A. 36-502, and amendments thereto, and all license  
17 renewal fees for lodging establishments under K.S.A. 36-505, and  
18 amendments thereto, to the state treasurer in accordance with the  
19 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
20 each such remittance, the state treasurer shall deposit the entire amount in  
21 the state treasury to the credit of the lodging fee fund. All expenditures  
22 from the lodging fee fund shall be made in accordance with appropriation  
23 acts upon warrants of the director of accounts and reports issued pursuant  
24 to vouchers approved by the secretary of agriculture or by a person  
25 designated by the secretary. ~~This section shall be a part of and~~  
26 ~~supplemental to the food service and lodging act.~~

27 Sec. 15. K.S.A. 2011 Supp. 65-655 is hereby amended to read as  
28 follows: 65-655. K.S.A. 65-619 through 65-690, and *sections 1 and 2*, and  
29 amendments thereto, may be cited as the Kansas food, drug and cosmetic  
30 act.

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

33 *(a) "Secretary" means the secretary of agriculture or the secretary's*  
34 *authorized representatives.*

35 ~~(b) The term "Person" includes~~ *means an individual, partnership,*  
36 *governmental entity, corporation, and or association of persons.*

37 ~~(c) The term "Food" means:~~ (1) Articles used for food or drink for  
38 ~~man~~ *human* or other animals; (2) chewing gum; and (3) articles used for  
39 components of any such article.

40 ~~(d) The term "Drug" means:~~ (1) Articles recognized in the official  
41 United States pharmacopoeia, official homeopathic pharmacopoeia of the  
42 United States, or official national formulary, or any supplement to any of  
43 them; ~~and~~ (2) articles intended for use in diagnosis, cure, mitigation,

1 treatment or prevention of disease in man or other animals; and (3) articles  
2 (, other than food), intended to affect the structure or any function of the  
3 body of man or other animals; and (4) articles intended for use as a  
4 component of any article specified in clause (1), (2), or (3); but does not  
5 include devices or their components, parts or accessories. The term "drug"  
6 shall not include amygdalin (laetrile).

7 ~~(e) The term "Device," except when used in paragraph (k) of this~~  
8 ~~section and in as used in subsection (j) of K.S.A. 65-657 (j), subsection (f)~~  
9 ~~of 65-665 (f), subsection (c) and (o) of 65-669 (e) and (e), and subsection~~  
10 ~~(c) of 65-671 (e), and amendments thereto, means instruments, apparatus~~  
11 ~~and contrivances, including their components, parts and accessories,~~  
12 ~~intended (1) for use in the diagnosis, cure, mitigation, treatment, or~~  
13 ~~prevention of disease in man or other animals; or (2) to affect the structure~~  
14 ~~or any function of the body of man or other animals.~~

15 (f) ~~The term "Cosmetic" means:~~ (1) Articles intended to be rubbed,  
16 poured, sprinkled, or sprayed on, introduced into, or otherwise applied to  
17 the human body or any part thereof for cleaning, beautifying, promoting  
18 attractiveness; or altering the appearance; and (2) articles intended for use  
19 as a component of any such articles, except that such term shall not  
20 include soap.

21 (g) ~~The term "Official compendium" means the official United States~~  
22 ~~pharmacopoeia, official homeopathic pharmacopoeia of the United States,~~  
23 ~~official national formulary; or any supplement to any of them.~~

24 (h) ~~The term "Label" means a display of written, printed or graphic~~  
25 ~~matter upon the immediate container of any article; and a requirement~~  
26 ~~made by or under authority of this act that any word, statement, or other~~  
27 ~~information appearing on the label shall not be considered to be complied~~  
28 ~~with unless such word, statement, or other information also appears on the~~  
29 ~~outside container or wrapper, if any there be, of the retail package of such~~  
30 ~~article, or is easily legible through the outside container or wrapper.~~

31 (i) ~~The term "Immediate container" does not include package liners.~~

32 (j) ~~The term "Labeling" means all labels and other written, printed or~~  
33 ~~graphic matter (1) upon an article or any of its containers or wrappers; or~~  
34 ~~(2) accompanying such article.~~

35 ~~(k) If any article is alleged to be misbranded because the labeling is~~  
36 ~~misleading, or if an advertisement is alleged to be false because it is~~  
37 ~~misleading, then in determining whether the labeling or advertisement is~~  
38 ~~misleading, there shall be taken into account, among other things, not only~~  
39 ~~representations made or suggested by statement, word, design, device,~~  
40 ~~sound, or in any combinations thereof, but also the extent to which the~~  
41 ~~labeling or advertisement fails to reveal facts material in the light of such~~  
42 ~~representations or materials with respect to consequences which may result~~  
43 ~~from the use of the article to which the labeling or advertisement relates~~

1 under the conditions of use prescribed in the labeling or advertisement  
2 thereof or under such conditions of use as are customary or usual.

3 ~~(h)~~ (k) The term "Advertisement" means all representations  
4 disseminated in any manner or by any means other than by labeling, for  
5 the purpose of inducing, or which are likely to induce, directly or  
6 indirectly, the purchase of food, drugs, devices, or cosmetics.

7 ~~(m)~~ The representation of a drug, in its labeling or advertisement, as  
8 an antiseptic shall be considered to be a representation that it is a  
9 germicide, except in the case of a drug purporting to be, or represented as,  
10 an antiseptic for inhibitory use as a wet dressing, ointment, dusting  
11 powder, or such other use as involves prolonged contact with the body.

12 ~~(n)~~ (l) The term "New drug" means: (1) Any drug the composition of  
13 which is such that such drug is not generally recognized, among experts  
14 qualified by scientific training and experience to evaluate the safety and  
15 effectiveness of drugs, as safe and effective for use under the conditions  
16 prescribed, recommended, or suggested in the labeling thereof; or (2) any  
17 drug the composition of which is such that such drug, as a result of  
18 investigations to determine its safety and effectiveness for use under such  
19 conditions, has become so recognized, but which has not, otherwise than  
20 in such investigations, been used to a material extent or for a material time  
21 under such conditions. The term "new drug" shall not include amygdalin  
22 (laetrile).

23 ~~(o)~~ (m) The term "Contaminated with filth" applies to any food, drug,  
24 device, or cosmetic not securely protected from dust, dirt, and as far as  
25 may be necessary by all reasonable means, from all foreign or injurious  
26 contaminations.

27 ~~(p)~~ The provisions of this act regarding the selling of food, drug,  
28 devices, or cosmetics, shall be considered to include the manufacture,  
29 production, processing, packaging, exposure, offer, possession, and  
30 holding of any such articles for sale; and the sale, dispensing, and giving  
31 of any such article, and the supplying or applying of any such articles in  
32 the conduct of any food, drug, or cosmetic establishment.

33 ~~(q)~~ (n) The term "Pesticide chemical" means any substance which,  
34 alone, in chemical combination, or in formulation with one or more other  
35 substances is an "economic poison" a "pesticide" within the meaning of  
36 the agricultural chemicals act, K.S.A. 2-2202 as now enacted or as  
37 hereafter amended, and amendments thereto, and which is used in the  
38 production, storage; or transportation of raw agricultural commodities.

39 ~~(r)~~ (o) The term "Raw agricultural commodity" means any food in its  
40 raw or natural state, including all fruits that are washed, colored, or  
41 otherwise treated in their unpeeled natural form prior to marketing.

42 ~~(s)~~ (p) The term "Food additive" means any substance, the intended  
43 use of which results or may be reasonably expected to result, directly or

1 indirectly, in its becoming a component or otherwise affecting the  
 2 characteristics of any food {, including any substance intended for use in  
 3 producing, manufacturing, packing, processing, preparing, treating,  
 4 packaging, transporting, or holding food; and including any source of  
 5 radiation intended for any such use}, if such substance is not generally  
 6 recognized, among experts qualified by scientific training and experience  
 7 to evaluate its safety, as having been adequately shown through scientific  
 8 procedures {, or, in the case of a substance used in a food prior to January  
 9 1, 1958, through either scientific procedures or experience based on  
 10 common use in food}, to be safe under the conditions of its intended use;  
 11 ~~except that such term.~~ "Food additive" does not include: (1) A pesticide  
 12 chemical in or on a raw agricultural commodity; ~~or~~ (2) a pesticide  
 13 chemical to the extent that it is intended for use or is used in the  
 14 production, storage, or transportation of any raw agricultural commodity;  
 15 ~~or~~ (3) a color additive; or (4) any substance used in accordance with a  
 16 sanction or approval granted prior to the enactment of the food additive  
 17 amendment of 1958, pursuant to the federal act.

18 ~~(†) (q) (1) The term "Color additive" means a material which—(A)~~  
 19 *which: (A) Is a dye, pigment, or other substance made by a process of*  
 20 *synthesis or similar artifice, or extracted, isolated, or otherwise derived,*  
 21 *with or without intermediate or final change of identity from a vegetable,*  
 22 *animal, mineral, or other source; or (B) when added or applied to a food,*  
 23 *drug; or cosmetic, or to the human body or any part thereof, is capable {,*  
 24 *alone or through reaction with another substance}, of imparting color*  
 25 *thereto; except that such term does not include any material which has*  
 26 *been or hereafter is exempted under the federal act.*

27 (2) The term "color" includes black, white and intermediate grays.

28 (3) Nothing in ~~clause (1) (†) this subsection~~ shall be construed to  
 29 apply to any pesticide chemical, soil or plant nutrient, or other agricultural  
 30 chemical solely because of its effect in aiding, retarding; or otherwise  
 31 affecting, directly or indirectly, the growth or other natural physiological  
 32 process of produce of the soil and thereby affecting its color, whether  
 33 before or after harvest.

34 ~~(†) (r) The term "Imitation" shall mean~~ *means* any article made in the  
 35 semblance of another, consisting of similar or dissimilar ingredients and  
 36 being capable of being substituted for the imitated article without the  
 37 knowledge of the consumer.

38 ~~(†) (s) The term "Federal act" means the federal food, drug and~~  
 39 *cosmetic act {, title 21 U.S.C. § 301 et seq.; 52 Stat. 1040 et seq.}*

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

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



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

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

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

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

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

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

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

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

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

40 (cc) "Sample" means a small quantity of food and does not include a  
41 meal or entree.

42 (dd) "Storage" means holding for distribution or processing.

43 Sec. 17. K.S.A. 2011 Supp. 65-657 is hereby amended to read as

1 follows: 65-657. The following acts and the causing thereof within the  
2 state of Kansas are hereby prohibited:

3 (a) ~~The manufacture, sale, or delivery, holding or offering for sale~~  
4 *processing, storage or distribution* of any food, drug, device; or cosmetic  
5 that is adulterated or misbranded.

6 (b) The adulteration or misbranding of any food, drug, device; or  
7 cosmetic.

8 (c) The receipt in commerce of any food, drug, device; or cosmetic  
9 knowing it to be adulterated or misbranded, and the delivery or proffered  
10 delivery thereof for pay or otherwise.

11 ~~(d) The sale, delivery for sale, holding for sale, or offering for sale of~~  
12 ~~any article in violation of K.S.A. 65-666.~~

13 ~~(e)~~ (d) The dissemination of any false advertisement.

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

17 ~~(g)~~ (f) The giving of a guaranty or undertaking which guaranty or  
18 undertaking is false, except by a person who relied on a guaranty or  
19 undertaking to the same effect signed by, and containing the name and  
20 address of the person residing in the United States from whom ~~he~~ *such*  
21 *person* received in good faith the food, drug, device; or cosmetic.

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

24 ~~(i)~~ (h) The alteration, mutilation, destruction, obliteration; or removal  
25 of the whole or any part of the labeling of, or the doing of any other act  
26 with respect to a food, drug, device; or cosmetic, if such act is done while  
27 such article is held for sale and results in such article being misbranded.

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

32 ~~(k)~~ (j) The using of any person to such person's own advantage, or  
33 revealing, other than to the administrator or officers or employees of the  
34 department of agriculture or to the courts where relevant in any  
35 jurisdictional proceeding under this act, any information acquired under  
36 authority of this act concerning any method or process which constitutes a  
37 trade secret under the uniform trade secrets act (, K.S.A. 60-3320 *et seq.*,  
38 and amendments thereto), and as a trade secret is entitled to protection.

39 ~~(l)~~ (k) The using, on the labeling of any drug or in any advertisement  
40 relating to such drug, of any representation or suggestion that an  
41 application with respect to such drug is effective under K.S.A. 65-669a, ~~as~~  
42 ~~amended and amendments thereto~~, or that such drug complies with the  
43 provisions of such section.

1       ~~(m)~~ (l) In the case of a prescription drug distributed or offered for sale  
2 in this state, the failure of the manufacturer, packer, or distributor thereof  
3 to maintain for transmittal, or to transmit, to any practitioner licensed by  
4 applicable law to administer such drug who makes written request for  
5 information as to such drug, true and correct copies of all printed matter  
6 which is required to be included in any package in which that drug is  
7 distributed or sold, or such other printed matter as is approved under the  
8 federal act. Nothing in this paragraph shall be construed to exempt any  
9 person from any labeling requirement imposed by or under other  
10 provisions of this act.

11       ~~(n)~~ (m) (1) Placing or causing to be placed upon any drug or device or  
12 container thereof, with intent to defraud, the trade name or other  
13 identifying mark, or imprint of another or any likeness of any of the  
14 foregoing; ~~or~~ (2) selling, dispensing, disposing of or causing to be sold,  
15 dispensed or disposed of or concealing or keeping in possession, control or  
16 custody, with intent to sell, dispense or dispose of, any drug, device or any  
17 container thereof, with knowledge that the trade name or other identifying  
18 mark or imprint of another or any likeness of any of the foregoing has  
19 been placed thereon in a manner prohibited by ~~subsection (1) hereof~~  
20 *paragraph (1)*; or (3) making, selling, disposing of or causing to be made,  
21 sold or disposed of or keeping in possession, control or custody, or  
22 concealing, with intent to defraud, any punch, die, plate, or other thing  
23 designed to print, imprint, or reproduce that trade name or other  
24 identifying mark or imprint of another or any likeness of any of the  
25 foregoing upon any drug, device or container thereof.

26       ~~(o)~~ (n) Dispensing or causing to be dispensed a different drug or  
27 brand of drug in place of the drug or brand of drug ordered or prescribed  
28 without the express permission in each case of the person ordering or  
29 prescribing.

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

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

37       (q) *Offering or exposing for sale at retail, for human consumption,*  
38 *any slaughtered wild or domestic fowl, rabbit, squirrel or other small*  
39 *animal unless the entrails, crops and other offensive parts are properly*  
40 *drawn and removed and the carcass is cooled to 41 degrees fahrenheit or*  
41 *less within four hours of slaughter and held at such temperature until*  
42 *delivery to the end consumer.*

43       (r) *Failing to protect slaughtered fresh meats, fish, fowl or game for*

1 *human consumption from dust, flies and other vermin or substance which*  
2 *may injuriously affect it. Protection shall be required at any wholesale or*  
3 *retail food establishment or food processing plant and for peddlers*  
4 *transporting such goods from place to place.*

5 Sec. 18. K.S.A. 2011 Supp. 65-658 is hereby amended to read as  
6 follows: 65-658. In addition to the remedies hereinafter provided by the  
7 *food, drug and cosmetic act*, the secretary of agriculture is hereby  
8 authorized to apply to the district court for, ~~and such court shall have~~  
9 ~~jurisdiction upon hearing and for cause shown, to grant~~ a temporary or  
10 permanent injunction restraining, any person from violating any provision  
11 of K.S.A. ~~65-657, as amended the food, drug and cosmetic act;~~  
12 irrespective of whether or not there exists an adequate remedy at law.

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

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

35 (c) ~~If the court finds that a detained or embargoed article is~~  
36 ~~adulterated or misbranded, such article shall, after entry of the decree be~~  
37 ~~destroyed at the expense of the claimant thereof, under the supervision of~~  
38 ~~such agent, and all court costs and fees, and storage and other proper~~  
39 ~~expenses, shall be taxed against the claimant of such article or his~~  
40 ~~agent. Provided, That when the adulteration or misbranding can be~~  
41 ~~corrected by proper labeling or processing of the article, the court, after~~  
42 ~~entry of the decree and after such costs, fees, and expenses have been paid~~  
43 ~~and a good and sufficient bond, conditioned that such article shall be so~~

1 labeled or processed, has been executed, may direct that such article be  
2 delivered to the claimant thereof for such labeling or processing under the  
3 supervision of an agent of the secretary. The expense of such supervision  
4 shall be paid by the claimant. Such bond shall be returned to the claimant  
5 of the article on representation to the court by the secretary that the article  
6 is no longer in violation of this act, and that the expenses of such  
7 supervision have been paid: *Provided further*, That No action shall be  
8 instituted under this act for any alleged misbranding if there is pending in  
9 any court, state or federal, a proceeding under this act based upon the same  
10 alleged misbranding, and not more than one such proceeding shall be  
11 instituted if no such proceeding is so pending, except that such limitations  
12 shall not apply (1) When such misbranding has been the basis of a prior  
13 judgment in favor of the state of Kansas or the United States, in a criminal,  
14 injunction, or condemnation proceeding under this act, or (2) when the  
15 administrator has probable cause to believe from facts found without  
16 hearing by him or any officer or employee of the agency that the  
17 misbranded article is dangerous to health, or that the labeling of the  
18 misbranded article is fraudulent, or would be in a material respect  
19 misleading to the injury or damage of the purchaser or consumer. In any  
20 case where the number of proceedings is limited as above provided, the  
21 proceeding pending or instituted shall, on application of the claimant  
22 seasonably made, be removed for trial to any district court agreed upon by  
23 stipulation between the parties, or in case of failure to so stipulate within a  
24 reasonable time, the claimant may apply to the court of the district in  
25 which the seizure has been made, and such court after giving the county  
26 attorney reasonable notice and opportunity to be heard shall by order,  
27 unless good cause to the contrary is shown, specify a district in which  
28 claimant's principal place of business is located, to which the case shall be  
29 removed for trial. Upon demand of either party any issue of fact joined in  
30 any such case shall be tried by jury: *Provided further*, When proceedings  
31 under this section involving the same claimant and the same issues of  
32 adulteration or misbranding are pending in two or more jurisdictions, such  
33 pending proceedings upon application of the claimant seasonably made to  
34 the court of one jurisdiction, shall be consolidated for trial by order of such  
35 court and tried in (1) Any district selected by the claimant where one such  
36 proceeding is pending, or (2) a district agreed upon by stipulation between  
37 the parties. If no order for consolidation is so made within a reasonable  
38 time the claimant may apply to the court of one such jurisdiction and such  
39 court, after giving reasonable notice to the county attorney and opportunity  
40 to be heard, shall by order unless good cause to the contrary is shown,  
41 specify a district in which claimant's principal place of business is located,  
42 in which all such pending proceedings shall be consolidated for trial and  
43 tried. The court granting such order shall give prompt notification thereof

1 to the other courts having jurisdiction of the case covered thereby;  
2 *Provided further*, The court at any time after seizure up to a reasonable  
3 time before trial, shall by order allow any party to a condemnation  
4 proceeding, his attorney or agent to obtain a representative sample of the  
5 article seized and as regards fresh fruits or fresh vegetables, a true copy of  
6 the analyses on which the proceeding is based and the identifying marks or  
7 numbers, if any of the packages from which the samples analyzed were  
8 obtained.

9 (d) ~~Whenever the secretary or any of his authorized agents shall find~~  
10 ~~in any room, building, vehicle of transportation or other structure, any~~  
11 ~~meat, seafood, poultry, vegetable, fruit or other perishable articles which~~  
12 ~~are unsound, or contain any filthy, decomposed, or putrid substance, or~~  
13 ~~that may be poisonous or deleterious to health or otherwise unsafe, the~~  
14 ~~same being hereby declared to be a nuisance, the secretary, or his~~  
15 ~~authorized agent, shall forthwith condemn or destroy the same, or in any~~  
16 ~~other manner render the same unsalable as human food~~ *the secretary shall*  
17 *issue an order establishing measures to prevent further contamination or*  
18 *threat to the public health. The secretary shall provide notice and the*  
19 *opportunity for a hearing in accordance with the provisions of the Kansas*  
20 *administrative procedure act. If the claimant does not request a hearing,*  
21 *such claimant may petition the district court in whose jurisdiction the*  
22 *article is detained or embargoed. The secretary may order the destruction*  
23 *of contaminated food, drugs, devices or cosmetics if no alternative assures*  
24 *that further contamination or health hazards are averted.*

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

31 Sec. 20. K.S.A. 65-674 is hereby amended to read as follows: 65-674.

32 (a) ~~The secretary or his duly authorized agent shall have free access at all~~  
33 ~~reasonable hours to any factory, warehouse, or establishment~~ *location* in  
34 which foods, drugs, devices; or cosmetics are ~~manufactured, processed,~~  
35 ~~packed, or held for introduction into commerce~~ *processed, stored or*  
36 *distributed*, or to enter any vehicle being used to transport or hold such  
37 foods, drugs, devices; or cosmetics in commerce, for the purpose: (1) ~~Of~~  
38 ~~inspecting such factory, warehouse, establishment, or vehicle to determine~~  
39 ~~if any of the provisions of this act are being violated, and (2) to secure~~  
40 ~~samples or specimens of any food, drug, device, or cosmetic after paying~~  
41 ~~or offering to pay for such sample. It shall be the duty of the secretary to~~  
42 ~~make or cause to be made examinations of samples secured under the~~  
43 ~~provisions of this section to determine whether or not any provision of this~~

1 ~~act is being violated.~~ following purposes:

2 (1) To inspect any location, products or equipment subject to the  
3 provisions of the food, drug and cosmetic act and rules and regulations  
4 adopted thereunder;

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

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

10 (4) to sample products.

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

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

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

31 (c) Any penalty recovered pursuant to the provisions of subsection  
32 (a) shall be remitted to the state treasurer in accordance with the  
33 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
34 each such remittance, the state treasurer shall deposit the entire amount in  
35 the state treasury to the credit of the state general fund.

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

39 Sec. 22. K.S.A. 2011 Supp. 65-685 is hereby amended to read as  
40 follows: 65-685. ~~It shall be the duty of each county or district attorney to~~  
41 ~~whom the secretary of agriculture reports any violation of this act, to cause~~  
42 ~~appropriate proceedings to be instituted in the proper courts without delay~~  
43 ~~and to be prosecuted in the manner required by law.~~ The enforcement of

1 *the criminal provisions of this act shall be the duty of, and shall be*  
2 *implemented by, the county or district attorneys of the state. In the event a*  
3 *county or district attorney refuses to act, the attorney general shall so act.*

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

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

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

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

22 ~~(4) "Secretary" means the secretary of agriculture.~~

23 ~~(b) (a) In order to reimburse the state of Kansas for inspections by the~~  
24 ~~secretary of agriculture of retail food stores of food establishments and~~  
25 ~~food processing plants, the secretary of agriculture shall adopt rules and~~  
26 ~~regulations establishing a graduated inspection application and license fee~~  
27 ~~schedule to cover all of the cost of inspection of retail food stores food~~  
28 ~~establishment and food processing plants which shall not exceed \$200 per~~  
29 ~~calendar year for each retail food store and food processing plant location.~~

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

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

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

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

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

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

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



1       (1) *No more than \$200 for any food processing plant of less than*  
2 *5,000 square feet; and*

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

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

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

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

29       (h) *Elementary and secondary education facilities that have school*  
30 *lunch programs subject to the national school lunch act, 42 U.S.C. § 1751*  
31 *et seq., shall not be subject to the provisions of subsections (b)(1) through*  
32 *(b)(5) but shall have separate application and license fees as established*  
33 *by rules and regulations of the secretary.*

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

42       ~~(d)~~ (j) The secretary of ~~agriculture~~ shall adopt rules and regulations  
43 necessary to carry out the provisions of this section including establishing

1 minimum conditions necessary to operate and maintain a retail food store  
2 ~~or a food establishment or~~ food processing plant in a safe and sanitary  
3 manner, and establishing enforcement provisions necessary to effect  
4 complete compliance with such standards, *provisions, rules and*  
5 *regulations.*

6 Sec. 24. K.S.A. 2011 Supp. 65-689 is hereby amended to read as  
7 follows: 65-689. (a) It shall be unlawful for any person to engage in the  
8 business of conducting a ~~retail food store~~ *food establishment* or food  
9 processing plant unless such person shall have in effect a valid license  
10 therefor issued by the secretary. ~~For the purpose of this section, the sale of~~  
11 ~~food in the same location less than seven days in any calendar year shall~~  
12 ~~be construed as the occasional sale of food. Nothing in this act shall~~  
13 ~~prevent the secretary from inspecting any retail food store or food~~  
14 ~~processing plant when a complaint against such retail food store or food~~  
15 ~~processing plant is transmitted to the secretary or any authorized agent~~  
16 ~~thereof.~~

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

42 (c) Every license issued hereunder shall be displayed conspicuously  
43 in the ~~retail food store~~ *food establishment* or food processing plant for

1 which it is issued, and no such license shall be transferable to any other  
2 person or location. Whenever any such license is lost, destroyed or  
3 mutilated, a duplicate license shall be issued to any otherwise qualified  
4 licensee upon application therefor and the payment of a fee in the amount  
5 of \$5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *other than wine produced at such farm winery.*

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

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

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

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

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

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

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

41 (c) The secretary, after providing notice and opportunity for a  
42 hearing in accordance with the provisions of the Kansas administrative  
43 procedure act, may deny, suspend, modify, revoke or refuse to renew any

1 license as provided in the food, drug and cosmetic act or rules and  
2 regulations adopted thereunder; if the secretary determines that such  
3 applicant or licensee has:

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

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

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

11 (4) denied the secretary access to any premises required to be  
12 inspected under the provisions of the act or any rule and regulation  
13 adopted thereunder.

14 Sec. 26. K.S.A. 36-505, 36-508, 36-511, 36-513, 36-515a, 36-515c,  
15 36-517, 65-619, 65-620, 65-621, 65-622, 65-623, 65-624, 65-625, 65-631,  
16 65-632, 65-633, 65-634, 65-637, 65-638, 65-639, 65-640, 65-642, 65-651,  
17 65-652, 65-654, 65-659, 65-660, 65-661, 65-666, 65-667, 65-668, 65-669,  
18 65-669a, 65-670, 65-671, 65-674, 65-677, 65-681 and 65-682 and K.S.A.  
19 2011 Supp. 36-501, 36-502, 36-503, 36-504, 36-506, 36-507, 36-509, 36-  
20 510, 36-515, 36-515b, 36-518, 36-519, 36-520, 65-626, 65-635, 65-641,  
21 65-653, 65-655, 65-656, 65-657, 65-658, 65-673, 65-676, 65-683, 65-684,  
22 65-685, 65-686, 65-688, 65-689, 65-690, 74-591, 74-592, 74-593, 74-594,  
23 74-595, 74-596, 74-596a, 74-597, 74-598, 74-5,101 and 74-5,102 are  
24 hereby repealed.

25 Sec. 27. This act shall take effect and be in force from and after its  
26 publication in the statute book.

27