

Substitute for HOUSE BILL No. 2081

By Committee on Agriculture and Natural Resources

2-12

9 AN ACT concerning milk and dairy products; relating to certain fees
10 fixed by the secretary of agriculture; amending K.S.A. 2008 Supp. 65-
11 771, 65-778 and 65-781 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2008 Supp. 65-771 is hereby amended to read as
15 follows: 65-771. As used in this act:

16 (a) “Adulterated” has the same meaning as provided in K.S.A. 65-
17 664, and amendments thereto.

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

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

30 (d) “Frozen dairy dessert” means and includes products containing
31 milk or cream and other ingredients which are frozen or semi-frozen prior
32 to consumption, such as ice cream, ice milk or sherbet, including frozen
33 dairy desserts for special dietary purposes.

34 (e) “Frozen dairy dessert mix” means the pasteurized unfrozen com-
35 bination of all ingredients with or without fruits, fruit juices, candy, nut
36 meats, flavor or harmless color which makes a frozen dairy dessert.

37 (f) “Goat milk” means the normal lacteal secretion, practically free
38 of colostrum, obtained by the complete milking of one or more healthy
39 goats. Goat milk sold in retail packages shall contain not less than 2.5 %
40 milkfat and not less than 7.5 % milk solids not fat. Goat milk shall be
41 produced according to the sanitary standards of this act.

42 (g) “Grade A pasteurized milk” means pasteurized milk which has at
43 least a 90% survey rating, as determined by a survey of the source con-

1 ducted by the secretary pursuant to the survey rating methods for con-
2 ducting surveys of the status of milk sanitation. The milk shall meet the
3 requirements for grade A under the rules and regulations adopted pur-
4 suant to this act. The secretary may authorize the use of the grade A
5 designation for a temporary time period on grade A pasteurized milk
6 within the statewide system of milk inspection and regulatory services,
7 although such grade A pasteurized milk does not have at least a 90%
8 survey rating.

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

19 (i) “Grade A raw milk for pasteurization” means milk having at least
20 90% survey rating, as determined by a survey of the source conducted by
21 the secretary pursuant to the survey rating methods for conducting sur-
22 veys of the status of milk sanitation, the raw milk meeting the require-
23 ments for grade A under the rules and regulations adopted pursuant to
24 this act. The secretary may authorize the use of the grade A designation
25 for a temporary time period on grade A raw milk for pasteurization within
26 the statewide system of milk inspection and regulatory services, although
27 such milk does not have at least a 90% survey rating.

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

40 (k) “In package form” means any commodity put up or packaged in
41 any manner in advance of sale so as to constitute a unit quantity of the
42 commodity for either wholesale or retail sale, exclusive of any auxiliary
43 container enclosing such packages which individually conform to the

1 requirements of this act.

2 (l) "Milk" means the lacteal secretion, practically free from colos-
3 trum, obtained by the complete milking of one or more healthy cows.
4 Milk that is in final package form for beverage use shall have been pas-
5 teurized or ultrapasteurized, and shall contain not less than 8.25% milk
6 solids not fat and not less than 3.25% milkfat. Milk may have been ad-
7 justed by separating part of the milkfat therefrom, or by adding thereto
8 cream, concentrated milk, dry whole milk, skim milk, concentrated skim
9 milk, or nonfat dry milk. Milk may be homogenized. Milk shall be inter-
10 preted to include goat milk.

11 (m) "Milk distributor" means any person who first sells or offers for
12 sale in Kansas any packaged grade A pasteurized milk, milk product, or
13 dairy product.

14 (n) "Milk hauler/sampler" means any person who collects official
15 samples and may transport raw milk from a farm or raw milk products to
16 or from a milk plant or both, receiving station or transfer station and has
17 in their possession a permit from any state to sample such products.

18 (o) "Milk inspection and regulatory services" means the inspection,
19 sampling, laboratory testing and the administrative procedures relating
20 thereto, necessary to determine that the production, processing, distri-
21 bution and sale of grade A milk, milk products, and dairy products comply
22 with the requirements of this act and any rules and regulations adopted
23 hereunder.

24 (p) "Milk or cream for manufacturing purposes" means raw milk or
25 raw cream which is not subject to grade A standards and which is pro-
26 duced for processing and manufacturing into dairy products for human
27 consumption. Milk for manufacturing purposes may contain less than
28 3.25% of butterfat and shall be delivered pure, sweet and clean.

29 (q) "Milk or cream receiving station" means any place where milk or
30 cream may be received, collected, handled, processed, stored or collected
31 and prepared for further transporting.

32 (r) "Milk or cream transfer station" means any place where milk or
33 cream are transferred directly from one milk tank truck to another.

34 (s) "Milk processor" means any person who operates any place, prem-
35 ises or establishment where grade A raw milk for pasteurization or milk
36 or cream for manufacturing purposes is processed, pasteurized, bottled
37 or prepared for distribution.

38 (t) "Milk producer" means any person who owns or operates a dairy
39 farm and who provides, sells or offers for sale grade A raw milk for pas-
40 teurization or milk or cream for manufacturing purposes to a milk plant,
41 receiving station or transfer station.

42 (u) "Milk products" means cream, light cream, light whipping cream,
43 heavy cream, heavy whipping cream, whipped cream, whipped light

1 cream, sour cream, acidified sour cream, cultured sour cream, half-and-
2 half, sour half-and-half, acidified sour half-and-half, cultured sour half-
3 and-half, reconstituted or recombined milk and milk products, concen-
4 trated milk, concentrated milk products, nonfat skim milk, reduced fat or
5 lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk,
6 cultured reduced fat or lowfat milk, cultured nonfat skim milk, yogurt,
7 lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat
8 milk, acidified nonfat skim milk, low-sodium milk, low-sodium reduced
9 fat or lowfat milk, low-sodium nonfat skim milk, lactose-reduced milk,
10 lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat skim
11 milk, aseptically processed and packaged milk and milk products, milk,
12 reduced fat or lowfat milk or nonfat skim milk with added safe and suit-
13 able microbial organisms and any other milk product made by the addi-
14 tion or subtraction of milkfat or addition of safe and suitable optional
15 ingredients for protein, vitamin or mineral fortification of milk products
16 defined herein. Milk products also include those dairy foods made by
17 modifying the federally standardized products listed in this section in
18 accordance with 21 C.F.R. 130.10, requirements for foods named by use
19 of a nutrient content claim and a standardized term. Milk and milk prod-
20 ucts which have been retort processed after packaging or which have been
21 concentrated, condensed or dried are included in this definition only if
22 they are used as an ingredient to produce any milk or milk product de-
23 fined herein or if they are labeled as Grade A as adopted and described
24 by rules and regulations promulgated under this act. Except as otherwise
25 provided, the term milk shall not include dietary products, infant formula,
26 ice cream or other desserts, butter or cheese.

27 (v) "Misbranded" has the same meaning as ascribed to it in K.S.A.
28 65-665, and amendments thereto.

29 (w) "On-farm retail sales of milk or milk products" means the sale of
30 milk or milk products on the farm by the producer from the production
31 of the dairy herd to the final consumer, so long as the person making
32 such sales does not promote the sale of milk or milk products to the public
33 in any manner other than by the erection of a sign upon the premises of
34 the dairy farm. The advertisement upon any such sign shall state that such
35 milk or milk products are raw and shall be in letters of a uniform size.
36 Each container in which any unpasteurized milk is sold or offered for sale
37 shall be clearly labeled as ungraded raw milk.

38 (x) "Pasteurized" has the same meaning as ascribed to it in 21 C.F.R.
39 131.3 and 135.3.

40 (y) "Person" means any individual, plant operator, partnership, cor-
41 poration, company, firm, trustee, association or institution.

42 (z) "Plant fabricating single service articles" means any place which
43 manufactures single service articles which are expected to come in contact

1 with grade A milk or grade A milk products.

2 (aa) "Secretary" means the secretary of the Kansas department of
3 agriculture, or the secretary's designee.

4 (bb) "Single service article or container" means any container having
5 a milk or milk product-contact surface and used in the packaging, han-
6 dling, storage or servicing of grade A milk and is intended for one usage
7 only.

8 (cc) "*Milk transport tanker wash station*" means any place, premises
9 or establishment, separate from a milk plant, receiving or transfer station,
10 where a milk tank truck is cleaned and sanitized.

11 Sec. 2. K.S.A. 2008 Supp. 65-778 is hereby amended to read as fol-
12 lows: 65-778. (a) Any person who engages in business as a dairy manu-
13 facturing plant shall first apply for and obtain a dairy manufacturing plant
14 license from the secretary and shall pay a license fee of \$120, or com-
15 mencing July 1, 2002, and ending June 30, ~~2010~~ 2011, a license fee of
16 \$155.

17 (b) Any person who engages in business as a distributor of milk, milk
18 products or dairy products shall first apply for and obtain a milk distrib-
19 utor license from the secretary and shall pay a license fee of \$120, or
20 commencing July 1, 2002, and ending June 30, ~~2010~~ 2011, a license fee
21 of \$155. No milk distributor license shall be required for a licensed dairy
22 manufacturing plant which distributes only those products which it
23 manufactures.

24 (c) Any person who engages in business as a milk hauler shall first
25 apply for and obtain a milk hauler license from the secretary and shall
26 pay a license fee of \$25 or commencing July 1, 2002, and ending June
27 30, ~~2010~~ 2011, a license fee of \$35. As part of the application, the sec-
28 retary may require the applicant to be tested regarding proper procedures
29 for sampling, testing and weighing milk or cream and state laws and rules
30 and regulations.

31 (d) Any person who operates a milk or cream transfer station or milk
32 or cream receiving station shall first apply for and obtain a milk or cream
33 station license from the secretary and shall pay a license fee of \$50, or
34 commencing July 1, 2002, and ending June 30, ~~2010~~ 2011, a license fee
35 of \$65.

36 (e) Any person who engages in business as a manufacturer of single
37 service dairy containers or manufacturer of single service dairy container
38 closures shall first apply for and obtain a single service manufacturing
39 license from the secretary and shall pay a license fee of \$50, or com-
40 mencing July 1, 2002, and ending June 30, ~~2010~~ 2011, a license fee of
41 \$65.

42 (f) *Any person who operates a milk transport tanker wash station*
43 *shall first apply for and obtain a milk transport tanker wash station license*

1 *from the secretary and shall pay a license fee of \$65.*

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

3 ~~(h)~~ (h) *The dairy manufacturing plant license, milk distributor license,*
4 *milk or cream station license, milk transport tanker wash station license*
5 *and single service manufacturing license shall expire on December 31 of*
6 *the year for which it was issued unless suspended or revoked by the*
7 *secretary pursuant to this act. The milk hauler license shall expire on June*
8 *30 following the date of issuance unless suspended or revoked by the*
9 *secretary pursuant to this act.*

10 ~~(g)~~ (i) *No license issued under this section shall be transferable. No*
11 *license shall be renewed if any assessments or fees required under this*
12 *act are delinquent.*

13 ~~(h)~~ (j) *Each applicant for a license or for the renewal thereof shall*
14 *submit an application on a form supplied by the secretary accompanied*
15 *by the license fee. All licenses shall be conspicuously displayed in the*
16 *applicant's place of business.*

17 Sec. 3. K.S.A. 2008 Supp. 65-781 is hereby amended to read as fol-
18 lows: 65-781. The following fees for the statewide system of milk inspec-
19 tion and regulatory services are hereby established:

20 (a) A fee of \$.01, or commencing July 1, 2002, and ending June 30,
21 ~~2010 2011~~, a fee of ~~\$.015~~ \$.0175 for each 100 pounds of milk produced
22 by milk producers under Kansas grade A inspection shall be paid. Each
23 producer is hereby charged with such fee which shall be paid to the milk
24 producers' cooperative, milk processor or milk distributor to whom the
25 milk is sold or delivered. Each cooperative, processor or distributor is
26 hereby charged with the duty of collecting such fees which shall be re-
27 mitted to the secretary.

28 (b) A fee of \$.01, or commencing July 1, 2002, and ending June 30,
29 ~~2010 2011~~, a fee of \$.015 for each 100 pounds of packaged grade A
30 pasteurized milk or milk products sold in Kansas at retail to the final
31 consumer shall be paid. Each distributor is hereby charged with such fee
32 which shall be remitted to the secretary.

33 (c) A fee of \$.01, or commencing July 1, 2002, and ending June 30,
34 ~~2010 2011~~, a fee of \$.015 per 100 pounds or fraction thereof of grade A
35 raw milk for pasteurization delivered to a milk processor within the state
36 of Kansas which is processed into grade A milk or grade A milk products
37 shall be paid. Each milk processor is hereby charged with such fee which
38 shall be remitted to the secretary.

39 (d) A milk fee of \$.01, or commencing July 1, 2002, and ending June
40 30, ~~2010 2011~~, a fee of ~~\$.015~~ \$.0175 per 100 pounds of milk or cream
41 for manufacturing purposes produced by milk producers under Kansas
42 manufacturing grade milk inspection shall be paid. Each producer is
43 hereby charged with such fee which shall be paid to the milk producers'

1 cooperative, dairy manufacturing plant or any other person to whom the
2 milk or cream for manufacturing purposes is sold or delivered. Each co-
3 operative, dairy manufacturing plant or other person is hereby charged
4 with the duty of collecting such fees which shall be remitted to the
5 secretary.

6 (e) A fee of \$.0075, or commencing July 1, 2002, and ending June
7 30, ~~2010~~ 2011, a fee of \$.01 per 100 pounds of Kansas produced milk or
8 cream for manufacturing purposes or other Kansas produced milk deliv-
9 ered to a dairy manufacturing plant shall be paid on all Kansas milk used
10 in the manufacturing of dairy products. As used in this subsection, the
11 term dairy products shall not include any frozen dairy dessert or frozen
12 dairy dessert mix. Each dairy manufacturing plant shall pay such fee
13 which shall be remitted to the secretary.

14 (f) In lieu of the fee prescribed in subsection (e), a fee of \$1, or
15 commencing July 1, 2002, and ending June 30, ~~2010~~ 2011, a fee of \$1.50
16 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix
17 shall be paid by the manufacturer thereof. Each manufacturer of frozen
18 dairy dessert or frozen dairy dessert mix is hereby charged with such fee
19 which shall be remitted to the secretary. Frozen dairy dessert mix which
20 is further processed into the corresponding frozen dairy dessert by the
21 manufacturer of the frozen dairy dessert mix shall not be subject to the
22 fee required by this subsection.

23 (g) A fee of \$1, or commencing July 1, 2002, and ending June 30,
24 ~~2010~~ 2011, a fee of \$1.50 per thousand gallons of frozen dairy dessert or
25 frozen dairy dessert mix imported for retail sale in Kansas shall be paid
26 by the milk distributor who imports these products.

27 (h) If any fee computed pursuant to subsection (a) *or* (c) through (e)
28 is less than \$2.50, then the sum of \$2.50 shall be paid in lieu of the
29 computed fee. If any fee computed pursuant to subsection (b), (f) or (g)
30 is less than \$7.50, a minimum fee of \$7.50 shall be paid in lieu of the
31 computed fee.

32 (i) All fees established herein shall be paid to the secretary in the
33 following manner:

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

39 (2) The fees established in subsections (b), (f) and (g) shall be remit-
40 ted on April 30, July 31, October 31 and January 31 for the three calendar
41 months immediately preceding and shall be accompanied by a report, in
42 the form prescribed by the secretary, indicating the quantity of frozen
43 dairy dessert or frozen dairy dessert mix upon which the remittance is

1 based.

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

6 (k) *The secretary is hereby authorized and empowered to reduce the*
7 *inspection fee provided for in subsections (a) through (h) whenever the*
8 *secretary determines that such fee is yielding more than is necessary for*
9 *the purpose of administering the provisions of this act. The secretary is*
10 *authorized and empowered to increase such inspection fee, or restore such*
11 *inspection fee, in full or in part, when such inspection fee is necessary to*
12 *produce sufficient revenues for the purposes of administering the provi-*
13 *sions of this act, except that such fees shall not be increased in excess of*
14 *the fee as provided in this section.*

15 Sec. 4. K.S.A. 2008 Supp. 65-771, 65-778 and 65-781 are hereby
16 repealed.

17 Sec. 5. This act shall take effect and be in force from and after its
18 publication in the statute book.