

SENATE BILL No. 346

By Committee on Agriculture and Natural Resources

1-14

1 AN ACT concerning agriculture; relating to milk and dairy products;
2 allowing on-farm retail sale of milk and milk products; extending
3 certain milk and dairy license fees; authorizing the secretary of
4 agriculture to declare an imminent health hazard; authorizing civil
5 penalties for certain dairy law violations; amending K.S.A. 65-771, 65-
6 778, 65-781, 65-786 and 65-788 and repealing the existing sections.
7

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

9 New Section 1. (a) Except as provided in article 7 of chapter 65 of the
10 Kansas Statutes Annotated, and amendments thereto, and in rules and
11 regulations adopted by the secretary hereunder, the secretary shall apply
12 the definitions and standards of identity ascribed to milk and dairy
13 products by the federal food and drug administration.

14 (b) Goat milk sold in retail packages shall contain not less than 2.5%
15 milkfat and not less than 7.5% milk solids not fat. Goat milk shall be
16 produced according to the sanitary standards of this act and may have been
17 adjusted by separating part of the milkfat therefrom or by adding cream,
18 concentrated milk, dry whole milk, skim milk, concentrated skim milk or
19 nonfat dry milk thereto. Goat milk may be homogenized.

20 (c) Milk that is not goat milk shall contain not less than 3.25%
21 milkfat and not less than 8.25% milk solids not fat. Milk may have been
22 adjusted by separating part of the milkfat therefrom or by adding cream,
23 concentrated milk, dry whole milk, skim milk, concentrated skim milk or
24 nonfat dry milk thereto. Milk may be homogenized.

25 (d) Milk or cream for manufacturing purposes may contain less than
26 3.25% butterfat and shall be delivered pure, sweet and clean.

27 (e) Grade A pasteurized milk, grade A pasteurized milk products and
28 grade A milk for pasteurization shall meet the requirements for grade A
29 under the rules and regulations adopted pursuant to this act. The secretary
30 may authorize the use of the grade A designation for a temporary time
31 period on grade A pasteurized milk within the statewide system of milk
32 inspection and regulatory services, even if such grade A pasteurized milk
33 does not have at least a 90% survey rating.

34 New Sec. 2. (a) The on-farm retail sale of milk or milk products shall
35 be lawful, so long as each container of unpasteurized raw milk sold or
36 offered for sale bears a label that is clearly visible and states the following

1 or its equivalent in a clearly visible font size: "~~This product contains Raw~~
2 ~~milk that is not pasteurized and could contain bacteria that may cause~~
3 ~~foodborne illness.~~" or "**Unpasteurized**".

4 (b) Any person who engages in the on-farm retail sale of milk or milk
5 products may advertise such milk or milk products. Any such
6 advertisement shall not be false or misleading and shall state that such
7 milk or milk products are raw ~~and~~ or unpasteurized. If such advertisement
8 is in print or other written or visual form, this statement shall be clearly
9 visible.

10 (c) In addition to any other remedies available under the act, the
11 secretary may issue a civil penalty pursuant to K.S.A. 65-788, and
12 amendments thereto, against any person who violates this section.

13 Sec. 3. K.S.A. 65-771 is hereby amended to read as follows: 65-771.
14 As used in this act:

15 (a) "Adulterated" ~~has~~ means the same meaning as provided in K.S.A.
16 65-664, and amendments thereto.

17 (b) "Bulk milk pick up tanker" means a vehicle, including the truck,
18 tank and those appurtenances necessary for such vehicle's use, used by a
19 bulk milk hauler or sampler to transport bulk raw milk for pasteurization
20 from a dairy farm to a milk plant, receiving station or transfer station.

21 (c) "Dairy manufacturing plants" means any place where dairy
22 products, grade A milk or milk products are manufactured or prepared for
23 sale or distribution, either at wholesale or retail. ~~This term shall~~ "*Dairy*
24 *manufacturing plants*" does not include a licensed food service
25 establishment ~~which~~ that is licensed to manufacture homemade ice cream
26 pursuant to this act.

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

35 (e) "Frozen dairy dessert" means ~~and includes~~ products containing
36 milk or cream and other ingredients ~~which~~ that are frozen or semi-frozen
37 prior to consumption, such as ice cream, ice milk or sherbet, including
38 frozen dairy desserts for special dietary purposes.

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

43 (g) ~~"Goat milk" means the normal lacteal secretion, practically free of~~

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

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

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

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

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

1 establishment of the existence of an imminent health hazard.

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

7 (m)(k) "Milk" means the lacteal secretion, practically free from
8 colostrum, obtained by the complete milking of one or more healthy ~~cows~~.
9 ~~Milk that is in hooved mammals. Except for on-farm retail sale of milk or~~
10 ~~milk products, milk sold in final package form for beverage use shall have~~
11 ~~been pasteurized or ultrapasteurized, and shall contain not less than 8.25%~~
12 ~~milk solids not fat and not less than 3.25% milkfat. Milk may have been~~
13 ~~adjusted by separating part of the milkfat therefrom, or by adding thereto~~
14 ~~cream, concentrated milk, dry whole milk, skim milk, concentrated skim~~
15 ~~milk, or nonfat dry milk. Milk may be homogenized. Milk shall be~~
16 ~~interpreted to include goat milk.~~

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

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

25 (p)(n) "Milk inspection and regulatory services" means the
26 inspection, sampling, laboratory testing and the administrative procedures
27 relating thereto, necessary to determine that the production, processing,
28 distribution and sale of grade A milk, milk products, and dairy products
29 comply with the requirements of this act and any rules and regulations
30 adopted hereunder.

31 (q)(o) "Milk or cream for manufacturing purposes" means raw milk
32 or raw cream ~~which~~ that is not subject to grade A standards and ~~which~~ is
33 produced for processing and manufacturing into dairy products for human
34 consumption. ~~Milk for manufacturing purposes may contain less than~~
35 ~~3.25% of butterfat and shall be delivered pure, sweet and clean.~~

36 (r)(p) "Milk or cream receiving station" means any place where milk
37 or cream may be received, collected, handled, processed, stored or
38 collected and prepared for further transporting.

39 (s)(q) "Milk or cream transfer station" means any place where milk or
40 cream are transferred directly from one milk tank truck to another.

41 (t)(r) "Milk plant" means any place, premises or establishment where
42 milk or milk products are collected, handled, processed, stored,
43 pasteurized, ultrapasteurized, aseptically processed, condensed, dried,

1 packaged or prepared for distribution.

2 ~~(t)~~(s) "Milk processor" means any person who operates any place,
3 premises or establishment where grade A raw milk for pasteurization or
4 milk or cream for manufacturing purposes is processed, pasteurized,
5 bottled or prepared for distribution.

6 ~~(v)~~(t) "Milk producer" means any person who owns or operates a
7 dairy farm and who provides, sells or offers for sale grade A raw milk for
8 pasteurization or milk or cream for manufacturing purposes to a milk
9 plant, receiving station or transfer station.

10 ~~(w)~~(u) "Milk products" means cream, light cream, light whipping
11 cream, heavy cream, heavy whipping cream, whipped cream, whipped
12 light cream, sour cream, acidified sour cream, cultured sour cream, half-
13 and-half, sour half-and-half, acidified sour half-and-half, cultured sour
14 half-and-half, reconstituted or recombined milk and milk products,
15 concentrated milk, concentrated milk products, nonfat skim milk, reduced
16 fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured
17 milk, cultured reduced fat or lowfat milk, cultured nonfat skim milk,
18 yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat
19 or lowfat milk, acidified nonfat skim milk, low-sodium milk, low-sodium
20 reduced fat or lowfat milk, low-sodium nonfat skim milk, lactose-reduced
21 milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat
22 skim milk, aseptically processed and packaged milk and milk products,
23 milk, reduced fat or lowfat milk or nonfat skim milk with added safe and
24 suitable microbial organisms and any other milk product made by the
25 addition or subtraction of milkfat or addition of safe and suitable optional
26 ingredients for protein, vitamin or mineral fortification of milk products
27 defined herein. "Milk products" ~~also include~~ *includes* those dairy foods
28 made by modifying the federally standardized products listed in this
29 section in accordance with 21 C.F.R. § 130.10, requirements for foods
30 named by use of a nutrient content claim and a standardized term. Milk
31 and milk products ~~which~~ *that* have been retort processed after packaging
32 or ~~which have been~~ concentrated, condensed or dried are included in this
33 definition only if they are used as an ingredient to produce any milk or
34 milk product defined herein or if they are labeled as Grade A as adopted
35 and described by rules and regulations promulgated under this act. Except
36 as otherwise provided, ~~the term~~ "milk ~~shall~~ *products*" *does* not include
37 dietary products, infant formula, ice cream or other desserts, butter or
38 cheese.

39 ~~(x)~~(v) "Milk tank truck" means the term used to describe both a bulk
40 milk pick up tanker and a milk transport tank.

41 ~~(y)~~(w) "Milk tank truck cleaning facility" means any place, premises
42 or establishment, other than a milk plant, receiving station or transfer
43 station, where a milk tank truck is cleaned and sanitized.

1 ~~(z)~~(x) "Milk transport tank" means a vehicle including the truck and
2 tank, used by a bulk milk hauler or sampler to transport bulk shipments of
3 milk and milk products from a milk plant, receiving station or transfer
4 station to another milk plant, receiving station or transfer station.

5 ~~(aa)~~(y) "Milk transportation company" means the person, business or
6 entity responsible for a milk tank truck.

7 ~~(bb)~~(z) "~~Misbranded~~"-~~has means~~ the same ~~meaning as ascribed to it~~
8 ~~as provided~~ in K.S.A. 65-665, and amendments thereto.

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

19 ~~(dd)~~(bb) "Pasteurized"-~~has means~~ the same ~~meaning as ascribed to it~~
20 ~~as provided~~ in 21 C.F.R. §§ 131.3 and 135.3.

21 ~~(ee)~~(cc) "Person" means any individual, plant operator, partnership,
22 corporation, company, firm, trustee, association or institution.

23 ~~(ff)~~(dd) "Plant fabricating single service articles" means any place
24 ~~which that~~ manufactures single service articles ~~which that~~ are expected to
25 come in contact with grade A milk or grade A milk products.

26 ~~(gg)~~(ee) "Secretary" means the secretary of the Kansas department of
27 agriculture, or the secretary's designee.

28 ~~(hh)~~(ff) "Single service article or container" means any container
29 having a milk or milk product-contact surface and used in the packaging,
30 handling, storage or servicing of grade A milk and is intended for one
31 usage only.

32 Sec. 4. K.S.A. 65-778 is hereby amended to read as follows: 65-778.

33 (a) Any person who engages in business as a dairy manufacturing plant
34 shall first apply for and obtain a dairy manufacturing plant license from
35 the secretary and shall pay a license fee of \$120, or commencing July 1,
36 2002, and ending June 30, ~~2023~~ 2028, a license fee of \$200.

37 (b) Any person who engages in business as a distributor of milk, milk
38 products or dairy products shall first apply for and obtain a milk distributor
39 license from the secretary and shall pay a license fee of \$120, or
40 commencing July 1, 2002, and ending June 30, ~~2023~~ 2028, a license fee of
41 \$200. No milk distributor license shall be required for a licensed dairy
42 manufacturing plant which distributes only those products which it
43 manufactures.

1 (c) Any person who engages in business as a milk hauler shall first
2 apply for and obtain a milk hauler license from the secretary and shall pay
3 a license fee of \$25 or commencing July 1, 2002, and ending June 30,
4 ~~2023~~ 2028, a license fee of \$35. As part of the application, the secretary
5 may require the applicant to be tested regarding proper procedures for
6 sampling, testing and weighing milk or cream and state laws and rules and
7 regulations.

8 (d) Any person who operates a milk or cream transfer station or milk
9 or cream receiving station shall first apply for and obtain a milk or cream
10 station license from the secretary and shall pay a license fee of \$50, or
11 commencing July 1, 2002, and ending June 30, ~~2023~~ 2028, a license fee of
12 \$100.

13 (e) Any person who engages in business as a manufacturer of single
14 service dairy containers or manufacturer of single service dairy container
15 closures shall first apply for and obtain a single service manufacturing
16 license from the secretary and shall pay a license fee of \$50, or
17 commencing July 1, 2002, and ending June 30, ~~2023~~ 2028, a license fee of
18 \$100.

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

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

23 (h) The dairy manufacturing plant license, milk distributor license,
24 milk tank truck cleaning facility license, milk or cream station license and
25 single service manufacturing license shall expire on December 31 of the
26 year ~~for which~~ it was issued unless suspended or revoked by the secretary
27 pursuant to this act. The milk hauler license shall expire on June 30
28 following the date of issuance unless suspended or revoked by the
29 secretary pursuant to this act.

30 (i) No license issued under this section shall be transferable. No
31 license shall be renewed if any assessments or fees required under this act
32 are delinquent.

33 (j) Each applicant for a license or for the renewal of such license shall
34 submit an application on a form supplied by the secretary accompanied by
35 the license fee. All licenses shall be conspicuously displayed in the
36 applicant's place of business.

37 (k) The secretary shall reduce any license fee in subsections (a)
38 through (f) by adopting rules and regulations whenever the secretary
39 determines that such fee is yielding more than is necessary for
40 administering the provisions of this act. The secretary may increase any
41 license fee in subsections (a) through (f) by adopting rules and regulations
42 when such license fee is necessary to produce sufficient revenues for
43 administering the provisions of this act. License fees in subsections (a)

1 through (f) shall not be increased in excess of the maximum amounts
2 provided in this section.

3 Sec. 5. K.S.A. 65-781 is hereby amended to read as follows: 65-781.
4 The following fees for the statewide system of milk inspection and
5 regulatory services are hereby established:

6 (a) A fee of \$.01, or commencing July 1, 2002, and ending June 30,
7 ~~2023~~ 2028, a fee of \$.015 for each 100 pounds of milk produced by milk
8 producers under Kansas grade A inspection shall be paid. Each producer is
9 hereby charged with such fee, which shall be paid to the milk producers'
10 cooperative, milk processor or milk distributor to whom the milk is sold or
11 delivered. Each cooperative, processor or distributor is hereby charged
12 with the duty of collecting such fees, which shall be remitted to the
13 secretary.

14 (b) A fee of \$.01, or commencing July 1, 2002, and ending June 30,
15 ~~2023~~ 2028, a fee of \$.02 for each 100 pounds of packaged grade A
16 pasteurized milk or milk products sold in Kansas at retail to the final
17 consumer shall be paid. Each distributor is hereby charged with such fee,
18 which shall be remitted to the secretary.

19 (c) A fee of ~~\$.01~~ **\$.0075**, or commencing July 1, 2002, and ending
20 June 30, ~~2023~~ 2028, a fee of \$.02 per 100 pounds or fraction thereof of
21 grade A raw milk for pasteurization delivered to a milk processor within
22 the state of Kansas ~~which~~ *that* is processed into grade A milk ~~or~~, grade A
23 milk products *or other dairy products* shall be paid. Each milk processor
24 is hereby charged with such fee, which shall be remitted to the secretary.
25 This fee shall not be paid if the milk is processed or manufactured at the
26 dairy where such milk is produced and less than 7,000,000 pounds of milk
27 are processed annually.

28 (d) A milk fee of \$.01, or commencing July 1, 2002, and ending June
29 30, ~~2023~~ 2028, a fee of \$.015 per 100 pounds of milk or cream for
30 manufacturing purposes produced by milk producers under Kansas
31 manufacturing grade milk inspection shall be paid. Each producer is
32 hereby charged with such fee, which shall be paid to the milk producers'
33 cooperative, dairy manufacturing plant or any other person to whom the
34 milk or cream for manufacturing purposes is sold or delivered. Each
35 cooperative, dairy manufacturing plant or other person is hereby charged
36 with the duty of collecting such fees, which shall be remitted to the
37 secretary.

38 (e) A fee of \$.0075, or commencing July 1, 2002, and ending June 30,
39 ~~2023~~ 2028, a fee of \$.02 per 100 pounds of Kansas produced milk or
40 cream for manufacturing purposes or other Kansas produced milk
41 delivered to a dairy manufacturing plant shall be paid on all Kansas milk
42 used in the manufacturing of dairy products. As used in this subsection, ~~the~~
43 ~~term~~ "dairy products ~~shall~~" *does* not include any frozen dairy dessert or

1 frozen dairy dessert mix. Each dairy manufacturing plant shall pay such
2 fee, which shall be remitted to the secretary. This fee shall not be paid if
3 the milk is processed or manufactured at the dairy where such milk is
4 produced and less than 7,000,000 pounds of milk are processed annually.

5 (f) In lieu of the fee prescribed in subsection (e), a fee of \$1, or
6 commencing July 1, 2002, and ending June 30, ~~2023~~ 2028, a fee of \$2 per
7 thousand gallons of frozen dairy dessert or frozen dairy dessert mix shall
8 be paid by the manufacturer thereof. Each manufacturer of frozen dairy
9 dessert or frozen dairy dessert mix is hereby charged with such fee, which
10 shall be remitted to the secretary. Frozen dairy dessert mix which is further
11 processed into the corresponding frozen dairy dessert by the manufacturer
12 of the frozen dairy dessert mix shall not be subject to the fee required by
13 this subsection.

14 (g) A fee of \$1, or commencing July 1, 2002, and ending June 30,
15 ~~2023~~ 2028, a fee of \$2 per thousand gallons of frozen dairy dessert or
16 frozen dairy dessert mix imported for retail sale in Kansas shall be paid by
17 the milk distributor who imports these products.

18 (h) A fee of \$50 for the annual inspection of a milk tank truck as
19 required by this act. The milk transportation company that owns or leases
20 the milk tank truck shall pay such fee, which shall be remitted to the
21 secretary.

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

26 (j) All fees established herein shall be paid to the secretary in the
27 following manner:

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

33 (2) The fees established in subsections (b), (f) and (g) shall be
34 remitted on April 30, July 31, October 31 and January 31 for the three
35 calendar months immediately preceding and shall be accompanied by a
36 report, in the form prescribed by the secretary, indicating the quantities
37 upon which the remittance is based.

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

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

1 (l) The secretary shall reduce any inspection fee in subsections (a)
2 through (h) by adopting rules and regulations whenever the secretary
3 determines that such fee is yielding more than is necessary for
4 administering the provisions of this act. The secretary may increase any
5 inspection fee in subsections (a) through (h) by adopting rules and
6 regulations when such inspection fee is necessary to produce sufficient
7 revenues for administering the provisions of this act. License fees in
8 subsections (a) through (h) shall not be increased in excess of the
9 maximum amounts provided in this section.

10 Sec. 6. K.S.A. 65-786 is hereby amended to read as follows: 65-786.

11 (a) If the secretary determines after notice and opportunity for a hearing
12 that any person has engaged in or is engaging in any act or practice
13 constituting a violation of any provision of this act or any rules and
14 regulations or order issued thereunder, the secretary may require that such
15 person cease and desist from the unlawful act or practice and take such
16 affirmative action as in the judgment of the secretary will carry out the
17 purposes of the violated or potentially violated provision of this act or
18 rules and regulations or order issued thereunder. Any such hearing shall be
19 held by the secretary or a presiding officer from the office of
20 administrative hearings.

21 (b) If the secretary makes written findings of fact that there is a
22 situation involving an immediate danger to the public health, safety or
23 welfare or that the public interest will be irreparably harmed by delay in
24 issuing an order under subsection (a), the secretary may issue an
25 emergency temporary cease and desist order. Such order, even when not an
26 order within the meaning of K.S.A. 77-502, and amendments thereto, shall
27 be subject to the same procedures as an emergency order issued under
28 K.S.A. 77-536, and amendments thereto. Upon the entry of such an order,
29 the secretary shall promptly notify the person subject to the order that:

30 (1) It has been entered;

31 (2) the reasons therefor; and

32 (3) that upon written request from the person subject to the order
33 within 15 days after service of the order the matter will be set for a hearing
34 which shall be conducted in accordance with the provisions of the Kansas
35 administrative procedure act. Any such hearing shall be held by the
36 secretary or presiding officer from the office of administrative hearings. If
37 no hearing is requested and none is ordered by the secretary, the order will
38 remain in effect until it is modified or vacated by the secretary. If a hearing
39 is requested or ordered the secretary, after giving notice of and opportunity
40 for hearings to the person subject to the order, shall by written findings of
41 fact and conclusions of law vacate, modify or make permanent the order.

42 (c) *When necessary to protect the public health, an imminent health*
43 *hazard may be declared by the secretary at any point in a chain of events*

1 *that ultimately may result in harm or danger to the public health. The*
2 *occurrence of the final anticipated injury or other disease-related*
3 *condition shall not be a prerequisite for the establishment of the existence*
4 *of an imminent health hazard and the use of any authority granted*
5 *pursuant to this act, including any action taken pursuant to subsection (a)*
6 *or (b) or K.S.A. 65-780a or 65-785, and amendments thereto.*

7 Sec. 7. K.S.A. 65-788 is hereby amended to read as follows: 65-788.

8 (a) Any licensee or any employee or agent thereof who violates any
9 provision of this act or any rules and regulations promulgated thereunder
10 *and any person who violates ~~K.S.A. 65-784a~~ **section 1**, and amendments*
11 *thereto*, in addition to any other penalty provided by law, may incur a civil
12 penalty imposed under subsection (b) in the amount fixed by rules and
13 regulations of the secretary in an amount not less than \$100 nor more than
14 \$300 for each violation and, in the case of a continuing violation, every
15 day such violation continues may be deemed a separate violation.

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

24 (c) ~~Any licensee~~ *person subject to and* aggrieved by a final order of
25 the secretary made under this section may appeal such order to the district
26 court in the manner provided by the Kansas judicial review act.

27 (d) Any civil penalty recovered pursuant to the provisions of this
28 section shall be remitted to the state treasurer, deposited in the state
29 treasury and credited to the state general fund.

30 Sec. 8. K.S.A. 65-771, 65-778, 65-781, 65-786 and 65-788 are hereby
31 repealed.

32 Sec. 9. This act shall take effect and be in force from and after its
33 publication in the statute book.