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## Food Safety & Lodging

### Article 5. FOOD SERVICE AND LODGING ESTABLISHMENTS

### Article 6. FOOD, DRUG AND COSMETICS ACT

## Kansas Statutes Annotated

### Chapter 36. HOTELS, LODGINGHOUSES AND RESTAURANTS

**36-501. Definitions.** (a) K.S.A. 36-501 through [36-520](#), and amendments thereto, shall be known and may be cited as the lodging inspection act.

(b) As used in the lodging inspection act, the following words and phrases shall have the following meanings:

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

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

(3) "Boarding house" means every building or other structure that is kept, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, and that maintains common facilities for the serving or preparation of food for such guests. The term "boarding house" shall not include facilities licensed under K.S.A. 2015 Supp. [75-3307b\(a\)\(5\)](#), prior to its repeal, or facilities licensed by the Kansas department for aging and disability services that are: (A) Facilities for developmentally disabled persons receiving assistance through the department and that receive or have received after June 30, 1967, any state or federal funds; or (B) facilities where developmentally disabled persons who require supervision or limited assistance with the taking of medication reside.

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

(5) "Food" means the same as provided in K.S.A. [65-656](#), and amendments thereto.

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

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

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

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

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

**History:** L. 1975, ch. 314, § 5; L. 1986, ch. 324, § 1; L. 2008, ch. 84, § 9; L. 2012, ch. 145, § 3; L. 2018, ch. 71, § 6; July 1.

**36-502. License for lodging establishment required; application, form; inspection; denial, hearing; designation of type of unit; display; duplicate; fees; existing licenses continued in effect.**

(a) It shall be unlawful for any person to engage in the business of conducting a lodging establishment unless such person shall have in effect a valid license therefor issued by the secretary. Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by the appropriate license fee required by subsection (c). Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the lodging establishment designated in the application, to determine that it complies with the standards for lodging establishments promulgated pursuant to this act. If such lodging establishment is found to be in compliance, and the completed application and accompanying fees have been submitted, the secretary shall issue the license. If such lodging establishment is found not to be in compliance, the secretary shall deny such application after providing notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

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

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

(d) Any lodging establishment that also has a food establishment license shall have a fee set by rule and regulation of the secretary. Such fee shall not exceed the fees for lodging establishments as provided in subsection (c).

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

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

**History:** L. 1975, ch. 314, § 6; L. 1978, ch. 154, § 1; L. 1984, ch. 313, § 55; L. 2008, ch. 84, § 10; L. 2011, ch. 73, § 2; L. 2012, ch. 145, § 4; L. 2018, ch. 71, § 33; July 1.

**36-505. Renewal of licenses; application, form, fee; remedial action; failure to renew, restoration fee.** Except as otherwise provided in this section, any license issued under the provisions of this act shall expire on March 31 following the date of issuance, and may be renewed by making application to the secretary on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary and shall be accompanied by the license fee required for the issuance of an original license. If, for any reason, a licensee fails to renew a license prior to the expiration date, the licensee may obtain a renewal of such license within 30 days following the expiration date by complying with the foregoing provisions of this section and paying a \$25 late fee. If the licensee does not renew within the 30-day period, then the license is treated as expired and the licensee must apply for a new license.

**History:** L. 1975, ch. 314, § 9; L. 1984, ch. 313, § 58; L. 1993, ch. 196, § 2; L. 2012, ch. 145, § 5; July 1.

**36-506. Rules and regulations establishing standards for lodging establishments.** (a) The secretary is hereby authorized and empowered to administer and enforce the provisions of the lodging inspection act, and rules and regulations adopted thereunder. The secretary shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of lodging establishments and the administration and enforcement thereof. Such rules and regulations shall relate to:

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

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

**History:** L. 1975, ch. 314, § 10; L 2008, ch. 84, § 14; Oct. 1; L. 2012, ch. 145, § 6; July 1.

**36-510. Enforcement of act by secretary; contracts providing for enforcement by municipalities, fire marshal or secretary of agriculture authorized.** (a) The secretary shall be responsible for the enforcement of the lodging standards promulgated pursuant to this act, but the secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of all or any portion of such standards, whenever the secretary shall determine that such municipality has adequate personnel to provide proper enforcement. Any municipality entering into a contract with the secretary to enforce such standards shall act as an agent of the secretary in carrying out such duties, and no such municipality shall charge any lodging establishment a fee for services performed as an agent of the secretary under such contract which is in addition to and separate from any fee such establishment is required to pay to the secretary under the provisions of this act. Such municipality shall enforce such standards within such municipalities of this state as are designated in the contract. Any

inspection of lodging establishments by officers, employees or agents of any such municipality, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

(b) The secretary and the state fire marshal are hereby authorized and empowered to enter into a contract authorizing the state fire marshal and the fire marshal's deputies or lawful agents to enforce all or any portion of the lodging standards promulgated pursuant to this act. Such contract shall designate specific lodging establishments, or types of lodging establishments, wherein such authority may be exercised. Any inspection of such establishments by the state fire marshal or the fire marshal's deputies or lawful agents, to determine compliance with lodging standards established pursuant to this act, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

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

**History:** L. 1975, ch. 314, § 14; L. 1976, ch. 205, § 3; L. 1984, ch. 313, § 61; L. 2008, ch. 84, § 16; L. 2009, ch. 59, § 6; L. 2012, ch. 145, § 7; July 1.

**36-512. Disposition of moneys; food service inspection reimbursement fund created.** (a) The secretary shall remit all moneys received by the secretary under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. [75-4215](#), and amendments thereto. Except for moneys remitted under subsection (b), upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(b) The secretary shall remit all moneys received by the secretary from fees from food service establishments located in a municipality where food service inspection services are provided by a local agency under contract with the secretary to the state treasurer in accordance with the provisions of K.S.A. [75-4215](#), and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food service inspection reimbursement fund which is hereby created. On July 1, 1988, and on the first day of each month thereafter, the director of accounts and reports shall transfer from the food service inspection reimbursement fund to the state general fund an amount equal to 10% of all money credited to such fund during the preceding month. Expenditures from the food service inspection reimbursement fund shall be made to reimburse each local agency under contract with the secretary for food service inspection services in an amount equal to 80% of the money received from food service establishments in the municipality served by the local agency. All expenditures from the food service inspection reimbursement fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person designated by the secretary.

**History:** L. 1975, ch. 314, § 16; L. 1983, ch. 286, § 9; L. 1985, ch. 139, § 1; L. 1988, ch. 135, § 1; L. 2001, ch. 5, § 106; L. 2011, ch. 53, § 14; July 1.

**36-515. Violation of standards; denial, suspension, revocation or refusal to renew or modify license; violation of act declared to be misdemeanor; injunctive relief.** (a) After notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may deny, suspend, revoke, refuse to renew or modify the license to operate a lodging establishment if the licensee failed to comply with the standards, provisions or requirements established pursuant to the lodging inspection act, or any rule or regulation adopted thereunder.

(b) The secretary may seek injunctive relief from the district court to enjoin any operator of a lodging establishment from conducting business when such operator has:

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

(2) had such license suspended, denied or revoked; or  
(3) failed to comply with the standards established pursuant to the lodging inspection act, or rules and regulations adopted thereunder.

**History:** L. 1975, ch. 314, § 19; L. 1982, ch. 181, § 2; L. 2009, ch. 59, § 7; L. 2012, ch. 145, § 8; July 1.

**36-515a. Temporary suspension of license without notice or hearing; limitations.** (a) If the secretary finds that the public health or safety is endangered by the continued operation of a lodging establishment, the secretary may suspend temporarily the license of such establishment, or if the lodging establishment is a guest house, order the temporary closure thereof, without notice or hearing in accordance with the emergency provisions of the Kansas administrative procedure act.

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

**History:** L. 1982, ch. 181, § 4; L. 1984, ch. 313, § 63; July 1, 1985; L. 2012, ch. 145, § 9; July 1.

**36-515b. Civil penalty for violation of act; procedure.** (a) Any person who violates any provision of the lodging inspection act or any rule and regulation adopted pursuant thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in an amount not to exceed \$500 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

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

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

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

**History:** L. 1982, ch. 181, § 5; L. 1985, ch. 140, § 1; L. 2001, ch. 5, § 107; L. 2008, ch. 84, § 17; Oct. 1; amended 2010; L. 2012, ch. 145, § 10; July 1.

**36-516. Gas stoves in public places, vents required; penalty for violation.** (a) No person shall install or own any gas stove in any public building, resort, hotel, restaurant, tourist camp or other similar public place in this state unless such stove is properly connected with a chimney or other outlet or combination of outlets.

(b) Any violation of the provisions of this section is a class C misdemeanor.

**History:** L. 1977, ch. 147, § 1; July 1.

**36-517. Lodging establishments; smoke detectors for deaf and hearing impaired.** Every licensed lodging establishment designated as a hotel shall provide at no additional charge to deaf or hard of hearing guests, upon request of such guests, portable smoke detectors of the type suitable for providing visual warning to such guests, or a room equipped with fixed visual warning smoke detectors or a ground floor guest room accessible to the out-of-doors. Each licensed lodging establishment designated as a hotel shall have available for such guests not less than one portable visual warning smoke detector, or one room equipped with a fixed visual warning smoke detector or one ground floor guest room accessible to the out-of-doors for each 50 guest rooms of such lodging establishment,

except that no such lodging establishment designated as a hotel shall be required to have more than a total of six portable visual warning smoke detectors, or six rooms equipped with fixed visual warning smoke detectors or six ground floor guest rooms accessible to the out-of-doors nor shall any such lodging establishment have less than one such smoke detector, or one room equipped with a fixed visual warning smoke detector or one ground floor guest room accessible to the out-of-doors.

**History:** L. 1988, ch. 134, § 1; July 1, 1989; L. 2012, ch. 145, § 11; July 1; L. 2022, ch. 75, § 5; July 1.

**36-518. Inspections of lodging establishments; compliance; rules and regulations.** (a) Except as provided in subsections (e) and (f) of K.S.A. 36-502, and amendments thereto, the secretary shall inspect or cause to be inspected every lodging establishment in this state. Any lodging establishment in this state shall be inspected upon receipt of a complaint indicating that such lodging establishment does not comply with the applicable standard promulgated in the rules and regulations adopted thereunder. The secretary or the secretary's lawful agent shall have the right of entry and access thereto, at any reasonable time.

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

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

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

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

(d) Upon reinspection of any lodging establishment given notice pursuant to this section, if it is determined that such establishment does not comply with the applicable standards promulgated in the lodging inspection act and rules and regulations adopted thereunder, the secretary, after providing notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, may suspend or revoke the license issued for such establishment.

(e) The secretary is authorized to receive lodging inspection reports from qualified individuals, private entities or public entities to determine compliance with lodging standards promulgated pursuant to the lodging inspection act, and amendments thereto. The secretary is authorized to promulgate such rules and regulations as are necessary to receive such inspection reports.

**History:** L. 2009, ch. 59, § 1; L. 2011, ch. 73, § 3; July 1; L. 2012, ch. 145, § 12; July 1.

**36-519. Secretary; cease and desist orders.** If the secretary determines that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of the lodging inspection act, and amendments thereto, or any rules and regulations or orders issued thereunder, the secretary, after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act, may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or orders issued thereunder.

**History:** L. 2009, ch. 59, § 2, July 1; L. 2012, ch. 145, § 13; July 1.

**36-520. Lodging fee fund.** There is hereby created the lodging fee fund. The secretary shall remit all license fees received by the secretary under the provisions of K.S.A. 36-502, and amendments thereto, and all license renewal fees for lodging establishments under K.S.A. 36-505, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto.

Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the lodging fee fund. All expenditures from the lodging fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person designated by the secretary.

**History:** L. 2011, ch. 73, § 1; July 1; L. 2012, ch. 145, § 14; July 1.

## Chapter 65. PUBLIC HEALTH

**65-636. Exhibition of title "drugstore," "pharmacy" or "apothecary."** It shall be unlawful for any individual who is not legally licensed as a pharmacist by the state board of pharmacy or any individual, firm or corporation who does not have in continuous employ, at each place of business, a pharmacist licensed by the state board of pharmacy, to take, use or exhibit the title "drugstore," "pharmacy" or "apothecary" or any combination of such titles, or any title or description of like import, or any other term designed to take the place of such title, if such title is being used in the context of health, medical or pharmaceutical care and the individual, firm or corporation has not provided a disclaimer sufficient to notify consumers that a pharmacist is not employed.

**History:** L. 1925, ch. 205, § 1; L. 1986, ch. 231, § 8; L. 2021, ch. 106, § 5; June 3.

**65-643. Caustic or corrosive substances; definition of terms.** When used in this act, unless the context or subject matter otherwise requires, the following shall be held and construed to mean as follows:

A. The terms "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percentum or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H<sub>2</sub>SO<sub>4</sub>) in a concentration of ten percentum or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO<sub>3</sub>) in a concentration of five percentum or more; (d) carboic acid (C<sub>6</sub>H<sub>5</sub>CH), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five percentum or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H<sub>2</sub>C<sub>2</sub>O<sub>4</sub>) in a concentration of ten percentum or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percentum or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC<sub>2</sub>H<sub>3</sub>O<sub>2</sub>) in a concentration of twenty percentum or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percentum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percentum or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percentum or more; (k) silver nitrate sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO<sub>3</sub>) in a concentration of five percentum or more; and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH<sub>3</sub>), including ammonium hydroxide and "Hartshorn" in a concentration of five percentum or more.

B. The term "misbranded parcel, package or container" means a retail parcel, package or container or any dangerous caustic or corrosive substance for household use, not bearing a conspicuous easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller or distributor; (c) the word "poison" running parallel with the main body of reading matter on said label or sticker on a clear, plain background or a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24-point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance.

C. The words "person" or "persons" shall be held, understood and construed to mean every person, natural or artificial, and all firms, copartnerships, trust estates, corporations and the principal officers and agents thereof.

**History:** L. 1927, ch. 247, § 1; June 1.

**65-644. Same; misbranding.** No person shall sell, barter or exchange, or receive, hold, display or offer for sale, barter or exchange, in the state of Kansas, any dangerous caustic or corrosive substance in a misbranded parcel, package or container, said parcel, package or container being designed for household use.

**History:** L. 1927, ch. 247, § 2; June 1.

**65-645. Same; condemnation and disposition.** Any dangerous caustic or corrosive substance in a misbranded parcel, package or container suitable for household use, that is being sold, bartered or exchanged, or held, displayed or offered for sale, barter or exchange, shall be liable to be proceeded against in any court of competent jurisdiction. If such substance is condemned as misbranded by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the clerk of the district court of the county in which such sale is had, but such substance shall not be sold contrary to the laws of the state: Provided, however, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may order [or] direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in confiscation of intoxicating liquors.

**History:** L. 1927, ch. 247, § 3; June 1.

**65-646. Same; enforcement of act.** The attorney general and the county attorneys of the respective counties of this state shall enforce the provisions of this act, and they are hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this act as may be submitted to him for that purpose and as may, in his judgment, conform to the requirements of this statute.

**History:** L. 1927, ch. 247, § 4; June 1.

**65-647. Same; penalty.** Any person violating the provisions of this act shall, upon conviction thereof, be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

**History:** L. 1927, ch. 247, § 5; June 1.

**65-648. Same; prosecutions.** The attorney general and the county attorneys of the respective counties of the state to whom there is presented, or who in any way procures satisfactory evidence of any violation of the provisions of this act, shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided.

**History:** L. 1927, ch. 247, § 6; June 1.

**65-649. Same; sale of household products.** Household products for cleaning and washing purposes subject to this act and labeled in accordance therewith may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesaler or retailer.

**History:** L. 1927, ch. 247, § 7; June 1.

**65-650. Medicines, drugs and poisons sold through vending machines, requirements; penalties for violations.** (a) Any person, firm or corporation who offers for sale, sells or distributes any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison through or by means of any vending machine or other



mechanical device, or who uses any vending machine in or for the sale or distribution of any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison, shall be guilty of a class C nonperson misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$500.

(b) No nonprescription drugs shall be offered for sale or sold through a vending machine in anything other than the manufacturer's original tamper-evident and expiration-dated packet. No more than 12 different nonprescription drugs products shall be offered for sale or sold through any one vending machine. Any vending machine in which nonprescription drugs are offered for sale or sold shall be located so that the drugs stored in such vending machine are stored in accordance with drug manufacturer's requirements. Drugs offered for sale or sold in such vending machine shall not be older than the manufacturer's expiration date. Each vending machine through which nonprescription drugs are offered for sale or sold shall have an obvious and legible statement on the machine that identifies the owner of the machine, a toll-free telephone number at which the consumer may contact the owner of the machine, a statement advising the consumer to check the expiration date of the product before using the product and the telephone number of the state board of pharmacy. As used in this subsection, "nonprescription drug" does not include any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison. A violation of this subsection is a class C nonperson misdemeanor and upon conviction the violator shall be fined not less than \$25 nor more than \$500.

**History:** L. 1933, ch. 177, § 1; L. 2000, ch. 40, § 1; July 1.

**65-655. Food, drug and cosmetic act; title.** K.S.A. [65-619](#) through [65-690](#), and K.S.A. [65-691](#) and [65-692](#), and amendments thereto, may be cited as the Kansas food, drug and cosmetic act.

**History:** L. 1953, ch. 286, § 1; L. 2010, ch. 72, § 5; L. 2012, ch. 145, § 15; July 1.

**65-656. Same; definitions.** For the purpose of this act:

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

(b) "Person" means an individual, partnership, governmental entity, corporation, or association of persons.

(c) "Food" means: (1) Articles used for food or drink for humans or other animals; (2) chewing gum; and (3) articles used for components of any such article.

(d) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; (2) articles intended for use in diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of humans or other animals; and (4) articles intended for use as a component of any article specified in paragraph (1), (2) or (3); but does not include devices or their components, parts or accessories. The term "drug" does not include amygdalin (laetrile).

(e) "Device," except as used in K.S.A. 65-657(j), 65-665(f), 65-669(c) and (o) and 65-671(c), and amendments thereto, means instruments, apparatus and contrivances, including their components, parts and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals or to affect the structure or any function of the body of humans or other animals.

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

(g) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary or any supplement to any of them.

(h) "Label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word,

statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) "Immediate container" does not include package liners.

(j) "Labeling" means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers or accompanying such article.

(k) "Advertisement" means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

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

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

(n) "Pesticide chemical" means any substance that, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the agricultural chemicals act, K.S.A. 2-2202, and amendments thereto, and that is used in the production, storage or transportation of raw agricultural commodities.

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

(p) "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food. "Food additive" includes any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures, or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use. "Food additive" does not include: (1) A pesticide chemical in or on a raw agricultural commodity; (2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; (3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the food additive amendment of 1958, pursuant to the federal act.

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

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

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

(r) "Imitation" means, except for imitation food as provided in K.S.A. 65-665, and amendments thereto, any article made in the semblance of another, consisting of similar or dissimilar ingredients and being capable of being substituted for the imitated article without the knowledge of the consumer.

(s) "Federal act" means the federal food, drug and cosmetic act, 21 U.S.C. § 301 et seq.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ee) "Meat analog" means any food that approximates the aesthetic qualities, primarily texture, flavor and appearance, or the chemical characteristics of any specific type of meat, meat food product, poultry product or poultry food product, but does not contain any meat, meat food product, poultry product or poultry food product.

(ff) "Identifiable meat term" includes, but is not limited to, terms such as meat, beef, pork, poultry, chicken, turkey, lamb, goat, jerky, steak, hamburger, burger, ribs, roast, bacon, bratwurst, hot dog, ham, sausage, tenderloin, wings, breast and other terms for food that contain any meat, meat food product, poultry product or poultry food product.

(gg) "Meat" means the same as provided in 9 C.F.R. § 301.2, as in effect on January 1, 2022.

(hh) "Meat food product" means the same as provided in 9 C.F.R. § 301.2, as in effect on January 1, 2022.

(ii) "Poultry product" means the same as provided in 9 C.F.R. § 381.1, as in effect on January 1, 2022.

(jj) "Poultry food product" means the same as provided in 9 C.F.R. § 381.1, as in effect on January 1, 2022.

**History:** L. 1953, ch. 286, § 2; L. 1965, ch. 377, § 1; L. 1967, ch. 338, § 1; L. 1974, ch. 352, § 97; L. 1978, ch. 239, § 13; July 1; amended 2010; L. 2012, ch. 145, sec. 16; July 1; L. 2022, ch. 84, § 1; July 1.

**65-657. Same; unlawful acts.** The following acts and the causing thereof within the state of Kansas are hereby prohibited:

(a) The processing, storage or distribution of any food, drug, device or cosmetic that is adulterated or misbranded.

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

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

(d) The dissemination of any false advertisement.

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

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

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

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

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

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

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

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

(m)(1) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by paragraph (1); or

(3) making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

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

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

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

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

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

**History:** L. 1953, ch. 286, § 3; L. 1965, ch. 377, § 2; L. 1974, ch. 352, § 98; L. 2005, ch. 67, § 6; July 1; amended 2010; L. 2012, ch. 145, sec. 18; July 1.

**65-658. Same; injunction to restrain violation of 65-657.** In addition to the remedies provided by the food, drug and cosmetic act, the secretary of agriculture is hereby authorized to apply to the district court for, and the court may grant, a temporary or permanent injunction restraining, any person from violating any provision of the food, drug and cosmetic act; irrespective of whether or not there exists an adequate remedy at law.

**History:** L. 1953, ch. 286, § 4; L. 1974, ch. 352, § 99; L. 2010, ch. 72, § 8; L. 2012, ch. 145, § 18; July 1.

**65-660. Same; adulterated or misbranded food, drug, device or cosmetic; detaining or embargoing; condemnation proceedings; consolidation, when; samples and analyses of seized articles; destruction of certain perishable food.** (a) Whenever the secretary finds or has probable cause to believe, that any food, drug, device or cosmetic is adulterated, contains any substance injurious to public health, is offered in violation of any of the provisions of the food, drug and cosmetic act or rules and regulations adopted thereunder, or so misbranded as to be dangerous or fraudulent, within the meaning of this act, the secretary shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed. Such tag or marking shall warn all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the secretary. It shall be unlawful for any person to remove such tag or marking from a detained or embargoed article or remove or dispose of such detained or embargoed article by sale or otherwise without the permission of the secretary.

(b) When an article detained or embargoed under subsection (a) has been found to be adulterated or misbranded, the secretary shall issue an order establishing measures to prevent further contamination or threat to the public health. The secretary may order the destruction of contaminated food, drugs, devices or cosmetics if no alternative assures that further contamination or health hazards are averted.

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

**History:** L. 1953, ch. 286, § 6; L. 1974, ch. 352, § 101; July 1; L. 2012, ch. 145, § 19; July 1.

**65-662. Same; minor violations; notice or warning.** Nothing in this act shall be construed as requiring the secretary to report for the institution of proceedings under this act, minor violations of this act, whenever the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

**History:** L. 1953, ch. 286, § 8; L. 1974, ch. 352, § 103; July 1.

**65-663. Same; regulations prescribing definitions and standards of identity for food.** Whenever in the judgment of the secretary such action will promote honesty and fair dealing in the interest of consumers, the secretary shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the secretary shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

**History:** L. 1953, ch. 286, § 9; L. 1974, ch. 352, § 104; July 1.

**65-664. Same; food deemed adulterated, when.** A food shall be deemed to be adulterated:

(a)(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of the substance in such food does not ordinarily render it injurious to health; or (2) (A) it bears or contains any added poisonous or added deleterious substance, other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which is unsafe within the meaning of K.S.A. [65-667](#), and amendments thereto; (B) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of K.S.A. [65-667](#), and amendments thereto; or (C) it is or it bears or contains any food additive which is unsafe within the meaning of K.S.A. [65-667](#), and amendments thereto. Where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under K.S.A. [65-667](#), and amendments thereto, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of K.S.A. [65-667](#), and amendments thereto, and subparagraph (C), not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; (3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or is otherwise unfit for food; (4) it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; (5) it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b)(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; (2) any substance has been substituted wholly or in part therefor; (3) damage or inferiority has been concealed in any manner; or (4) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is. This subsection does not apply to any cured or smoked pork product by reason of its containing added water.

(c) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4%, harmless natural wax not in excess of 0.4%, harmless natural gum, and pectin. This subsection does not apply to any confectionery by reason of its containing not more than 1% by volume of alcohol, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it is or bears or contains any color additive that is unsafe within the meaning of K.S.A. [65-667](#), and amendments thereto.

**History:** L. 1953, ch. 286, § 10; L. 1965, ch. 377, § 3; L. 1981, ch. 242, § 1; L. 2018, ch. 99, § 8; May 24.

**65-665. Same; food deemed misbranded, when.** A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated. For the purposes of this section, "imitation" means the same as provided in 21 C.F.R. § 101.3(e), as in effect on January 1, 2022. In such definition, references to section 403(c) of the federal food, drug, and cosmetic act mean this subsection (c), and references to the commissioner mean the Kansas secretary of agriculture.

(d) If its container is so made, formed or filled as to be misleading.

(e) If in package form, unless it bears a label containing: (1) The name and place of business of the manufacturer, packer or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established, by rules and regulations prescribed by the secretary of agriculture.

(f) If any word, statement or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by K.S.A. 65-663, and amendments thereto, unless: (1) It conforms to such definition and standard; and (2) its label bears the name of the food specified in the definition and standard, and insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such food.

(h) If it purports to be or is represented as: (1) A food for which a standard of quality has been prescribed by regulations as provided in K.S.A. 65-663, as amended and amendments thereto, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container has been prescribed by regulations as provided by K.S.A. 65-663, as amended and amendments thereto, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify a statement that it falls below such standard.

(i) If it is not subject to the provisions of subsection (g), unless it bears labeling clearly giving: (1) The common or usual name of the food, if any; and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except that spices, flavorings and colorings, other than those sold as such, may be designated as spices, flavorings and colorings, without naming each. Except that to the extent that compliance with the requirements of paragraph (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by rules and regulations promulgated by the secretary.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the secretary determines to be, and by regulations prescribes, as necessary, in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, unless it bears labeling stating that fact. Except that to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by rules and regulations promulgated by the secretary.

(l) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(m) If it is a meat analog and: (1) Its labeling utilizes an identifiable meat term; and (2) the labeling does not have a disclaimer in a prominent and conspicuous font size, in close proximity to the identifiable meat term, stating one of the following: (A) "This product does not contain meat"; (B) "meatless"; (C) "meat-free"; (D) "vegan"; (E) "veggie"; (F) "vegetarian"; (G) "vegetable"; (H) "plant-

based”; or (I) a disclaimer equivalent to (A) through (H), as determined by the secretary through rules and regulations. The provisions of this subsection shall not apply to a menu or menu board or to food that can be defined as “imitation” under subsection (c) and complies with the provisions of such subsection. If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

**History:** L. 1953, ch. 286, § 11; L. 1974, ch. 352, § 105; L. 2010, ch. 72, § 9; July 1; L. 2022, ch. 84, § 2; July 1.

**65-668. Same; drugs or devices deemed adulterated, when.** A drug or device shall be deemed to be adulterated:

(a)(1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) (A) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if (A) it is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of K.S.A. 65-667, or (B) it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of K.S.A. 65-667.

(b) If it purports to be, or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in any official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor.

**History:** L. 1953, ch. 286, § 14; L. 1965, ch. 377, § 5; July 1.

**65-669. Same; drugs or devices deemed misbranded, when.** A drug or device shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing:

(1) The name and place of business of the manufacturer, the packer or the distributor, except that in the case of a prescription drug it shall bear the name and place of business of the person responsible for the production of the finished dosage form of the drug, the packer and the distributor; except that nothing in this paragraph shall be construed to apply to wholesalers and the requirement of this paragraph shall be satisfied by stating such information on the label of the drug and filing a statement with such information with the secretary which shall be made available by the secretary on request to local, public and private health agencies, poison control centers, licentiates of the healing arts, the state



board of pharmacy, consumers and others to promote the purposes of this act; in no event, however, shall the label contain less information than required under federal law; and

(2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, except that under this paragraph reasonable variations shall be permitted and exemptions as to small packages shall be allowed, in accordance with regulations prescribed by the secretary, or issued under the federal act.

(c) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If it is for use by human and contains any quantity of narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance that has been by the secretary after investigation, found to be, and by regulations under this act, or by regulations issued pursuant to 21 U.S.C. § 352(d), designated as, habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "warning-may be habit forming."

(e)(1) If it is a drug, unless its label bears, to the exclusion of any other nonproprietary name, except the applicable systematic chemical name or the chemical formula: (A) The established name, as defined in paragraph (2), of the drug, if such there be; and (B) in case it is fabricated from two or more ingredients, the established name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein. The requirements for stating the quantity of the active ingredients, other than the quantity of those specifically named in this paragraph, shall apply only to prescription drugs. To the extent that compliance with the requirements of subsection (e)(1)(B) is impracticable, exemptions shall be allowed under regulations promulgated by the secretary, or under the federal act.

(2) As used in this subsection, the term "established name," with respect to a drug or ingredient thereof, means: (A) The applicable official name designated pursuant to 21 U.S.C. § 358; (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium; or (C) if neither subparagraph (A) nor subparagraph (B) applies, then the common or usual name, if any, of such drug or of such ingredient. Where subparagraph (B) applies to an article recognized in the United States pharmacopeia and in the homeopathic pharmacopoeia under different official titles, the official title used in the United States pharmacopeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the homeopathic pharmacopoeia shall apply.

(f) Unless its labeling bears: (1) Adequate directions for use; and (2) such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users. Where any requirement of paragraph (1), as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements. Articles exempted under regulations issued under 21 U.S.C. § 352(f) may also be exempt.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. The method of packing may be modified with the consent of the secretary, or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States pharmacopeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopeia with respect to the packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopeia. In the event of inconsistency between the requirements of this subsection

and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) If it has been found by the secretary or under the federal act to be a drug liable to deterioration, unless it is packed in such form and manner and its label bears a statement of such precautions, as the regulations adopted by the secretary require as necessary for the protection of public health. No such regulations shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i)(1) If it is a drug and its container is so made, formed or filled as to be misleading; (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency of duration prescribed, recommended or suggested in the labeling thereof.

(k) If it is, purports to be or is represented as a drug composed wholly or partly of insulin, unless: (1) It is from a batch with respect to which a certificate or release has been issued pursuant to 21 U.S.C. § 356; and (2) such certificate or release is in effect with respect to such drug.

(l) If it is, purports to be or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin or any other antibiotic drug, or any derivative thereof, unless: (1) It is from a batch with respect to which a certificate or release has been issued pursuant to 21 U.S.C. § 357; and (2) such certificate or release is in effect with respect to such drug. This paragraph shall not apply to any drug or class of drugs exempted by regulations promulgated under 21 U.S.C. § 357(c) or (d). For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by human containing any quantity of any chemical substance that is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution, including the chemically synthesized equivalent of any such substance.

(m) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of K.S.A. [65-667](#), and amendments thereto, or of the federal act.

(n) In the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of: (1) The established name, as defined in subsection (e)(2); (2) the formula showing quantitatively each ingredient of such drug to the extent required for labels under 21 U.S.C. § 352(e); and (3) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act.

(o) If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(p) Drugs and devices that are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this act if such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the secretary or under the federal act.

(q) A drug intended for use by human that: (1) Is a habit-forming drug to which K.S.A. [65-668](#), and amendments thereto, applies; or (2) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or (3) is limited by an approved application under 21 U.S.C. § 355 or K.S.A. [65-669a](#), and amendments thereto, to use under the professional supervision of a practitioner licensed by law to administer such drug, shall be dispensed only: (A) Upon a written prescription of a practitioner licensed by law to administer such drug or upon the written prescription of a mid-level practitioner as defined in K.S.A. [65-1626](#), and amendments thereto; (B) upon an oral prescription of such practitioner or mid-level practitioner which is reduced promptly to writing and filed by the pharmacist; or (C) by refilling, any such written or oral prescription if

such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in a drug being misbranded while held for sale.

(r) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug or by filling or refilling a written or oral prescription of a mid-level practitioner as defined in K.S.A. [65-1626](#), and amendments thereto, shall be exempt from the requirements of this section, except subsections (a), (i)(2) and (3), (k) and (l), and the packaging requirements of subsections (g) and (h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsection (q).

(s) The secretary may, by regulation, remove drugs subject to subsection (d) and K.S.A. [65-669a](#), and amendments thereto, from the requirements of subsection (q) when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the secretary, be removed from the requirements of subsection (q).

(t) A drug which is subject to subsection (q) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "caution: federal law prohibits dispensing without prescription," or "caution: state law prohibits dispensing without prescription." A drug to which subsection (q) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

(u) Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or that may hereafter be included within the classifications of narcotic drugs or marijuana as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

**History:** L. 1953, ch. 286, § 15; L. 1965, ch. 377, § 6; L. 1972, ch. 230, § 1; L. 1974, ch. 352, § 108; L. 1977, ch. 215, § 1; L. 1999, ch. 115, § 8; L. 2017, ch. 34, § 18; April 20.

**65-669a. New drugs; selling, offering or giving away, restrictions; investigational uses.** (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has been approved and such approval has not been withdrawn under 21 U.S.C.A. 355, or (2) when not subject to the federal act, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the secretary an application setting forth (A) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (B) a full list of the articles used as components of such drug; (C) a full statement of the composition of such drug; (D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing and packing of such drug; (E) such samples of such drug and of the articles used as components thereof as the secretary may require; and (F) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a)(2) of this section shall become effective 180 days after the filing thereof, except that if the secretary finds, after due notice to the applicant and giving the applicant an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, the secretary shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) An order refusing to permit an application under this section to become effective may be revoked by the secretary.

(d) This section shall not apply to: (1) A drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the secretary or pursuant to 21 U.S.C.A. 355 or 21 U.S.C.A. 357; or (2) a drug sold in this state at any time prior to the enactment of this act or introduced into interstate commerce at any time prior to the enactment of the federal act; or (3) any drug which is licensed under the virus, serum, and toxin act of July 1, 1902 (U.S.C. 1958 ed. title 42, chapter 6A, sec. 262); or (4) any drug which is subject to subsection (1) of K.S.A. [65-669](#) and amendments thereto.

(e) The provisions of subsection (n) of K.S.A. [65-656](#) and amendments thereto shall not apply to any drug which was, on October 9, 1962, or on the date immediately preceding the enactment of this subsection, (1) commercially sold or used in this state or in the United States, (2) not a new drug as defined by subsection (n) of K.S.A. [65-656](#) and amendments thereto as then in force, and (3) was not covered by an effective application under this section or under 21 U.S.C.A. 355, when such drug is intended solely for use under conditions prescribed, recommended or suggested in labeling with respect to such drug.

**History:** L. 1965, ch. 377, § 7; L. 1974, ch. 352, § 109; L. 1988, ch. 356, § 187; July 1, 1989.

**65-670. Same; cosmetic deemed adulterated, when.** A cosmetic shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, That this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution-this product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate direction for such preliminary testing. For the purposes of this paragraph and the paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

**History:** L. 1953, ch. 286, § 16; June 30.

**65-671. Same; cosmetic deemed misbranded, when.** A cosmetic shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the secretary.

(c) If any word, statement or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading.

**History:** L. 1953, ch. 286, § 17; L. 1974, ch. 352, § 110; July 1.

**65-672. Same; advertisements of food, drugs, devices or cosmetics deemed false, when.** (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to a physician, dentist or veterinarian, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, That whenever the secretary determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the secretary shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such condition and restriction as the secretary may deem necessary in the interests of public health: Provided, That this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

**History:** L. 1953, ch. 286, § 18; L. 1974, ch. 352, § 111; July 1.

**65-674. Same; free access to establishments and vehicles for inspections and samples.** (a) The secretary shall have free access at all reasonable hours to any location in which foods, drugs, devices or cosmetics are processed, stored or distributed, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the following purposes:

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

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

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

(4) to sample products.

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

**History:** L. 1953, ch. 286, § 20; L. 1974, ch. 352, § 113; July 1; L. 2012, ch. 145, § 20; July 1.

**65-675. Same; reports and dissemination of information.** (a) The secretary may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(b) The secretary may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the secretary deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in the section shall be construed to prohibit the secretary from collecting, reporting and illustrating the results of the investigations of the secretary.

**History:** L. 1953, ch. 286, § 21; L. 1974, ch. 352, § 114; July 1.

**65-678. Same; cooperation with federal food and drug administration.** The secretary is hereby authorized to confer and cooperate with the federal food and drug administration in the enforcement of the national food, drug and cosmetic act as it may apply to food, liquor, drugs, and cosmetic products received in this state from other states, territories or foreign countries.

**History:** L. 1953, ch. 286, § 24; L. 1974, ch. 352, § 117; July 1.

**65-679. Same; act not to limit authority established under certain other acts.** Nothing in this act shall be construed as limiting or abridging the authority of the secretary of agriculture established under

the Kansas dairy law, K.S.A. 65-771 through 65-791, and amendments thereto; or the Kansas commercial feeding stuffs law, K.S.A. 2-1001 through 2-1013, and amendments thereto.

**History:** L. 1953, ch. 286, § 25; L. 1974, ch. 352, § 118; L. 2001, ch. 32, § 23; L. 2002, ch. 25, § 1; July 1.

**65-679a. Dimethyl sulfoxide; labeling and information requirements if sold other than by prescription.** (a) Any dimethyl sulfoxide (DMSO) sold in this state other than by prescription shall be labeled by the manufacturer and seller. The label shall contain a description of all of the contents in the solution, a statement of purity, the percent of dimethyl sulfoxide (DMSO) in the solution and the manufacturer's name and address. Whenever dimethyl sulfoxide (DMSO) is sold or otherwise supplied, the seller or supplier shall give additional printed material, approved by the secretary, to the person receiving the dimethyl sulfoxide (DMSO) that provides adequate warning against use that may be dangerous to the health of the user.

(b) The secretary of agriculture may adopt rules and regulations necessary to administer the provisions of this section.

(c) This section shall be part of and supplemental to the Kansas food, drug and cosmetic act.

**History:** L. 1982, ch. 255, § 1; L. 2010, ch. 72, § 11; July 1.

**65-680. Same; invalidity of part.** If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and applicability thereof to other persons and circumstances shall not be affected thereby.

**History:** L. 1953, ch. 286, § 26; June 30.

**65-682. Same; penalty.** (a) The secretary, after providing notice and an opportunity for a hearing in accordance with provisions of the Kansas administrative procedure act, may impose a civil penalty in an amount of not more than \$1,000 per violation of the food, drug and cosmetic act or rule and regulation adopted, or order issued thereunder. In the case of a continuing violation, each day such violation continues shall be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law.

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

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

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

**History:** L. 1974, ch. 1, § 2; July 1; L. 2012, ch. 145, § 21; July 1.

**65-685. Same; enforcement of criminal provisions.** The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the state. In the event a county or district attorney refuses to act, the attorney general shall so act.

**History:** L. 1974, ch. 1, § 5; L. 1975, ch. 462, § 75; L. 2010, ch. 72, § 14; L. 2012, ch. 145, § 22; July 1.

**65-687. Limitation on liability of donor for donated food.** (a) As used in this act, the following terms shall mean:

(1) "Canned food," any food commercially processed and prepared for human consumption.

(2) "Perishable food," any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables and foods which have been packaged, refrigerated or frozen.

(b) All other provisions of law notwithstanding, a good faith donor of canned or perishable food, to a bona fide charitable or not for profit organization for ultimate distribution to needy individuals, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the willful, wanton, malicious or intentional misconduct of the donor.

(c) All other provisions of law notwithstanding, a bona fide charitable or not for profit organization which in good faith receives and distributes food, which complies with K.S.A. 65-655 et seq., and amendments thereto, at the time it was donated and which is fit for human consumption at the time it is distributed, without charge, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the willful, wanton, malicious or intentional misconduct of such organization.

(d) The provisions of this act shall govern all good faith donations of canned or perishable food which is not readily marketable due to appearance, freshness, grade, surplus or other conditions, but nothing in this act shall restrict the authority of any appropriate agency to regulate or ban the use of such food for human consumption.

**History:** L. 1983, ch. 202, § 1; L. 1996, ch. 101, § 1; July 1.

**65-688. Retail food establishments and food processing plants; inspection fees; rules and regulations.** (a) In order to reimburse the state of Kansas for inspections by the secretary of food establishments and food processing plants, the secretary shall adopt rules and regulations establishing a graduated application and license fee schedule to cover all of the cost of inspection of food establishments and food processing plants.

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

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

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

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

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

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

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

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

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

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

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

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

(h) Elementary and secondary education facilities that have school lunch programs subject to the national school lunch act, 42 U.S.C. § 1751 et seq., shall not be subject to the provisions of subsections

(b) and (c)(1) through (c)(4) but shall have separate application and license fees as established by rules and regulations of the secretary.

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

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

**History:** L. 2001, ch. 203, § 2; L. 2002, ch. 91, § 16; L. 2004, ch. 147, § 6; L. 2008, ch. 48, § 6; L. 2012, ch. 145, § 23; July 1.

**65-689. Same; license requirements, fees, inspections, denial, hearing, display; exceptions.** (a) It shall be unlawful for any person to engage in the business of conducting a food establishment or food processing plant unless such person shall have in effect a valid license therefor issued by the secretary.

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the food establishment or food processing plant designated in the application, to determine that it complies with rules and regulations adopted pursuant to the food, drug and cosmetic act, and amendments thereto. If the food establishment or food processing plant is found to be in compliance, and the completed application and accompanying fees have been submitted, the secretary shall issue the license. If the food establishment or food processing plant is found not to be in compliance, the secretary shall deny the application for a license after providing notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

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

(d) A license shall not be required by:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**History:** L. 2001, ch. 203, § 3; L. 2008, ch. 48, § 7; L. 2012, ch. 145, § 24; L. 2018, ch. 71, § 38; July 1.

**65-690. Same; temporary suspension of license.** (a) If the secretary finds that the public health or safety is endangered by the continued operation of a food processing plant or food establishment, the secretary may temporarily suspend the license of such establishment or order the temporary closure of such establishment without notice or hearing in accordance with the emergency provisions of the Kansas administrative procedure act.

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

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

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

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

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

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

**History:** L. 2009, Ch. 59 § 4, July 1; L. 2012, ch. 145, § 25; July 1.

**65-691. Food establishments and food processing plants; licensure.** (a) Except as otherwise provided in this section, any license issued under the provisions of this act shall expire on March 31 following the date of issuance. Licensees may renew licenses by applying to the secretary on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary and shall be accompanied by the license fee required for the issuance of an original license. If the secretary refuses to renew any license, the secretary shall give written notice thereof to the licensee. In giving written notice, the secretary shall specify changes necessary for complete compliance with rules and regulations, and the secretary shall state that if compliance is achieved within the time designated then the license shall be renewed. If the licensee fails to achieve complete compliance within the prescribed time, the secretary, after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act, shall deny the application for a license. If for any reason, a licensee fails to renew a license prior to the expiration date, the licensee may obtain a renewal of such license within 30 days following the expiration date. In order to renew a license during this thirty-day period, the licensee must comply with the foregoing provisions of this section and pay a \$25 late fee. If the licensee does not renew within the thirty-day period, then the license is treated as expired, and the licensee must apply for a new license.

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

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

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

(c) If after providing notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary determines that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of this act, or any rules and regulations or order issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice. The secretary may take such affirmative action when in the secretary's judgment affirmative action carries out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder.

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

**History:** L. 2012, ch. 145, § 1; July 1.

**65-692 Same; inspection by municipality, fire marshal.** (a) The secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of this act, and

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

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

**History:** L. 2012, ch. 145, § 2; July 1.

**65-693. Food establishments, dogs permitted inside or outside; conditions required to permit.**

(a) Notwithstanding any other provisions of state law, a food establishment, as defined in K.S.A. [65-656](#), and amendments thereto, that is a microbrewery as defined in K.S.A. [41-102](#), and amendments thereto, and is licensed as provided in K.S.A. [41-308b](#), and amendments thereto, may allow live dogs in outside and inside areas on the premises if the conditions specified in subsection (c) are met.

(b) Notwithstanding any other provisions of state law, a food establishment, as defined in K.S.A. [65-656](#), and amendments thereto, that is not a microbrewery as defined in K.S.A. [41-102](#), and amendments thereto, may allow live dogs in outside areas on the premises, if the conditions as specified in subsection (c) are met.

(c) The following conditions shall be met by a food establishment for dogs to be permitted on such food establishment's premises as permitted by subsections (a) and (b):

(1) The food establishment shall prepare a written plan describing the processes and procedures in place to prevent food contamination from dogs on the premises. The plan shall be posted next to the food establishment license inside the premises of the food establishment. The employees of the food establishment shall be trained on the plan, and the plan shall be made available to the Kansas department of agriculture upon request;

(2) dogs shall be under handler control. Dogs shall be well behaved and respond to their handler's command. Dogs belonging to food establishment owners, management or employees shall not be required to be leashed. Dogs belonging to guests of the food establishment shall be leashed at all times;

(3) with respect to a food establishment that is a microbrewery, as provided by subsection (a), dogs in indoor areas shall not be permitted in food or drink preparation areas, including, but not limited to, kitchens and behind bars;

(4) dogs shall not be permitted on dining surfaces, including tables, bars or counter tops;

(5) dogs shall not be fed or watered from any food establishment equipment, including, but not limited to, plates, bowls and utensils, except for single-service items that are disposed of immediately following such use;

(6) an area outside the food establishment shall be designated for dog urination and defecation;

(7) employees shall be required to wash their hands after contact of any kind with a dog prior to handling any food, drink, utensil or food or drink production, preparation or serving equipment or the preparation or use of surfaces that may come into contact with food or drink;

(8) guests shall be advised to wash their hands after any contact with a dog; and

(9) a process for immediately sanitizing equipment or surfaces used for the production, preparation, serving or consumption of food or drink if a dog has contact with such equipment or surfaces shall be developed and followed by the food establishment. This process shall include instructions for disposing of contaminated food or drink.

**History:** L. 2023, ch. 71, § 1; May 4.

## Chapter 74. STATE BOARDS, COMMISSIONS AND AUTHORITIES

**74-581. Transfer of powers, duties and functions to department and secretary of agriculture; rules and regulations.** (a) Except as otherwise provided by this order, the following powers, duties, and functions of the department of health and environment, the secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment are hereby transferred to and imposed upon the department of agriculture and the secretary of agriculture:

(1) All powers, duties, and functions under the food service and lodging act, K.S.A. [36-501](#) et seq., and amendments thereto, relating to the licensing, inspection, and regulation of mobile retail ice cream vendors, food service establishments in food processing plants, or any combination thereof, and food service establishments located in retail food stores;

(2) all powers, duties, and functions under the food service and lodging act, K.S.A. [36-501](#) et seq., and amendments thereto, relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. [36-501](#), and amendments thereto;

(3) all powers, duties, and functions under K.S.A. [65-688](#) through K.S.A. [65-689](#), and amendments thereto, relating to the licensing, inspection, and regulation of retail food stores and food processing plants; and

(4) all of those powers, duties, and functions under K.S.A. [65-619](#) through K.S.A. [65-687](#), and amendments thereto, that relate to the powers, duties, and functions transferred under paragraphs (1), (2) and (3) above.

(b) The secretary of agriculture is hereby authorized to adopt rules and regulations as necessary to carry out the powers, duties and functions transferred to and imposed upon the department of agriculture and the secretary of agriculture pursuant to paragraph (a).

**History:** Executive Reorganization Order No. 32, L. 2004, ch. 192, § 1; L. 2008, ch. 48, § 9; July 1.

**74-582. Successors to certain powers and functions of department and secretary of health and environment and director of division of health; application of documentary references; rules and regulations; orders and directives continued in effect until superseded.** (a) The department of agriculture and the secretary of agriculture shall be the successor in every way to the powers, duties, and functions of the department and secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment in which the same were vested prior to the effective date of this order and that are transferred pursuant to K.S.A. 2004 Supp. 74-581. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department or secretary of agriculture shall be deemed to have the same force and effect as if performed by the department or secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the department of health and environment, the secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services or words of like effect, are referred to or designated by a statute, contract, or other document and such reference

is in regard to any of the powers, duties, or functions transferred to the department or secretary of agriculture pursuant to this order, such reference or designation shall be deemed to apply to the department of agriculture or the secretary of agriculture.

(c) All rules and regulations, orders, and directives of the secretary of health and environment which relate to the functions transferred by this order and which are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of agriculture until revised, amended, revoked, or nullified pursuant to law.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 2; Oct. 1.

**74-583. Transfer of fund balances and assumption of liability for compensation and salaries by department.** (a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties, and functions transferred by this order are hereby transferred within the state treasury to the department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are transferred to the department of agriculture under this order shall be assumed and paid by the department of agriculture.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 3; Oct. 1.

**74-584. Resolution of conflicts regarding disposition of property, powers, duties, functions, appropriations, personnel and records.** (a) When any conflict arises as to the disposition of any property, power, duty, or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The department of agriculture shall succeed to all property, property rights, and records which were used for or pertain to the performance of powers, duties, and functions transferred to the department of agriculture. Any conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 4; Oct. 1.

**74-585. Rights preserved in legal actions and proceedings.** (a) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

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

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 5; Oct. 1.

**74-586. Transfer of officers and employees; rights and benefits preserved.** (a) All officers and employees of the department of health and environment who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties, and functions transferred by this order, as well as all officers and employees of the department of health and environment who are determined by the secretary of health and environment and the secretary of agriculture to be engaged in providing administrative, technical, or other support services that are essential to the exercise and performance of the powers, duties, and functions transferred by this order, are hereby transferred to the department of agriculture. All classified employees so transferred shall retain their status as classified employees.

(b) Officers and employees of the department of health and environment transferred by this order shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to

have been continuous. Any subsequent transfers, layoffs, or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the department of health and environment prior to the date of transfer.

**History:** Executive Reorganization Order No. 32, L. 2004, ch. 192, § 6; Oct. 1.

**74-587. Food safety programs; authority relating to certain real property transferred to department.** On and after October 1, 2004, the Kansas department of agriculture shall succeed to whatever right, title or interest the department of health and environment has acquired in any real property in this state concerning the functions transferred by this act or by 2004 Executive Reorganization Order No. 32, and the authority shall hold the same for and in the name of the state of Kansas. On and after October 1, 2004, whenever any statute, contract, deed or other document concerns the power or authority of the department of health and environment or the secretary of the department of health and environment concerning the functions transferred by this act or by 2004 Executive Reorganization Order No. 32 to acquire, hold or dispose of real property or any interest therein, the Kansas department of agriculture shall succeed to such power or authority.

**History:** L. 2004, ch. 147, § 1; July 1.

**74-588. Same; transfer of employees.** Except as otherwise provided in this act, on October 1, 2004, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the department of health and environment concerning food and food service which are transferred by this act or by 2004 Executive Reorganization Order No. 32, or who become a part of the Kansas department of agriculture, or the powers, duties and functions of which are transferred to the Kansas department of agriculture, and who, in the opinion of the secretary of the Kansas department of agriculture, are necessary to perform the powers, duties and functions of the Kansas department of agriculture, shall be transferred to, and shall become officers and employees of the Kansas department of agriculture.

**History:** L. 2004, ch. 147, § 2; July 1.

**74-589. Same; conflict resolution.** On and after October 1, 2004, when any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

**History:** L. 2004, ch. 147, § 3; July 1.

**74-590. Same; disposition of records.** (a) On and after October 1, 2004, the Kansas department of agriculture shall serve as custodian for all agency records as defined by the Kansas open records act, related to those sections of chapter 36, article 5 and chapter 65, article 6, from which authority is transferred from the secretary of health and environment to the secretary of agriculture. The department of health and environment shall continue to serve as custodian as defined by the Kansas open records act for all agency records related to chapter 36, article 5 and chapter 65, article 6 generated prior to October 1, 2004. A request for records generated prior to October 1, 2004, pursuant to the Kansas open records act may be made to the Kansas department of agriculture and it will be forwarded to the department of health and environment upon receipt.

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

**History:** L. 2004, ch. 147, § 4; July 1.

**74-599. Same; designation of hearing officer.** Notwithstanding the provisions of K.S.A. 77-514, and amendments thereto, on and after July 1, 2004, with respect to hearings pursuant to K.S.A. 65-6a18 et seq., and amendments thereto, before the secretary of agriculture in accordance with the Kansas

administrative procedure act, a hearing officer from the office of administrative hearings shall be the presiding officer unless the party requests that the matter, for which a hearing has been scheduled or for which a right to a hearing exists, be heard by a hearing officer appointed by the secretary.

**History:** L. 2004, ch. 147, § 16; July 1.

**74-5,100. Certificates of free sale; fees; rules and regulations.** (a) In addition to the specific powers and duties conferred upon the secretary of agriculture by the laws of this state, the secretary is authorized to issue certificates of free sale upon request that are necessary or incidental to the execution of the laws relating to the department of agriculture.

(b) The secretary may establish a fee schedule to cover the cost of issuing such certificates not to exceed \$25 per certificate.

(c) The secretary is hereby authorized to adopt rules and regulations necessary to carry out the provisions of this section.

**History:** L. 2008, ch. 48, § 1; July 1.

**74-5,103. Rules and regulations, orders and directives continued.** All rules and regulations, orders and directives of the secretary of agriculture which relate to the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, which are in effect on the effective date of this act shall continue to be effective until revised, amended, revoked or nullified pursuant to law.

**History:** L. 2008, ch. 48, § 4; July 1.

**74-5,104. Transfer of powers, duties and functions to secretary of agriculture; division of food safety.** (a) Except as otherwise provided by this act, on and after October 1, 2008, all of the powers, duties and functions of the department of health and environment concerning food service and lodging are hereby transferred to and conferred and imposed upon, the secretary of agriculture.

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

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

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

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

**History:** L. 2008, ch. 84, § 1; Apr. 24.

**74-5,105. Rights preserved in legal actions and proceedings.** (a) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

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

**History:** L. 2008, ch. 84, § 2; Apr. 24.

**74-5,106. Food service and lodging; authority relating to certain real property transferred to secretary.** On and after October 1, 2008, the secretary of agriculture shall succeed to whatever right, title or interest the department of health and environment has acquired in any real property in this state concerning the functions transferred by this act, and the secretary of agriculture shall hold the same for and in the name of the state of Kansas. On and after October 1, 2008, whenever any statute, contract, deed or other document concerns the power or authority of the department of health and environment or the secretary of the department of health and environment concerning the functions transferred by this act to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

**History:** L. 2008, ch. 84, § 3; Apr. 24.

**74-5,107. Same, transfer of employees.** (a) Except as otherwise provided in this act, on October 1, 2008, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the department of health and environment concerning food service and lodging which are transferred by this act, or who become a part of the Kansas department of agriculture, or the powers, duties and functions of which are transferred to the Kansas department of agriculture, and who, in the opinion of the secretary of agriculture, are necessary to perform the powers, duties and functions of the Kansas department of agriculture, shall be transferred to, and shall become officers and employees of the Kansas department of agriculture.

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

**History:** L. 2008, ch. 84, § 4; Apr. 24.

**74-5,108. Same; disposition of records.** (a) On and after October 1, 2008, the Kansas department of agriculture shall serve as custodian for all agency records, as defined by the Kansas open records act, related to article 5 of chapter 36 of the Kansas Statutes Annotated, from which authority is transferred from the department of health and environment to the secretary of agriculture. The department of health and environment shall continue to serve as custodian, as defined by the Kansas open records act, for all agency records related to article 5 of chapter 36 of the Kansas Statutes Annotated generated prior to October 1, 2008. A request for records generated prior to October 1, 2008, pursuant to the Kansas open records act, may be made to the Kansas department of agriculture and it shall be forwarded to the department of health and environment upon receipt.

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

**History:** L. 2008, ch. 84, § 5; Apr. 24.

**74-5,109. Same; transfer of funds.** On October 1, 2008, the balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act are hereby transferred within the state treasury to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made.



**History:** L. 2008, ch. 84, § 6; Apr. 24.

**74-5,110. Same; effective date.** The provisions of sections 1 through 6, and amendments thereto, shall be effective on and after October 1, 2008.

**History:** L. 2008, ch. 84, § 7; Apr. 24.

**74-5,111. Same; expenditures by secretary of health and environment; approval of secretary of agriculture required.** (a) On and after the effective date of this act, and prior to July 1, 2008, the secretary of health and environment shall not make any expenditures for the fiscal year ending June 30, 2008, from funds or accounts appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act on October 1, 2008, without prior approval of the secretary of agriculture.

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

**History:** L. 2008, ch. 84, § 8; Apr. 24.