

HOUSE BILL No. 2836

AN ACT concerning agriculture; relating to the Kansas egg law; requirements; definitions; unlawful acts; enforcement and penalties; fees; amending K.S.A. 2-2502, 2-2503, 2-2505, 2-2507 and 2-2508 and K.S.A. 2005 Supp. 2-2501 and repealing the existing sections.

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

Section 1. K.S.A. 2005 Supp. 2-2501 is hereby amended to read as follows: 2-2501. (a) This act shall be known and may be cited as the Kansas egg law.

(b) For the purposes of this act:

(1) "Eggs" mean eggs in the shell that are the product of the domesticated chicken, *turkey, goose, guinea and any other eggs offered for sale for human consumption. Eggs shall not include balut;*

(2) "person" means all individuals, firms, associations, partnerships and corporations;

(3) "department" means the Kansas department of agriculture;

(4) "secretary" means the secretary of agriculture *or the secretary's authorized representative;*

(5) "consumer" means a person who buys *or otherwise acquires* eggs for personal consumption *and not for resale;*

(6) "container" means any box, case, basket, carton, sack, bag or other receptacle; ~~and~~

(7) "ambient temperature" means the air temperature maintained in an egg storage facility or transport vehicle;

(8) "*balut*" means a food derived from fertile eggs, generally chicken or duck eggs, which are incubated for a period of time shorter than is necessary for hatching;

(9) "*candling*" means the careful examination of each shell egg and the elimination of those eggs determined unfit for human consumption;

(10) "*expiration date*" means the date the eggs are to be removed from sale;

(11) "*food purveyor*" means state institutions, military or federal installations, retailers, restaurants, cafes, cafeterias, hotels, institutions or other places where eggs are served in the shell or broken out for immediate consumption or where any foods containing eggs are sold;

(12) "*graded egg*" means an egg which is classified in accordance with the standards established by the Kansas department of agriculture, taking into consideration the size or weight, quality factors, interior and exterior, including condition of white and yolk, the size and condition of the air cell and cleanliness and soundness of shell;

(13) "*identity*" means types of eggs other than chicken eggs such as turkey, duck, guinea and other eggs;

(14) "*last handler*" means any person who sells, offers or exposes for sale or distributes eggs to retailers or food purveyors;

(15) "*pack date*" means the date the eggs were packed which shall be expressed in terms of the month and day or as a julian date;

(16) "*packer*" means any person who grades, sizes, candles and packs eggs for purpose of sale;

(17) "*producer*" means any person who exercises control over the production of eggs and disposes of eggs from the output of a flock owned by such person;

(18) "*repackaging eggs*" means packaging eggs in another carton or container other than the carton in which the eggs were first packed; and

(19) "*retailer*" means any person selling or offering eggs for sale to consumers and not for resale.

Sec. 2. K.S.A. 2-2502 is hereby amended to read as follows: 2-2502. The standards of size and quality of *graded* eggs shall be those promulgated and adopted by the department as provided in article 5 of chapter 74 of the Kansas Statutes Annotated and amendments thereto. The tolerances for eggs in any container or bulk lot, as determined by count, of the quality grades "Grade AA," "Grade A," and "Grade B," shall conform to the tolerances adopted by the department as provided by statute.

Sec. 3. K.S.A. 2-2503 is hereby amended to read as follows: 2-2503. It shall be a violation of this act for any person, other than those exempted by K.S.A. 2-2508, and amendments thereto, to:

(a) ~~To~~ Sell *graded* eggs below the quality of "Grade B" ~~to food purveyors or consumers;~~

(b) ~~to~~ sell *graded* eggs ~~to food purveyors or consumers~~ that are not

labeled on the container to indicate size and quality thereof in boldface type letters not less than $\frac{3}{8}$ inch in height;

(c) ~~to sell graded eggs to food purveyors or consumers~~ without the name *and address* of either the ~~dealer packer, last handler,~~ retailer, ~~food purveyor~~ or agent by or for whom the eggs were graded ~~or~~, labeled or *packed*, indicated on the carton or container;

(d) ~~to~~ falsely or deceptively label, advertise or invoice eggs;

(e) ~~to~~ advertise *graded eggs* in a manner which indicates price without also indicating the full, correct and unabbreviated designation of size and quality as provided herein;

(f) ~~to~~ hold eggs for human consumption at an ambient temperature higher than 45° Fahrenheit after being received at the point of first purchase or assembly;

(g) ~~to sell to food purveyors or consumers~~ *graded eggs* in a container which does not bear an inspection fee stamp showing that the inspection fee has been paid thereon unless the person ~~registered as required by subsection (i)~~ has been issued a permit to pay the inspection fee on a quarterly basis as required by K.S.A. 2-2507, and amendments thereto;

(h) ~~to~~ use an inspection fee stamp ~~the second time~~ *more than once*, or to use a counterfeit thereof;

(i) ~~to~~ grade eggs for size and quality for subsequent resale to food purveyors, retailers or consumers without first ~~registering~~ *acquiring a license issued by the secretary for such purveyor's, retailer's or consumer's person's place of business with the department*;

(j) ~~to~~ fail or neglect to file the quarterly inspection fee report and pay the inspection fee due, as provided in K.S.A. 2-2507, and amendments thereto, or to file a false quarterly inspection fee report of the quantity of eggs sold during any period;

(k) ~~to~~ refuse entry to any authorized inspector or employee of the department for the purpose of making inspections under the provisions of this act;

(l) ~~to~~ engage in the business of purchasing eggs unless there is posted in a conspicuous place in such place of business every day that ~~the same~~ *such place of business* is open for the purchase of eggs the prices which are being paid for each of the various grades of eggs;

(m) ~~to~~ offer eggs for sale that have not been candled and graded; ~~or~~

(n) ~~to~~ fail to mark all containers with official United States or Kansas grade AA, A or B identification with label to indicate that refrigeration is required, ~~e.g. using~~ "keep refrigerated," or words of similar meaning;

(o) *sell, offer or expose for sale or distribute eggs in this state without first acquiring a license issued by the secretary for such person's place of business; or*

(p) *fail to comply with any other provision of this act or any rule or regulation adopted pursuant to this act.*

Sec. 4. K.S.A. 2-2505 is hereby amended to read as follows: 2-2505. The department shall prescribe by rules and regulations methods of selecting samples of lots or containers of eggs ~~which shall be a minimum of 100 egg samples~~ that will fairly represent the entire lots or containers sampled. Any sample taken ~~hereunder~~ *pursuant to this section* or an official certificate of the grade shall be prima facie evidence, in any court in this state, of the true condition of the entire lot in the examination of which such sample was taken.

Sec. 5. K.S.A. 2-2507 is hereby amended to read as follows: 2-2507. (a) For the purpose of financing the administration and enforcement of this act, there is hereby levied an inspection fee on all *graded eggs* sold, offered or exposed for sale *or distributed* to food purveyors or ~~consumers~~ *retailers* at the rate of 3.5 mills for each dozen eggs. ~~Such fees shall be paid quarterly, but in no event shall the remittance for any quarter be less than \$15. If the department finds that the above fees are providing more funds than necessary for the administration of this act, the department may reduce the above-mentioned fee by rules and regulations, and in like manner may increase such fee when necessary, but not to exceed the rate specified above. The secretary shall provide inspection fee stamps for sale to persons desiring them. The price of such stamps shall include the printing and mailing costs thereof. Such inspection fee stamps shall also serve as a label indicating size and quality in boldface type letters not less than $\frac{3}{8}$ inch in height. Persons desiring to report and pay the in-~~

spection fee quarterly, in lieu of using inspection fee stamps, may make application to the secretary for a permit to pay the inspection fee quarterly. *Such fee shall be paid by the last handler. The inspection fee shall be paid only once on the same quantity of eggs so long as such eggs remain in the eggs' original container.*

(b) ~~The secretary may grant the permit if the applicant agrees to keep such records as may be necessary to indicate accurately the quantity of eggs sold on which the inspection fee is due, and if the applicant agrees to grant the secretary or a duly authorized representative of the secretary permission to verify the statement of quantity of eggs sold. The report shall be filed in the office of the secretary, and shall be due and payable on the first day of October, January, April, and July for the previous three months. If the report is not filed and the inspection fee paid within 30 days after the due date, or if the report of quantity is false, the secretary may revoke the permit. In addition to the inspection fee there may be assessed against the permit holder a penalty of \$5 per day for each day the inspection fee remains unpaid after the thirty-day period. Such records of quantity sold shall be held for a period of three years. The secretary shall remit all moneys received by or for the secretary under article 25 of chapter 2 of Kansas Statutes Annotated, 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 egg fee fund. All expenditures from such 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 of agriculture or by a person or persons designated by the secretary. The secretary shall provide inspection fee stamps for sale to persons requesting such stamps. The price of such inspection fee stamps shall include the printing and mailing costs thereof. Such inspection fee stamps shall also serve as a label indicating size and quality in boldface type letters not less than $\frac{3}{8}$ inch in height.~~

(c) *Persons desiring to report and pay the inspection fee quarterly, in lieu of using such inspection fee stamps, may make application to the secretary for a permit to pay the inspection fee quarterly, except that in no event shall the inspection fee for any quarter be less than \$15. The secretary may grant the permit if the applicant agrees to keep such records and make such report as may be necessary to indicate accurately the quantity of eggs sold on which the inspection fee is due, and if the applicant agrees to grant the secretary permission to verify the statement of quantity of eggs sold. The report shall be filed in the office of the secretary, and shall be due and payable on the first day of October, January, April and July for the previous three months. If the report is not filed and the inspection fee is not paid within 30 days after the due date, or if the report of quantity is false, the secretary may revoke the permit. In addition to the inspection fee there may be assessed against the permit holder a penalty of \$5 per day for each day the inspection fee remains unpaid after the 30-day period has expired. Such records of quantity sold shall be held for a period of three years.*

(d) *If the department finds that the fees specified in this section are providing more funds than necessary for the administration of this act, the department may reduce the above-mentioned fee pursuant to rules and regulations adopted by the secretary. The secretary may increase such fee when necessary, pursuant to rules and regulations adopted by the secretary, except that such fee shall not exceed the rate specified in subsection (a). The secretary shall remit all moneys received by or for the secretary under article 25 of chapter 2 of Kansas Statutes Annotated, and amendments thereto, to the state treasurer in accordance with the provision 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 egg fee fund. All expenditures from such 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 of agriculture or by a person or persons designated by the secretary.*

Sec. 6. K.S.A. 2-2508 is hereby amended to read as follows: 2-2508. (a) Any person ~~registering~~ *selling, offering or exposing for sale or distributing or grading eggs in this state shall first obtain a license for such person's place of business for the purpose of qualifying to grade eggs as required under subsection (i) of K.S.A. 2-2503, and amendments thereto, shall file an* from the secretary. A written application for such ~~registration~~ license or a renewal of such license shall be made on a form supplied by the secretary and shall ~~pay~~ *include payment of an annual registration license fee of \$5 to be set by rules and regulations adopted by the secretary, except that such license fee shall not exceed \$25.* Each ~~registration~~ license shall expire on December 31 of the year in which issued. *Licenses shall not be transferable and shall be posted conspicuously at the place of business for which the license was issued so that the license may be seen by the public and by inspectors of the department of agriculture at any time during business hours. Before any license is renewed, the previous year's licensing fees and, when applicable, inspection fees shall be paid. Any person selling eggs without the required license shall be subject to having the eggs removed from sale until a license is obtained.*

(b) *Retailers and food purveyors shall be exempt from the licensing fee requirement of subsection (a), but shall be subject to all other requirements of the Kansas egg law.*

(c) *Licensees and any person required to be licensed under the provisions of this act shall keep and retain for three years such records required to verify the quantity of eggs bought, sold, offered for sale or distributed in this state. Such records shall be available for inspection by the secretary at all reasonable times.*

(d) (1) A producer of eggs when selling ungraded eggs of the producer's own flock production is exempted from the provisions of this act if: (A) *The producer owns 50 or fewer hens; or*

(B) (i) *The producer owns more than 50 hens but fewer than 250 hens;*

(ii) *eggs are washed and clean;*

(iii) *eggs are prepackaged and labeled as ungraded with the name and address of the producer;*

(iv) *cartons are not reused unless all brand markings and other identification is obliterated and the carton is free of foreign material;*

(v) *sales are to consumers only; and*

(vi) *eggs are maintained at a temperature of 45° Fahrenheit or below.*

(2) If such producer desires to sell graded eggs, the producer shall be permitted to do so if in compliance with this act.

New Sec. 7. (a) Each container of eggs shall be labeled with the following information:

(1) The size and quality of eggs which shall be printed in boldface type letters not less than $\frac{3}{8}$ inch in height;

(2) the identity of the eggs;

(3) name and address of either the packer, the person for whom the eggs are packed or the retailer if the eggs have been repacked;

(4) the pack date;

(5) safe handling instructions, which shall include the statements:

(A) "Keep refrigerated at or below 45° Fahrenheit," which shall be printed on the outside of the carton; and

(B) "to prevent illness from bacteria: Keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly," which may be printed either on the outside or the inside of the carton; and

(6) the expiration date which shall be preceded by "exp," "sell by," "use by" or similar language.

(b) Such information shall be printed in English, be clearly and conspicuously placed on the outside of the carton except as otherwise provided in this section, and not be false or misleading.

(c) The provisions of this section shall be part of and supplemental to the Kansas egg law.

New Sec. 8. (a) A retailer may repack eggs located in a store as long as the following requirements are met:

(1) Eggs eligible for repacking include dirty eggs or eggs in containers with broken eggs. Eggs that are determined to pose a health risk shall not be eligible for repacking;

- (2) the eggs are not subject to a stop sale order issued by the secretary;
- (3) eggs cannot be repacked more than once;
- (4) repacked eggs must meet grade B requirements and shall not be graded higher than grade B;
- (5) all containers shall have the necessary labeling requirements printed on the outside of the carton which shall include:
 - (A) Grade and size;
 - (B) a statement saying that the eggs have been repacked by the retailer where the eggs are located;
 - (C) name and address of the retailer that repacked the eggs;
 - (D) a statement containing the phrase, “Keep refrigerated at or below 45° Fahrenheit;”
 - (E) the expiration date which shall be the earliest expiration date of the repacked eggs; and
 - (F) an inspection fee stamp on the carton indicating that the inspection fee has been paid;
- (6) records must be kept and available for inspection on all eggs repacked by the retailer; and
- (7) eggs remain subject to inspection and the requirements of this act.
 - (b) Retailers may lose the privilege to repack eggs if:
 - (1) The retailer is found postdating repacked eggs;
 - (2) the eggs do not meet Grade B standards; and
 - (3) the retailer has violated any other provision of this act.
 - (c) The provisions of this section shall be part of and supplemental to the Kansas egg law.

New Sec. 9. (a) In addition to any other penalty provided by law, any person who violates any provision of this act, and amendments thereto, or any rules and regulations adopted thereunder, may incur a civil penalty of not less than \$100 nor more than \$500 for each such violation. In the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The potential or actual harm, or both, caused by the violation;

- (2) the nature and persistence of the violation;
- (3) the length of time over which the violation occurs;
- (4) compliance history;
- (5) any corrective actions taken; and
- (6) any and all other relevant circumstances.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary.

(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(f) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(g) Any civil 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.

(h) The provisions of this section shall be part of and supplemental to the Kansas egg law.

New Sec. 10. (a) The secretary may deny, suspend, revoke or modify the provisions of any license issued under this act, if the secretary finds, after notice and hearing, conducted in accordance with the provisions of

the Kansas administrative procedure act, that the applicant, licensee or permit holder has:

(1) Been convicted of or pleaded guilty to a violation of the Kansas egg law, and amendments thereto, or been convicted of or pleaded guilty to a felony under the laws of this state or of the United States, if the department determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(2) failed to comply with any provision or requirement of this act or any rule and regulation adopted thereunder, or any of the laws or rules and regulations of any other state or the United States relating to licensing or other provisions concerning eggs; or

(3) had any license, certificate or permit issued to the person under the Kansas egg law, and amendments thereto, or the egg laws of any other state revoked.

(b) The provisions of this section shall be part of and supplemental to the Kansas egg law.

New Sec. 11. (a) Balut must be refrigerated upon removal from incubation and maintained at a refrigerated temperature of 45° Fahrenheit, or less, while transported, stored or held for retail sale.

(b) Each container of balut shall be clearly and conspicuously labeled to inform the consumer that the product is an embryonated egg or such other term or phrase that is informative and not false or misleading.

(c) The provisions of this section shall be part of and supplemental to the Kansas egg law.

Sec. 12. K.S.A. 2-2502, 2-2503, 2-2505, 2-2507 and 2-2508 and K.S.A. 2005 Supp. 2-2501 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

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

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.