

## HOUSE BILL No. 2659

By Committee on Appropriations

2-5

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9 AN ACT concerning lodging establishments; relating to license require-  
10 ments; amending K.S.A. 36-505, 36-515a and 36-517 and K.S.A. 2009  
11 Supp. 36-503, 36-515, 36-518 and 79-201b and repealing the existing  
12 sections; also repealing K.S.A. 2009 Supp. 36-502.  
13

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

15 Section 1. K.S.A. 2009 Supp. 36-503 is hereby amended to read as  
16 follows: 36-503. (a) It shall be unlawful for any person to engage in the  
17 business of conducting a food service establishment unless such person  
18 shall have in effect a valid license therefor issued by the secretary of  
19 agriculture, except that any food service establishment providing only a  
20 device for the convenience and operation by a customer for the purpose  
21 of heating prepackaged food with no provision for consumption of food  
22 on the premises, or any person engaged only in the serving of food on  
23 railway dining cars or in the occasional sale or serving of food shall not  
24 be required to obtain a license under this section. For the purpose of this  
25 section, the sale or serving of food in the same location less than seven  
26 days in any calendar year shall be construed as the occasional sale or  
27 serving of food. For the purpose of this section, hotels that provide only  
28 complimentary food service to only that hotel's overnight guests shall not  
29 be required to purchase a food service license ~~separate from the lodging~~  
30 ~~establishment license. This exemption from licensing does not exempt~~  
31 ~~any food service establishment inside the hotel from inspection or regu-~~  
32 ~~lation.~~ Any person not otherwise required to be licensed under this sec-  
33 tion who prepares, serves or sells food for the sole purpose of soliciting  
34 funds to be used for community projects, educational and youth activities  
35 or humanitarian purposes, shall not be required to obtain a license under  
36 this section. Nothing in this act shall prevent the secretary of agriculture  
37 from inspecting any food service establishment when a complaint against  
38 such food service establishment is transmitted to the secretary of agri-  
39 culture or any authorized agent thereof.

40 (b) A food service establishment operated in connection with any  
41 premises licensed, registered or permitted by the department of health  
42 and environment pursuant to any other law, which is inspected and reg-  
43 ulated pursuant to that law, shall not be required to obtain a license under

1 subsection (a). No provision of this act authorizes the secretary of agri-  
2 culture to inspect or cause to be inspected such food service establish-  
3 ment under the provisions of this act. This exemption shall not apply to  
4 a food service establishment whose primary function is not operated in  
5 connection with any premises licensed, registered or permitted pursuant  
6 to such other law.

7 (c) Applications for licenses under subsection (a) shall be made on  
8 forms prescribed by the secretary, and each such application shall be  
9 accompanied by an application fee and by a license fee, each of which  
10 shall be established in an amount fixed by rules and regulations adopted  
11 by the secretary of agriculture. Application fees may be adjusted in ac-  
12 cordance with the type of establishment or based on other criteria as  
13 determined by the secretary, but in no event shall any application fee  
14 exceed \$200. Such license fee shall not exceed \$200 and shall be fixed in  
15 an amount which, together with the application fee, is sufficient to defray  
16 the cost of administering the food service establishment inspection and  
17 licensure activities of the secretary. Prior to the issuance of any such  
18 license, the secretary shall inspect or cause to be inspected the food serv-  
19 ice establishment designated in the application, to determine that it com-  
20 plies with the standards for food service establishments promulgated pur-  
21 suant to this act. If such food service establishment is found to be in  
22 compliance, the secretary shall issue the license. If the application for  
23 license is denied, the secretary shall give written notice thereof to the  
24 applicant, stating also that the applicant is entitled to a hearing thereon  
25 if a written request therefor is filed with the secretary within 20 days of  
26 the date such notice is sent. Such hearing shall be held in accordance  
27 with the provisions of the Kansas administrative procedure act.

28 (d) Every license issued hereunder shall be displayed conspicuously  
29 in the food service establishment for which it is issued, and no such license  
30 shall be transferable to any other person or location. Whenever any such  
31 license is lost, destroyed or mutilated, a duplicate license shall be issued  
32 to any otherwise qualified licensee upon application therefor and the pay-  
33 ment of a fee in the amount of \$5.

34 (e) A premises where prepackaged individual meals are distributed  
35 to persons eligible under the federal older Americans act shall not pay  
36 any fee prescribed under subsection (c).

37 Sec. 2. K.S.A. 36-505 is hereby amended to read as follows: 36-505.  
38 Except as otherwise provided in this section, any license issued under the  
39 provisions of this act shall expire on December 31 of the year in which it  
40 is issued, and may be renewed by making application to the secretary on  
41 or before the expiration date. Application for renewal of a license shall  
42 be made on a form prescribed by the secretary and shall be accompanied  
43 by the license fee required for the issuance of an original license. Prior

1 to the renewal of any such license, the secretary shall inspect or cause to  
2 be inspected the licensed premises or food vending machines which are  
3 to be operated and serviced under authority of a license issued under this  
4 act to determine the compliance of such premises with the applicable  
5 standards promulgated pursuant to this act. ~~Lodging establishments shall~~  
6 ~~not be required to be inspected prior to license renewal.~~ If an inspection  
7 of the premises is required and such inspection is not made prior to the  
8 expiration date of the license sought to be renewed, such license shall be  
9 valid until the inspection has been made and the secretary has granted  
10 or denied the application for renewal. No license shall be renewed unless  
11 and until the licensed premises for which it is issued is found to be in  
12 compliance with the applicable standards promulgated pursuant to this  
13 act. A food vending machine dealer license shall be renewed without  
14 inspection. If the secretary shall refuse to renew any license, the secretary  
15 shall give written notice thereof to the licensee, specifying the changes  
16 or alterations necessary in the establishment to effect complete compli-  
17 ance with the applicable standards and stating that, if such compliance is  
18 effected within the period of time designated in the notice, the license  
19 shall be renewed. If the licensee fails to effect complete compliance with  
20 the applicable standards within the time prescribed in such notice, the  
21 application for renewal of a license shall be denied, and the secretary shall  
22 give written notice thereof to the applicant, stating also that the applicant  
23 is entitled to a hearing thereon, if a written request therefor is filed with  
24 the secretary within 20 days of the date such notice is sent. Such hearing  
25 shall be held in accordance with the provisions of the Kansas administra-  
26 tive procedure act. If, for any reason, a licensee fails to renew a license  
27 prior to the expiration date thereof, the licensee may obtain a renewal of  
28 such license within 30 days following the expiration date thereof, by com-  
29 plying with the foregoing provisions of this section and paying a restora-  
30 tion fee in the amount of \$10.

31 Sec. 3. K.S.A. 2009 Supp. 36-515 is hereby amended to read as fol-  
32 lows: 36-515. (a) After notice and opportunity for a hearing in accordance  
33 with the provisions of the Kansas administrative procedure act, the sec-  
34 retary may deny, suspend, revoke, refuse to renew or modify the license  
35 to operate a food service establishment, ~~a lodging establishment~~ or food  
36 vending machines if the licensee has:

37 (1) Failed to comply with the standards established pursuant to this  
38 act; or

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

42 (b) Upon conviction, any person who violates any provision of this act  
43 shall be guilty of a class C misdemeanor, except that upon subsequent

1 conviction such person shall be guilty of a class B misdemeanor.

2 (c) The secretary may seek injunctive relief from the appropriate dis-  
3 trict court to enjoin any operator of a food service establishment, ~~lodging~~  
4 ~~establishment~~ or food vending machine company from conducting busi-  
5 ness when such operator has failed to make application for or to obtain  
6 a license for such purpose as required by the food service and lodging act  
7 or when such license has been suspended or revoked.

8 Sec. 4. K.S.A. 36-515a is hereby amended to read as follows: 36-  
9 515a. (a) If the secretary finds that the public health or safety is endan-  
10 gered by the continued operation of a ~~lodging establishment~~ or food serv-  
11 ice establishment, the secretary may suspend temporarily the license of  
12 such establishment without notice or hearing in accordance with the  
13 emergency adjudication procedures of the provisions of the Kansas ad-  
14 ministrative procedure act.

15 (b) In no case shall a temporary suspension of a license under this  
16 section be in effect for a period of time in excess of 90 days. At the end  
17 of such period of time, the licensee shall be reinstated to full licensure  
18 unless the secretary has suspended or revoked the license, after notice  
19 and hearing, or the license has expired as otherwise provided under the  
20 food service and lodging act.

21 (c) This section shall be a part of and supplemental to the food service  
22 and lodging act.

23 Sec. 5. K.S.A. 36-517 is hereby amended to read as follows: 36-517.

24 (a) Every ~~licensed~~ lodging establishment designated as a hotel shall pro-  
25 vide at no additional charge to deaf and hearing impaired guests, upon  
26 request of such guests, portable smoke detectors of the type suitable for  
27 providing visual warning to such guests, or a room equipped with fixed  
28 visual warning smoke detectors or a ground floor guest room accessible  
29 to the out-of-doors. Each ~~licensed~~ lodging establishment designated as a  
30 hotel shall have available for such guests not less than one portable visual  
31 warning smoke detector, or one room equipped with a fixed visual warn-  
32 ing smoke detector or one ground floor guest room accessible to the out-  
33 of-doors for each 50 guest rooms of such lodging establishment, except  
34 that no such lodging establishment designated as a hotel shall be required  
35 to have more than a total of six portable visual warning smoke detectors,  
36 or six rooms equipped with fixed visual warning smoke detectors or six  
37 ground floor guest rooms accessible to the out-of-doors nor shall any such  
38 lodging establishment have less than one such smoke detector, or one  
39 room equipped with a fixed visual warning smoke detector or one ground  
40 floor guest room accessible to the out-of-doors.

41 (b) This section shall be part of and supplemental to the food service  
42 and lodging act.

43 Sec. 6. K.S.A. 2009 Supp. 36-518 is hereby amended to read as fol-

1 lows: 36-518. (a) The secretary shall inspect or cause to be inspected ~~every~~  
2 *any* lodging establishment in this state, *upon receipt of a complaint in-*  
3 *dicating the lodging establishment does not comply with the applicable*  
4 *standards promulgated in the rules and regulations of the secretary.* For  
5 such inspections the secretary or the secretary's lawful agent shall have  
6 the right of entry and access thereto, at any reasonable time.

7 (b) Whenever, upon inspection, it is determined that any lodging es-  
8 tablishment does not comply with the applicable standards promulgated  
9 in the rules and regulations of the secretary, the secretary shall give writ-  
10 ten notice to the owner, proprietor or agent in charge of such establish-  
11 ment of the changes or alterations necessary to comply with such  
12 standards.

13 (1) The notice shall order the establishment to comply with the ap-  
14 plicable standards within a period of time specified in the notice, which  
15 shall be not less than 10 days, except that a shorter period of time may  
16 be provided in the notice whenever the secretary believes it essential to  
17 protect the public health and safety.

18 ~~(2) The notice also shall state that the license for such establishment~~  
19 ~~shall be subject to suspension or revocation for failure to comply with the~~  
20 ~~applicable standards within the time specified.~~

21 ~~(3) (2) The licensee of any lodging establishment given a notice pur-~~  
22 ~~suant to this section may apply to the secretary for an extension of the~~  
23 ~~time specified in the notice. The secretary shall review such application~~  
24 ~~and may grant or deny such application or modify the provisions of the~~  
25 ~~notice with respect to the time for compliance with any of the particulars~~  
26 ~~stated in the notice.~~

27 (c) Upon reinspection of any lodging establishment given a notice  
28 pursuant to this section, if it is determined that such establishment does  
29 not comply with the applicable standards promulgated in the rules and  
30 regulations of the secretary, the secretary may ~~suspend or revoke the~~  
31 ~~license issued for such establishment. If the secretary suspends or revokes~~  
32 ~~the license, close the lodging establishment.~~ The secretary shall send writ-  
33 ten notice to the licensee ~~that the license for such establishment will be~~  
34 ~~suspended or revoked, lodging establishment that it will be closed effec-~~  
35 ~~tive 20 days after the date such notice is sent, unless within such time the~~  
36 ~~licensee lodging establishment files with the secretary a written request~~  
37 ~~for a hearing on the proposed suspension or revocation closing.~~ All hear-  
38 ings pursuant to this section shall be conducted in accordance with the  
39 provisions of the Kansas administrative procedure act.

40 (d) The secretary is authorized to receive lodging inspection reports  
41 from qualified individuals, private entities or public entities to determine  
42 compliance with lodging standards promulgated pursuant to the food  
43 service and lodging act, and amendments thereto. The secretary is au-

1 thorized to promulgate such rules and regulations as are necessary to  
2 receive such inspection reports. Such rules and regulations shall be prom-  
3 ulgated on or before July 1, 2010.

4 (e) This section shall be a part of and supplemental to the food service  
5 and lodging act.

6 Sec. 7. K.S.A. 2009 Supp. 79-201b is hereby amended to read as  
7 follows: 79-201b. The following described property, to the extent herein  
8 specified, shall be and is hereby exempt from all property or ad valorem  
9 taxes levied under the laws of the state of Kansas:

10 *First.* All real property, and tangible personal property, actually and  
11 regularly used exclusively for hospital purposes by a hospital as the same  
12 is defined by K.S.A. 65-425, and amendments thereto, or a psychiatric  
13 hospital as the same was defined by K.S.A. 59-2902, and amendments  
14 thereto, as in effect on January 1, 1976, which hospital or psychiatric  
15 hospital is operated by a corporation organized not for profit under the  
16 laws of the state of Kansas or by a corporation organized not for profit  
17 under the laws of another state and duly admitted to engage in business  
18 in this state as a foreign, not-for-profit corporation, or a public hospital  
19 authority; and all intangible property including moneys, notes and other  
20 evidences of debt, and the income therefrom, belonging exclusively to  
21 such a corporation and used exclusively for hospital, psychiatric hospital  
22 or public hospital authority purposes. This exemption shall not be deemed  
23 inapplicable to property which would otherwise be exempt pursuant to  
24 this paragraph because any such hospital, psychiatric hospital or public  
25 hospital authority: (a) Uses such property for a nonexempt purpose which  
26 is minimal in scope and insubstantial in nature if such use is incidental to  
27 the exempt purpose enumerated in this paragraph; or (b) is reimbursed  
28 for the actual expense of using such property for the exempt purposes  
29 enumerated in this paragraph or paragraph second of K.S.A. 79-201, and  
30 amendments thereto; or (c) permits the use of such property for the  
31 exempt purposes enumerated in this paragraph or paragraph second of  
32 K.S.A. 79-201, and amendments thereto, by more than one agency or  
33 organization for one or more of such purposes.

34 *Second.* All real property, and tangible personal property, actually and  
35 regularly used exclusively for adult care home purposes by an adult care  
36 home as the same is defined by K.S.A. 39-923, and amendments thereto,  
37 which is operated by a corporation organized not for profit under the laws  
38 of the state of Kansas or by a corporation organized not for profit under  
39 the laws of another state and duly admitted to engage in business in this  
40 state as a foreign, not-for-profit corporation, charges to residents for serv-  
41 ices of which produce an amount which in the aggregate is less than the  
42 actual cost of operation of the home or the services of which are provided  
43 to residents at the lowest feasible cost, taking into consideration such

1 items as reasonable depreciation, interest on indebtedness, acquisition  
2 costs, interest and other expenses of financing acquisition costs, lease  
3 expenses and costs of services provided by a parent corporation at its costs  
4 and contributions to which are deductible under the Kansas income tax  
5 act; and all intangible property including moneys, notes and other evi-  
6 dences of debt, and the income therefrom, belonging exclusively to such  
7 corporation and used exclusively for adult care home purposes. For pur-  
8 poses of this paragraph and for all taxable years commencing after De-  
9 cember 31, 1976, an adult care home which uses its property in a manner  
10 which is consistent with the federal internal revenue service ruling 72-  
11 124 issued pursuant to section 501(c)(3) of the federal internal revenue  
12 code, shall be deemed to be operating at the lowest feasible cost. The  
13 fact that real property or real or tangible personal property may be leased  
14 from a not-for-profit corporation, which is exempt from federal income  
15 taxation pursuant to section 501(c)(3) of the internal revenue code of  
16 1986, and amendments thereto, and which is the parent corporation to  
17 the not-for-profit operator of an adult care home, shall not be grounds to  
18 deny exemption or deny that such property is actually and regularly used  
19 exclusively for adult care home purposes by an adult care home, nor shall  
20 the terms of any such lease be grounds for any such denial. For all taxable  
21 years commencing after December 31, 1995, such property shall be  
22 deemed to be used exclusively for adult care home purposes when used  
23 as a not-for-profit day care center for children which is licensed pursuant  
24 to K.S.A. 65-501 et seq., and amendments thereto.

25 *Third.* All real property, and tangible personal property, actually and  
26 regularly used exclusively for private children's home purposes by a pri-  
27 vate children's home as the same is defined by K.S.A. 75-3329, and  
28 amendments thereto, which is operated by a corporation organized not  
29 for profit under the laws of the state of Kansas or by a corporation or-  
30 ganized not for profit under the laws of another state and duly admitted  
31 to engage in business in this state as a foreign, not-for-profit corporation,  
32 charges to residents for services of which produce an amount which in  
33 the aggregate is less than the actual cost of operation of the home or the  
34 services of which are provided to residents at the lowest feasible cost,  
35 taking into consideration such items as reasonable depreciation and in-  
36 terest on indebtedness, and contributions to which are deductible under  
37 the Kansas income tax act; and all intangible property including moneys,  
38 notes and other evidences of debt, and the income therefrom, belonging  
39 exclusively to such a corporation and used exclusively for children's home  
40 purposes.

41 *Fourth.* All real property and tangible personal property, actually and  
42 regularly used exclusively for: (a) Housing for elderly and handicapped  
43 persons having a limited or lower income, or used exclusively for coop-

1 erative housing for persons having a limited or low income, assistance for  
2 the financing of which was received under 12 U.S.C.A. 1701 et seq., or  
3 under 42 U.S.C.A. 1437 et seq., which is operated by a corporation or-  
4 ganized not for profit under the laws of the state of Kansas or by a cor-  
5 poration organized not for profit under the laws of another state and duly  
6 admitted to engage in business in this state as a foreign, not-for-profit  
7 corporation; and (b) for all taxable years commencing after December  
8 31, 2006, temporary housing of 24 months or less for limited or low  
9 income, single-parent families in need of financial assistance who are  
10 enrolled in a program to receive life training skills, which is operated by  
11 a charitable or religious organization; and all intangible property including  
12 moneys, notes and other evidences of debt, and the income therefrom,  
13 belonging exclusively to such a corporation and used exclusively for the  
14 purposes of such housing. For the purposes of this subsection, coopera-  
15 tive housing means those not-for-profit cooperative housing projects op-  
16 erating or established pursuant to sections 236 or 221(d)(3), or both, of  
17 the national housing act and which have been approved as a cooperative  
18 housing project pursuant to applicable federal housing administration and  
19 U.S. Department of Housing and Urban Development statutes, and rules  
20 and regulations, during such time as the use of such properties are: (1)  
21 Restricted pursuant to such act, or rules and regulations thereof; or (2)  
22 subject to affordability financing standards established pursuant to the  
23 national housing act during such time that such not-for-profit corporation  
24 has adopted articles of incorporation or by-laws, or both, requiring such  
25 corporation to continue to operate in compliance with the United States  
26 department of housing and urban development affordability income  
27 guidelines established pursuant to sections 236 or 221(d)(3) of the na-  
28 tional housing act or rules and regulations thereof.

29 *Fifth.* All real property and tangible personal property, actually and  
30 regularly used exclusively for housing for elderly persons, which is oper-  
31 ated by a corporation organized not for profit under the laws of the state  
32 of Kansas or by a corporation organized not for profit under the laws of  
33 another state and duly admitted to engage in business in this state as a  
34 foreign, not-for-profit corporation, in which charges to residents produce  
35 an amount which in the aggregate is less than the actual cost of operation  
36 of the housing facility or the services of which are provided to residents  
37 at the lowest feasible cost, taking into consideration such items as rea-  
38 sonable depreciation and interest on indebtedness and contributions to  
39 which are deductible under the Kansas income tax act; and all intangible  
40 property including moneys, notes and other evidences of debt, and the  
41 income therefrom, belonging exclusively to such corporation and used  
42 exclusively for the purpose of such housing. For purposes of this para-  
43 graph and for all taxable years commencing after December 31, 1976, an

1 adult care home which uses its property in a manner which is consistent  
2 with the federal internal revenue service ruling 72-124 issued pursuant  
3 to section 501(c)(3) of the federal internal revenue code, shall be deemed  
4 to be operating at the lowest feasible cost. For all taxable years com-  
5 mencing after December 31, 1995, such property shall be deemed to be  
6 used exclusively for housing for elderly persons purposes when used as a  
7 not-for-profit day care center for children which is licensed pursuant to  
8 K.S.A. 65-501 et seq., and amendments thereto.

9 *Sixth.* All real property and tangible personal property actually and  
10 regularly used exclusively for the purpose of group housing of mentally  
11 ill or retarded and other handicapped persons which is operated by a  
12 corporation organized not for profit under the laws of the state of Kansas  
13 or by a corporation organized not for profit under the laws of another  
14 state and duly admitted to engage in business in this state as a foreign,  
15 not-for-profit corporation, in which charges to residents produce an  
16 amount which in the aggregate is less than the actual cost of operation of  
17 the housing facility or the services of which are provided to residents at  
18 the lowest feasible cost, taking into consideration such items as reasonable  
19 depreciation and interest on indebtedness and contributions to which are  
20 deductible under the Kansas income tax act, and which is licensed as a  
21 facility for the housing of mentally ill or retarded and other handicapped  
22 persons under the provisions of K.S.A. 75-3307b, and amendments  
23 thereto, or as a rooming or boarding house used as a facility for the  
24 housing of mentally retarded and other handicapped persons which is  
25 ~~licensed as~~ a lodging establishment under the provisions of K.S.A. 36-501  
26 et seq., and amendments thereto.

27 The provisions of this section, except as otherwise specifically provided,  
28 shall apply to all taxable years commencing after December 31, 1998.

29 Sec. 8. K.S.A. 36-505, 36-515a and 36-517 and K.S.A. 2009 Supp.  
30 36-502, 36-503, 36-515, 36-518 and 79-201b are hereby repealed.

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