

SESSION OF 2012

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2730**

As Agreed to May 7, 2012

**Brief\***

Senate Sub. for HB 2730 would amend various sections in the Kansas Food Service and Lodging Act, and the Kansas Meat and Poultry Inspection Act.

***Kansas Food Service and Lodging Act***

The bill would rename the Kansas Food Service and Lodging Act as the Kansas Lodging Inspection Act. In addition, the bill would clarify current practice by establishing a definition for the term “guest house” to mean every building or other structure where sleeping accommodations are furnished for pay. In order to meet the definition, a guest house could accommodate no more than seven guests in no more than three rooms. Under the provisions of the bill, guest houses would not be required to have a lodging license, but would be required to be inspected if there is a complaint.

The bill also would:

- Clarify any lodging establishment that also has a food establishment license would have fees set by rule and regulation;
- Clarify a lodging establishment operated in connection with any premise licensed, registered or

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permitted by the Secretary of Health and Environment, the Secretary of Aging, the Secretary of Corrections, or the Secretary of Social and Rehabilitation Services would not be required to obtain a license, nor would the Secretary of Agriculture be authorized to inspect these premises;

- Set a late fee of \$25 and provide that if a licensee does not renew within a 30-day period, the license is treated as expired and application for a new license would be required;
- Give express authority to the Secretary of Agriculture to promulgate rules and regulations with respect to the licensure of lodging establishments and fees related to licensure and inspection;
- Clarify authority to seek injunctive relief when the operator has failed to comply with the standards established or the rules and regulations; and
- Make other technical amendments.

The bill also would make numerous amendments to the Kansas Food, Drug and Cosmetic Act, under which certain food establishments and food processing plants are regulated.

The bill would:

- Consolidate definitions into one section of law;
- Consolidate penalty statutes into one statute;
- Allow the Secretary to impose a civil penalty, after providing notice and an opportunity for a hearing, and establish a cap on civil penalties at \$1,000 per violation;

- Provide that any location that meets the definition of both a food processing plant and a food establishment must have licenses for both; and
- Establish an application fee for each food establishment and food processing plant location not to exceed \$350.

Further, the bill would statutorily establish annual license fees for each food establishment as follows:

- No more than \$250 for any food establishment of less than 5,000 square feet;
- No more than \$300 for any food establishment of 5,000 square feet or more but less than 10,000 square feet;
- No more than \$500 for any food establishment of 10,000 square feet or more but less than 50,000 square feet; and
- No more than \$750 for any food establishment of 50,000 square feet or more.

The bill also would establish annual license fees for each food processing plant as follows:

- No more than \$200 for any food processing plant of less than 5,000 square feet; and
- No more than \$400 for any food processing plant of 5,000 square feet or more.

Other provisions of the bill would:

- Increase the late fee for license renewal from \$10 to \$25;

- Change the license renewal date from January 1 to April 1;
- Clarify elementary and secondary schools that have a school lunch program would have separate application and license fees; and
- Establish in statute the list of entities that would be exempt from licensing and inspection. Those exempt entities would be:
  - Registered nonprofit organizations that provide food without charge;
  - Locations where prepackaged individual meals are distributed;
  - Persons who produce food for distribution directly to the end consumer;
  - Persons who serve food exclusively on interstate conveyances;
  - Persons operating a food establishment for less than seven days in any calendar year;
  - Persons who prepare, serve, or sell food for the sole purpose of soliciting funds;
  - Persons operating a food vending machine;
  - Persons providing only complimentary coffee;
  - Persons operating a farm winery;
  - Retailers who sell only alcoholic liquors and cereal malt beverages;
  - Food establishments that sell or offer for sale only certain packaged foods that are non-hazardous and are received directly from a licensed food production facility in packaged form;
  - Persons who provide food samples, without charge; and
  - A guest house, as defined in the bill.

Other amendments would clarify administrative and enforcement provisions in a manner consistent with the Kansas Administrative Procedure Act and repeal unnecessary statutes.

### ***Kansas Meat and Poultry Inspection Act***

The bill would add new sections to and amend existing sections in the Kansas Meat and Poultry Act.

#### ***Voluntary Inspections***

The bill would provide for voluntary inspections of animals other than livestock, poultry, or rabbits which can or may be used in and for the preparation of meat or meat products and poultry or poultry products. The voluntary inspections would provide greater flexibility for operations wanting to slaughter the animals listed above under inspection.

The request for voluntary inspections would be submitted to the Secretary of Agriculture who could then refuse the request due to issues of staffing, inspector expertise, or any other good cause shown. Priority in scheduling the inspections would be given to those inspections mandated by the Act. The Secretary also would have the power to establish fees for voluntary inspections. In addition, the Secretary would have the authority to prescribe rules and regulations for implementing the provisions of voluntary inspections.

#### ***Inspection Services***

The bill contains provisions for when inspection services are required and instructs the Secretary to take into account the efficient and effective use of personnel when approving inspection work schedules.

Specifically, the bill would clarify that all operations requiring inspections under the Act cannot proceed unless conducted under the supervision of a representative of the Secretary. All slaughtering of animals would be done under the direct supervision of a representative of the Secretary and with reasonable speed.

The bill would establish the procedures for establishing and approving a work schedule for processing and slaughter operations. Each official establishment applying the mark of inspection would be required to submit a work schedule to the Secretary for approval upon the occurrence of any of the following:

- Prior to the inauguration of the inspection;
- When a change in work schedule is requested, except for minor deviations from a daily operating schedule approved by the area supervisor; or
- Upon request by a representative of the Secretary.

The submitted work schedules would be required to specify the daily clock hours of inspected operations.

The bill would require the Secretary to take into account the efficient and effective use of inspection personnel when approving work schedules, as well as consult with the establishments involved when designating work schedules. In addition, the bill would require establishments to maintain consistent work schedules. The Secretary would be authorized to prescribe, through rules and regulations, the process by which an establishment may request a change in its work schedule.

### ***Inhumane Slaughter and Inhumane Handling***

The Secretary, for purposes of preventing the inhumane slaughter or inhumane handling in connection with the

slaughter of livestock, domestic rabbits, or poultry must authorize inspectors to perform an examination and inspection of the method by which those animals are slaughtered and handled. In addition, the Secretary would be authorized to prescribe rules and regulations for the examination and inspection of methods by which livestock, domestic rabbits, or poultry are slaughtered.

### ***Custom Slaughter***

The bill would amend portions of the Act with regard to custom slaughter. Any carcass, meat, or meat products prepared on a custom basis, including any containers or packages containing such products, must be plainly marked "Not for Sale" immediately after being prepared and kept identified as such until delivered to the owner.

Custom slaughter and preparation also would be subject to the humane slaughter and humane handling provisions of the Act.

### ***Definitions***

The bill would update existing sections of the Act by updating definitions, deleting obsolete definitions, and defining new terms, including "public warehouseman"; "slaughter facility"; "processing facility"; "wholesaler"; and "Humane Slaughter Act."

### ***Fees***

The bill would amend existing law by establishing a \$25 registration fee for all slaughter or processing facilities, including those facilities operating on a custom basis and facilities operating in conjunction with and under the jurisdiction of the Kansas Board of Regents. The bill would

remove the provisions for the previous registration fee and other calculations that were previously required by the Kansas Department of Agriculture (KDA).

### ***Records***

The bill would require any person registered or required to be registered under the Act to keep records that fully and accurately disclose transactions related to animals prepared for and capable for use as human food. All persons, firms, and corporations subject to this requirement would provide access to their places of business and provide an opportunity to examine the facilities, inventory, and records, and to copy records.

Any records required to be maintained shall be maintained for a period of time as the Secretary shall prescribe by rules and regulations.

### ***Technical Changes***

The bill would make numerous technical changes, including the update of terminology for the Secretary and deleting references to the State Board of Agriculture. Additionally, the technical changes include references to various sections of existing state law.

### **Conference Committee Action**

The Conference Committee agreed to the Senate Substitute version of the bill. In addition, the Conference Committee made a technical change to correct an inaccurate internal reference in the bill.

The second Conference Committee adopted the same changes as the first Conference Committee.

## **Background**

As it left the House, HB 2730 would have made numerous amendments to the Kansas Food Service and Lodging Act. The Senate Committee on Agriculture placed the contents of SB 302 (as amended by Senate Committee of the Whole), which would make numerous amendments to the Kansas Meat and Poultry Act, into HB 2730. The Senate Committee then adopted a substitute bill, including both the contents of HB 2730 as it left the House and SB 302, as amended by Senate Committee of the Whole.

HB 2730 was introduced at the request of a spokesperson for the Kansas Department of Agriculture. At the House Committee on Agriculture and Natural Resources hearing on the bill, a spokesperson from the agency indicated that there was a need to consolidate provisions of current law relating to food and lodging. It was noted that the Legislature had transferred all food safety inspection functions to the Kansas Department of Agriculture (KDA) in 2008 from the Kansas Department of Health and Environment (KDHE) and that since that time the agency had been working on efforts to update the laws in an attempt to make them more user-friendly. The House Committee was told that this bill reflected agency efforts. A spokesperson from the Kansas Restaurant and Hospitality Association appeared as a neutral conferee. There were no opponents to the bill who appeared before the House Committee.

The House Committee made numerous amendments to the bill, including:

- Clarified under the Food, Drug and Cosmetic Act, when the Secretary of Agriculture has issued the notice of noncompliance, there may be a suspension or revocation of the license after providing notice and an opportunity for a hearing;

- Clarified that under the new Lodging Inspection Act, a search warrant may be granted by a court if the agency shows sufficient cause; and
- Other technical amendments.

The Senate Committee on Agriculture received similar testimony to that received by the House Committee on Agriculture and Natural Resources. The Senate Committee amended the bill by striking the language that would have authorized the Secretary of Agriculture to obtain a search warrant from a court when access to a premise is denied. In addition, the Senate Committee clarified the definition of "food establishment" and included "guest house" on the list of business entities that would be exempt from licensing and inspection.

The fiscal note on the original version of HB 2730 states many of the changes in the bill are technical in nature; therefore, it is estimated there would be no fiscal effect on state operations.

SB 302 was introduced by the Senate Committee on Agriculture at the request of the KDA. At the Senate Committee on Agriculture hearing on the bill, the Committee received proponent testimony from the KDA. The KDA stated that the \$25 fee allows the Meat and Poultry Inspection Program to cover the administrative costs of issuing the registration. Currently, fees under the Act range from no cost to \$250. The KDA testified that Kansas has the second highest registration fees of any state inspection program, as the U.S. Department of Agriculture (USDA) and most other states have a free or minimal registration fee. Current fees represent 1.0 percent of the total budget for the program; thus, as fees are such a small portion of the budget, any decrease will not affect program operations.

The President of the Kansas Meat Processors Association and a member of the public provided testimony in opposition to the bill. The opponents raised concerns the

processors in the state are small, family-owned and operated businesses that provide numerous services to local communities. The opponents recommended establishing a food safety program that promotes and protects the safe production of meat through research, education, and cooperation, with enforcement as the last resort.

The Senate Committee made amendments to the bill, which included the following:

- Strike all in New Section 1 of the original bill;
- Clarify the definition of non-amenable species, which includes animals other than livestock, poultry, or rabbits which can or may be used in and for the preparation of meat or meat products, poultry, or poultry products;
- Clarify official establishments that apply the mark of inspection shall submit a work schedule to the Secretary of Agriculture upon the occurrence of various factors, including when a change in work schedule is requested, except for minor deviations from a daily operating schedule approved by the area supervisor;
- Amend the proposed language of the bill to clarify persons registered or required to be registered shall keep records that fully and accurately disclose transactions related to animals prepared for and capable for use as human food;
- Delete the definition and reference to the "Federal Humane Methods of Livestock Slaughter Act";
- Strike the reference to "or the secretary's authorized representative" in the definition of "Secretary" in the Act as it is currently; and

- Change "may" to "shall" in reference to the Secretary of Agriculture prescribing by rules and regulations the period of time that records should be maintained.

The Senate Committee of the Whole amended the bill to include three technical amendments to New Section 2(b) of the bill.

During floor action, the House did not adopt the first Conference Committee Report and appointed a new conference committee. The Senate acceded to this request.

The fiscal note on the original version of SB 302, as provided by the Division of the Budget, states the passage of the bill would reduce state revenue to the Meat and Poultry Fee Fund by \$9,150; however, the KDA indicated the fiscal impact would have no effect on state operations.

Kansas Food and Lodging Act; Kansas Food, Drug and Cosmetic Act; Kansas Meat and Poultry Act

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