

HOUSE BILL No. 2425

By Representative Schwertfeger

1-8

AN ACT concerning public health; relating to the Kansas food, drug and cosmetic act; determining food containing specific food or color additives to be adulterated; prohibiting the use of adulterated food as an ingredient in any meal provided by schools as part of certain food service programs; providing certain exceptions for foods adulterated by specific food or color additives, including sales of less than \$5,000; determining drugs containing synthetic color additives to be adulterated; providing that the processing, storage or distribution of any drug containing synthetic color additives is subject to a civil penalty in an amount not more than \$500,000 per violation and is a drug severity level 5 felony; amending K.S.A. 65-657, 65-664, 65-668 and 65-682 and repealing the existing sections.

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

Section 1. K.S.A. 65-657 is hereby amended to read as follows: 65-657. The following acts and the causing thereof within the state of Kansas are hereby prohibited:

(a) (1) The processing, storage or distribution of any food, drug, device or cosmetic that is adulterated or misbranded.

(2) (A) *The prohibition in paragraph (1) shall include using any of the additives listed in K.S.A. 65-664(d), and amendments thereto, as an ingredient in any meal served through a food service program or school lunch program, as defined in K.S.A. 72-17,132, and amendments thereto, or school breakfast program, as defined in K.S.A. 72-17,145, and amendments thereto.*

(B) *An elementary or secondary school may permit the sale of food items that do not comply with this subsection as part of a school fundraising event if the sale of such items takes place off and away from school premises or the sale of such items takes place on the school premises at least 1/2 hour after the end of the school day.*

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

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

1 (d) The dissemination of any false advertisement.

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

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

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

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

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

19 (j) The using of any person to such person's own advantage, or
20 revealing, other than to the administrator or officers or employees of the
21 department of agriculture or to the courts where relevant in any
22 jurisdictional proceeding under this act, any information acquired under
23 authority of this act concerning any method or process ~~which that~~
24 constitutes a trade secret under the uniform trade secrets act, K.S.A. 60-
25 3320 et seq., and amendments thereto, and as a trade secret is entitled to
26 protection.

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

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

42 (m) (1) Placing or causing to be placed upon any drug or device or
43 container thereof, with intent to defraud, the trade name or other

1 identifying mark, or imprint of another or any likeness of any of the
2 foregoing; (2) selling, dispensing, disposing of or causing to be sold,
3 dispensed or disposed of or concealing or keeping in possession, control or
4 custody, with intent to sell, dispense or dispose of, any drug, device or any
5 container thereof, with knowledge that the trade name or other identifying
6 mark or imprint of another or any likeness of any of the foregoing has
7 been placed thereon in a manner prohibited by paragraph (1); or (3)
8 making, selling, disposing of or causing to be made, sold or disposed of or
9 keeping in possession, control or custody, or concealing, with intent to
10 defraud, any punch, die, plate, or other thing designed to print, imprint or
11 reproduce that trade name or other identifying mark or imprint of another
12 or any likeness of any of the foregoing upon any drug, device or container
13 thereof.

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

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

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

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

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

36 Sec. 2. K.S.A. 65-664 is hereby amended to read as follows: 65-664.
37 A food shall be deemed to be adulterated *if*:

38 (a) (1) ~~If it~~ *Such food* bears or contains any poisonous or deleterious
39 substance ~~which that~~ *that* may render it injurious to health; ~~but~~. In case the
40 substance is not an added substance, such food shall not be considered
41 adulterated under this ~~clause~~ *paragraph* if the quantity of the substance in
42 such food does not ordinarily render ~~it~~ *such food* injurious to health; or (2)
43 (A) ~~it~~ *Such food* bears or contains any added poisonous or added

1 deleterious substance, other than one ~~which~~ *that* is: (i) A pesticide
2 chemical in or on a raw agricultural commodity; (ii) a food additive *not*
3 *listed in subsection (d)*; or (iii) a color additive, ~~which is unsafe within the~~
4 ~~meaning of K.S.A. 65-667, and amendments thereto not listed in~~
5 *subsection (d)*; (B) ~~if~~ *such food* is a raw agricultural commodity and ~~it~~
6 bears or contains a pesticide chemical ~~which~~ *that* is unsafe within the
7 meaning of K.S.A. 65-667, and amendments thereto; or (C) ~~if~~ *such food* is
8 ~~or it~~, bears or contains any food additive ~~which~~ *that* is unsafe within the
9 meaning of K.S.A. 65-667, and amendments thereto. Where a pesticide
10 chemical has been used in or on a raw agricultural commodity in
11 conformity with an exemption granted or tolerance prescribed under
12 K.S.A. 65-667, and amendments thereto, and such raw agricultural
13 commodity has been subjected to processing such as canning, cooking,
14 freezing, dehydrating, or milling, the residue of such pesticide chemical
15 remaining in or on such processed food shall, notwithstanding the
16 provisions of K.S.A. 65-667, and amendments thereto, and subparagraph
17 (C), not be deemed unsafe if such residue in or on the raw agricultural
18 commodity has been removed to the extent possible in good
19 manufacturing practice, and the concentration of such residue in the
20 processed food when ready to eat is not greater than the tolerance
21 prescribed for the raw agricultural commodity; (3) ~~if~~ *such food* consists in
22 whole or in part of a diseased, contaminated, filthy, putrid, or decomposed
23 substance, or is otherwise unfit for food; (4) ~~if~~ *such food* has been
24 produced, prepared, packed, or held under insanitary conditions whereby it
25 may have become contaminated with filth, or whereby it may have been
26 rendered diseased, unwholesome, or injurious to health; (5) ~~if~~ *such food* is
27 the product of a diseased animal or an animal ~~which~~ *that* has died
28 otherwise than by slaughter, or that has been fed upon the uncooked offal
29 from a slaughterhouse; or (6) ~~its~~ *such food's* container is composed, in
30 whole or in part, of any poisonous or deleterious substance ~~which~~ *that* may
31 render the contents injurious to health.

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

41 (c) ~~If~~ *Such food* is confectionery and ~~it~~ bears or contains any alcohol
42 or nonnutritive article or substance except harmless coloring, harmless
43 flavoring, harmless resinous glaze not in excess of 0.4%, harmless natural

1 wax not in excess of 0.4%, harmless natural gum, and pectin. This
2 subsection does not apply to any confectionery by reason of ~~its such~~
3 *confectionery* containing not more than 1% by volume of alcohol, or to
4 any chewing gum by reason of ~~its such chewing gum~~ containing harmless
5 nonnutritive masticatory substances.

6 (d) ~~If it~~ *Such food* is or, bears or contains any color additive that is
7 ~~unsafe within the meaning of K.S.A. 65-667, and amendments thereto.~~

8 (1) *Butylated hydroxyanisole;*

9 (2) *propylparaben;*

10 (3) *FD&C blue no. 1;*

11 (4) *FD&C blue no. 2;*

12 (5) *FD&C green no. 3;*

13 (6) *FD&C red no. 3;*

14 (7) *FD&C red no. 40;*

15 (8) *FD&C yellow no. 5; or*

16 (9) *FD&C yellow no. 6.*

17 Sec. 3. K.S.A. 65-668 is hereby amended to read as follows: 65-668.

18 A drug or device shall be deemed to be adulterated *if the drug or device:*

19 (a) (1) ~~If it~~ Consists in whole or in part of any filthy, putrid; or
20 decomposed substance; ~~or~~

21 (2) ~~(A) if it~~ has been produced, prepared, packed or held under
22 insanitary conditions whereby ~~it such drug or device~~ may have been
23 contaminated with filth, or whereby ~~it such drug or device~~ may have been
24 rendered injurious to health; ~~or~~

25 ~~(B) if it~~ (3) is a drug and the methods used in, or the facilities or
26 controls used for, ~~its such drug's~~ manufacture, processing, packing; or
27 holding do not conform to or are not operated or administered in
28 conformity with current good manufacturing practice to assure that such
29 drug meets the requirements of this act as to safety and has the identity and
30 strength; and meets the quality and purity characteristics, ~~which it that~~
31 *such drug* purports or is represented to possess; ~~or~~

32 (3) ~~if it~~ (4) is a drug and its container is composed, in whole or in
33 part, of any poisonous or deleterious substance ~~which that~~ may render the
34 contents injurious to health; or

35 (4) ~~if (A) it~~ (5) is a drug and ~~it bears or contains, for purposes of~~
36 ~~coloring only, a synthetic color additive which is unsafe within the~~
37 ~~meaning of K.S.A. 65-667, or (B) it is a color additive, the intended use of~~
38 ~~which in or on drugs is for purposes of coloring only, and is unsafe within~~
39 ~~the meaning of K.S.A. 65-667;~~

40 (b) ~~If it~~ purports to be or is represented as a drug the name of which is
41 recognized in an official compendium, and its strength differs from, or its
42 quality or purity falls below, the standard set forth in such compendium.
43 Such determination as to strength, quality; or purity shall be made in

1 accordance with the tests or methods of assay set forth in such
2 compendium, or in the absence of or inadequacy of such tests or methods
3 of assay, those prescribed under authority of the federal act. No drug
4 defined in any official compendium shall be deemed to be adulterated
5 under this ~~paragraph~~ subsection because ~~it~~ such drug differs from the
6 standard of strength, quality, or purity therefor set forth in such
7 compendium, if ~~its~~ such drug's difference in strength, quality, or purity
8 from such standard is plainly stated on its label. Whenever a drug is
9 recognized in both the United States pharmacopoeia and the homeopathic
10 pharmacopoeia of the United States ~~it~~, such drug shall be subject to the
11 requirements of the United States pharmacopoeia unless ~~it~~ such drug is
12 labeled and offered for sale as a homeopathic drug, in which case ~~it~~, such
13 drug shall be subject to the provisions of the homeopathic pharmacopoeia
14 of the United States and not to those of the United States pharmacopoeia;

15 (c) ~~If it is a drug not subject to the provisions of paragraph~~
16 ~~subsection (b) of this section and its such drug's strength differs from, or~~
17 ~~its such drug's purity or quality falls below, that which it such drug~~
18 ~~purports or is represented to possess; or~~

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

22 Sec. 4. K.S.A. 65-682 is hereby amended to read as follows: 65-682.

23 (a) (1) The secretary, after providing notice and an opportunity for a
24 hearing in accordance with provisions of the Kansas administrative
25 procedure act, may impose a civil penalty in an amount of not more than:

26 (A) \$1,000 per violation of the food, drug and cosmetic act or rule
27 and regulation adopted, or order issued thereunder, *except as otherwise*
28 *provided by subparagraph (B); or*

29 (B) \$500,000 per violation of K.S.A. 65-668(a)(4), and amendments
30 thereto.

31 (2) In the case of a continuing violation, each day such violation
32 continues shall be deemed a separate violation. Such civil penalty may be
33 assessed in addition to any other penalty provided by law.

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

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

42 (d) Any person who recklessly or intentionally violates the provisions
43 of:

1 (1) The food, drug and cosmetic act, or rules and regulations adopted
2 thereunder, *except as otherwise provided by paragraph (2)*, shall be guilty
3 of a class A, nonperson misdemeanor; or

4 (2) *the provisions of K.S.A. 65-668(a)(5), and amendments thereto,*
5 *shall be guilty of a drug severity level 5 felony.*

6 (e) *The penalty provisions of subsections (a) and (d) shall not apply*
7 *to any person who offers for sale, or sells, within this state, less than*
8 *\$5,000, in aggregate, of adulterated food, per month, when the food is*
9 *adulterated by including any of the additives listed in K.S.A. 65-664(d),*
10 *and amendments thereto.*

11 Sec. 5. K.S.A. 65-657, 65-664, 65-668 and 65-682 are hereby
12 repealed.

13 Sec. 6. This act shall take effect and be in force from and after its
14 publication in the statute book.