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Kansas Dairy Law

Article 23 – KANSAS DAIRY COMMISSION

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ARTICLE 23 - KANSAS DAIRY COMMISSION

47-2301. Definitions. As used in this act:

- (a) "Commission" means the Kansas dairy commission.
- (b) "Purchaser" means any person, public or private corporation, association or partnership who buys fluid milk from the seller or acts as an agent for the sale transaction.
- (c) "Producer" means a person who is actively engaged within this state in the business of producing fluid milk and who receives income from the production of fluid milk.
- (d) "Sale" or "sold" means a transaction in which fluid milk is transferred from the seller to a purchaser for full or partial consideration.
- (e) "Secretary" means the secretary of agriculture.
- (f) "Seller" means any private entity or corporation that sells fluid milk.

History: L. 1995, ch. 89, § 1; L. 2004, ch. 101, § 86; July 1.

47-2302. Kansas dairy commission; members, officers, compensation. (a) There is hereby created the Kansas dairy commission.

(b) The commission shall consist of seven members who will be elected at the annual meeting of the Kansas dairy association. The board of directors of the Kansas dairy association shall act as interim commission members until commission members can be elected and qualified. Vacancies which may occur shall be filled for unexpired terms by the board of directors of the Kansas dairy association from among the producers of the state. Each commission member appointed on and after the effective date of this act, other than a commission member appointed to fill a vacancy for an unexpired term, shall be elected for a term of four years except that three of the commission members first elected on and after the effective date of this act shall be elected for a term of two years. No member may serve more than two consecutive terms. Upon the expiration of a term of a member of the commission, such member shall continue to serve as a member of the commission until a successor to such member is elected and qualified.

(c) Members of the commission shall be residents of this state and currently be active producers. One member shall be elected from each of the dairy herd improvement association districts and the remaining members shall be elected at large. The elections will be held at an open session to all dairy producers at the annual meeting of the Kansas dairy association.

(d) The dean of the college of agriculture of Kansas state university or the dean's representative and the secretary or the secretary's designee shall serve as ex officio nonvoting members of the commission.

(e) The commission shall annually elect a chairperson from its membership.

(f) A member of the commission may cease to hold such member's position on the commission for any of the following reasons, at the discretion of a majority of the commission, upon resolution duly adopted by the commission dismissing such member:

- (1) Failure to attend two or more regular meetings of the commission, if unexcused; or
- (2) ceasing to be a producer.

(g) Members of the Kansas dairy commission attending meetings of such commission, or attending a subcommittee meeting authorized by such commission, may be paid compensation and other expenses.

(h) The commission shall meet at least once every calendar quarter regularly and hold an annual meeting which shall be open to the public. The day, time and place of each meeting shall be determined by the commission. The chairperson or any three members of the commission may call special meetings of the commission upon such notice as may be prescribed by the duly adopted rules and regulations of the commission.

History: L. 1995, ch. 89, § 2; July 1.

47-2303. Same; powers and duties. In the administration of this act, the commission shall have the following duties, authorities and powers:

- (a) To conduct a campaign of dairy industry development, through research, education and information;
- (b) to accept grants and donations;
- (c) to sue and be sued;
- (d) to enter into such contracts as may be necessary or advisable for the purpose of this act;
- (e) to appoint an administrator who is knowledgeable about the dairy industry and fix the compensation. With the approval of the commission, the administrator may appoint such other personnel as is needed;
- (f) to cooperate or contract with any local, state or national organization or agency, whether voluntary or created by the law of any state, or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and promotion;
- (g) to establish an office of the administrator at any place in this state the commission may select;
- (h) to adopt, rescind, modify and amend all necessary and proper orders, resolutions and rules and regulations for the procedure and exercise of its powers and the performance of its duties; and
- (i) to approve an annual budget and establish a reserve. Each project budgeted and approved by the commission shall include a stated objective and anticipated results. In the commission's annual report to the industry, the commission shall include those objectives and actual results.

History: L. 1995, ch. 89, § 3; July 1.

47-2304. Assessments; receipts; refunds. (a) An assessment to be set by the commission at not more than .1 percent of the market price per hundred pounds of fluid milk produced and sold by a seller shall be imposed on the seller at the time of delivery of the fluid milk to the purchaser who will deduct the assessment from the price paid to the seller at the time of sale.

(b) The commission shall not change the assessment rate, either to increase or reduce, more than once a year. The administrator shall furnish to every purchaser receipt forms which shall be issued by such purchaser to the seller upon payment of such assessment. The form shall indicate thereon the procedure by which the seller may obtain a refund of any such assessment, except a refund shall not be issued unless the amount of the refund is \$5 or more. Within one year after any and all sales during such period the seller, upon submission of a request therefor to the administrator, may obtain such refund in the amount of the assessment deducted by the purchaser. Such request shall be accompanied by evidence of the payment of the assessment which need not be verified.

(c) The commission shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed two years after the refund is made. All funds expended in the administration of this act and for the payment of all claims whatsoever growing out of the performance of any duties or activities pursuant to this act shall be paid from the proceeds derived from such act.

History: L. 1995, ch. 89, § 4; July 1.

47-2305. Collection and disbursement of assessment. (a) The commission shall negotiate and contract with a person or persons to collect and disburse the assessments pursuant to this act.

(b) The assessment hereby imposed, on or before the 20th day of the calendar month following the date of settlement, shall be paid by the purchaser and remitted to the person or persons contracted with pursuant to subsection (a). The person or persons shall issue a receipt to the purchaser therefor and shall remit all moneys received in payment of such assessment to a bank account at least monthly.

(c) Each bank account for use in operating and conducting the commission's duties shall be secured by pledge of securities in the manner prescribed for state bank accounts under K.S.A. 75-4218, and amendments thereto or if such bank account is in an institution outside the state of Kansas, the institution shall be licensed by a state or the federal government.

(d) All money collected pursuant to K.S.A. 47-2304 shall be expended in the administration of this act, and for the payment of claims based upon obligations incurred in the performance of the activities and functions set forth in this act, and for no other purpose.

History: L. 1995, ch. 89, § 5; July 1.

47-2306. Penalties. Any person who shall violate any of the provisions of article 23 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for not less than 30 nor more than 90 days, or by both such fine and imprisonment.

History: L. 1995, ch. 89, § 6; July 1; L. 2012, ch. 125, § 42; July 1.

ARTICLE 7 – MILK, CREAM AND DAIRY PRODUCTS

65-771. Definitions. As used in this act:

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

(b) “Bulk milk pick up tanker” means a vehicle, including the truck, tank and those appurtenances necessary for such vehicle’s use, used by a bulk milk hauler or sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station or transfer station.

(c) “Dairy manufacturing plants” means any place where dairy products, grade A milk or milk products are manufactured or prepared for sale or distribution, either at wholesale or retail. “Dairy manufacturing plants” does not include a licensed food service establishment which that is licensed to manufacture homemade ice cream pursuant to this act.

(d) “Dairy products” means products that may be made from milk or cream for manufacturing purposes and are not required to meet grade A standards. “Dairy products” includes butter, cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk, whole or skim, condensed whole milk, condensed skim milk, sweetened or plain, frozen dairy dessert, and frozen dairy dessert mixes and such other products as may be otherwise designated by rules and regulations.

(e) “Frozen dairy dessert” means products containing milk or cream and other ingredients that are frozen or semi-frozen prior to consumption, such as ice cream, ice milk or sherbet, including frozen dairy desserts for special dietary purposes.

(f) “Frozen dairy dessert mix” means the pasteurized unfrozen combination of all ingredients with or without fruits, fruit juices, candy, nut meats, flavor or harmless color that makes a frozen dairy dessert.

(g) “Grade A pasteurized milk” means pasteurized milk that has at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation.

(h) “Grade A pasteurized milk products” means all pasteurized milk products that have at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation.

(i) “Grade A raw milk for pasteurization” means milk having at least 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation, the raw milk meeting the requirements for grade A under the rules and regulations adopted pursuant to this act.

(j) “Imminent health hazard” means any condition that involves milk, milk products or dairy products, or any practice or procedure in the handling, transportation, storage, processing or manufacturing of milk, milk product or dairy product that poses a significant threat of danger to the public health that should be corrected immediately to prevent injury or sickness and that should not be permitted to continue while a hearing or other proceeding is being conducted.

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

(l) “Milk” means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy hooved mammals. Except for on-farm retail sale of milk or milk products, milk sold in final package form shall have been pasteurized or ultrapasteurized.

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

(n) “Milk hauler or sampler” means any person who collects official samples and may transport raw

milk from a farm or raw milk products to or from a milk plant or both, receiving station or transfer station and has in their possession a permit from any state to sample such products.

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

(p) "Milk or cream for manufacturing purposes" means raw milk or raw cream that is not subject to grade A standards and produced for processing and manufacturing into dairy products for human consumption.

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

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

(s) "Milk plant" means any place, premises or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, ultrapasteurized, aseptically processed, condensed, dried, packaged or prepared for distribution.

(t) "Milk processor" means any person who operates any place, premises or establishment where grade A raw milk for pasteurization or milk or cream for manufacturing purposes is processed, pasteurized, bottled or prepared for distribution.

(u) "Milk producer" means any person who owns or operates a dairy farm and who provides, sells or offers for sale grade A raw milk for pasteurization or milk or cream for manufacturing purposes to a milk plant, receiving station or transfer station.

(v) "Milk products" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, nonfat skim milk, reduced fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured reduced fat or lowfat milk, cultured nonfat skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat milk, acidified nonfat skim milk, low-sodium milk, low-sodium reduced fat or lowfat milk, low-sodium nonfat skim milk, lactose-reduced milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat skim milk, aseptically processed and packaged milk and milk products, milk, reduced fat or lowfat milk or nonfat skim milk with added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined herein. "Milk products" includes those dairy foods made by modifying the federally standardized products listed in this section in accordance with 21 C.F.R. § 130.10, requirements for foods named by use of a nutrient content claim and a standardized term. Milk and milk products that have been retort processed after packaging or concentrated, condensed or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein or if they are labeled as Grade A as adopted and described by rules and regulations promulgated under this act. Except as otherwise provided, "milk products" does not include dietary products, infant formula, ice cream or other desserts, butter or cheese.

(w) "Milk tank truck" means the term used to describe both a bulk milk pick up tanker and a milk transport tank.

(x) "Milk tank truck cleaning facility" means any place, premises or establishment, other than a milk plant, receiving station or transfer station, where a milk tank truck is cleaned and sanitized.

(y) "Milk transport tank" means a vehicle including the truck and tank, used by a bulk milk hauler or sampler to transport bulk shipments of milk and milk products from a milk plant, receiving station or transfer station to another milk plant, receiving station or transfer station.

(z) "Milk transportation company" means the person, business or entity responsible for a milk tank truck.

(aa) "Misbranded" means the same as provided in K.S.A. 65-665, and amendments thereto.

(bb) "On-farm retail sales of milk or milk products" means the sale of unpasteurized raw milk or unpasteurized raw milk products on the farm by the producer from the production of the dairy herd to

the final consumer.

(cc) "Pasteurized" means the same as provided in 21 C.F.R. §§ 131.3 and 135.3.

(dd) "Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.

(ee) "Plant fabricating single service articles" means any place which that manufactures single service articles that are expected to come in contact with grade A milk or grade A milk products.

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

(gg) "Single service article or container" means any container having a milk or milk product-contact surface and used in the packaging, handling, storage or servicing of grade A milk and is intended for one usage only. **History:** L. 2001, ch. 32, § 1; L. 2002, ch. 181, § 15; L. 2004, ch. 101, § 171; L. 2010, ch. 72, § 16; July 1; L. 2022, ch. 45, § 4; July 1.

65-772. Secretary to adopt rules and regulations. (a) The secretary shall adopt such rules and regulations as are necessary to implement the provisions of this act, and shall be charged with the enforcement of this act and of any rules and regulations adopted hereunder.

(b) All rules and regulations of the department of agriculture or the secretary of the Kansas department of agriculture concerning milk, cream and dairy products in existence on the effective date of this act shall continue to be effective until revised, amended, revoked or nullified pursuant to law.

History: L. 2001, ch. 32, § 2; L. 2004, ch. 101, § 172; July 1.

65-773. Inspection and testing of milk products. It shall be the duty of the secretary to:

(a) Establish a statewide system of milk inspection and regulatory services to insure, by means of uniform inspection and sampling procedures, that all milk and milk products sold in this state at retail to the final consumer, except on-farm retail sales of milk or milk products, shall attain the standard of grade A pasteurized. The secretary may contract with the governing body of any county or incorporated city, or both, for the provision of milk inspection and regulatory services, and compensation shall be made by the secretary for the furnishing of these services;

(b) inspect or cause to be inspected, as often as may be deemed practicable, all businesses licensed pursuant to this act and any other places where milk, milk products or dairy products are produced, manufactured, kept, handled, stored or sold within the state. The secretary may enter any business licensed under this act during regular business hours or any other hours during which business is in operation or any other place where any milk, milk products or dairy products are manufactured, produced, stored, sold or kept for sale or transportation, for the purpose of performing official duties under this act;

(c) prohibit the production and sale of adulterated or misbranded milk, milk products or dairy products;

(d) seize and condemn for food purposes all unclean, adulterated or misbranded milk, milk products or dairy products wherever such milk, milk products or dairy products may be found; and

(e) take or cause to be taken samples of milk, milk products or dairy products and cause the same to be analyzed or tested according to such methods as shall be prescribed by rules and regulations. Such test or analyses shall conform to methods of the association of official analytical chemists or any other such similar organization as determined by the secretary. Such analyses or tests shall be preserved and recorded as evidence, and the certificate of such test, when sworn to by the analyst, shall be admitted in evidence in all prosecutions that may result under the operation of this act.

History: L. 2001, ch. 32, § 3; July 1.

65-774. Powers of secretary. The secretary may:

(a) Examine any books and records which are kept by any person who is subject to this act and which pertain to any milk, milk products or dairy products or any fees required to be paid pursuant to this act;

(b) examine under oath or otherwise, any person whom the secretary may believe has knowledge concerning the unlawful operation of any business required to be licensed under this act or any place where milk, milk products or dairy products are produced, bought, sold or stored contrary to the

provisions of this act;

(c) issue subpoenas requiring the appearance of witnesses and the production of books, papers, reports and records, and to administer oaths under this act;

(d) cooperate with, contract with, and receive funds from any governmental agency; and

(e) enter into reciprocal agreements with other states governing the inspection of milk, milk products and dairy products.

History: L. 2001, ch. 32, § 4; July 1.

65-775. Adoption of rules and regulations. (a) The secretary may adopt rules and regulations:

(1) Establishing criteria for the sanitary production, processing, handling, sampling, examination, testing, grading and labeling of all milk, milk products and dairy products sold or produced in the state of Kansas;

(2) providing criteria for the inspection of dairy farms, dairy manufacturing plants, plants fabricating single service articles, milk or cream transfer stations, milk or cream receiving stations, milk haulers and milk distributors;

(3) establishing sanitation standards and equipment and utensil standards for dairy farms, dairy manufacturing plants, plants fabricating single service articles, transfer stations, receiving stations, milk haulers and milk distributors;

(4) establishing standards of identity for milk, milk products and dairy products. Such standards shall take into consideration corresponding federal standards of identity where such standards exist;

(5) prescribing for any person regulated under this act any bookkeeping or reporting requirements deemed necessary by the secretary, including the maintenance of records and making such records available to the secretary;

(6) regarding bacterial and coliform standards or other quality standards for milk, milk products, or dairy products; and

(7) establishing specifications for apparatus and chemicals and procedures for sampling, testing and weighing milk, cream, butter and any other milk products or dairy products. These specifications, directions and other technical requirements shall conform, insofar as practical, to the official methods of analysis of the association of official analytical chemists or any other such similar organization.

(b) Any rules and regulations promulgated under this act shall conform, insofar as practicable, to the pasteurized milk ordinance, and the policies adopted by the interstate milk shippers conference.

History: L. 2001, ch. 32, § 5; L. 2002, ch. 181, § 16; July 1.

65-776. Political subdivisions of state prohibited from performing further inspection or assessment of fees. (a) All milk, milk products and dairy products which have been inspected in accordance with the provisions of this act, and any rules and regulations adopted thereunder, may be moved, distributed or sold, any place in this state, and any further inspection by any political subdivision of this state shall be prohibited. The duly authorized official of any political subdivision of this state may take samples of such products which have been moved into, distributed within or sold within, the boundaries of such political subdivision of this state, for the sole purpose of determining that such products meet the bacterial, butterfat, temperature and coliform standards prescribed in the rules and regulations adopted pursuant to this act. Nothing in this act shall be construed as prohibiting any epidemiological investigations by the proper authorities of any political subdivision.

(b) No political subdivision of this state shall be permitted to fix or impose any license fee, privilege or occupation tax or other charge against the production premises or the product or against any person as a prerequisite for the movement, distribution or sale of any milk, milk product or dairy products within the state or any political subdivisions thereof, and any sampling performed by any political subdivision in accordance with the provisions of subsection (a) or any testing or inspection of milk or milk products by any political subdivision for epidemiological purposes, shall be performed entirely at the expense of such political subdivision.

(c) The secretary or the secretary's authorized representative shall be notified of any sampling being performed by political subdivisions within the state under the provisions of this section.

History: L. 2001, ch. 32, § 6; July 1.

65-777. Secretary may perform tests and assess fees therefor. (a) The secretary, through the department of agriculture's laboratory, may test any sample of milk, milk product or dairy product for bacteria or somatic cells or perform any other test required by this act or any rules and regulations promulgated under this act.

(b) The secretary is hereby authorized to establish by rules and regulations a schedule of fees for such tests performed by the laboratory.

History: L. 2001, ch. 32, § 7; L. 2010, ch. 72, § 17; July 1.

65-778. License requirement for certain persons engaged in milk, cream or dairy business; fees.

(a) Any person who engages in business as a dairy manufacturing plant shall first apply for and obtain a dairy manufacturing plant license from the secretary and shall pay a license fee of \$120, or commencing July 1, 2002, and ending June 30, 2028, a license fee of \$200.

(b) Any person who engages in business as a distributor of milk, milk products or dairy products shall first apply for and obtain a milk distributor license from the secretary and shall pay a license fee of \$120, or commencing July 1, 2002, and ending June 30, 2028, a license fee of \$200. No milk distributor license shall be required for a licensed dairy manufacturing plant which distributes only those products which it manufactures.

(c) Any person who engages in business as a milk hauler shall first apply for and obtain a milk hauler license from the secretary and shall pay a license fee of \$25 or commencing July 1, 2002, and ending June 30, 2028, a license fee of \$35. As part of the application, the secretary may require the applicant to be tested regarding proper procedures for sampling, testing and weighing milk or cream and state laws and rules and regulations.

(d) Any person who operates a milk or cream transfer station or milk or cream receiving station shall first apply for and obtain a milk or cream station license from the secretary and shall pay a license fee of \$50, or commencing July 1, 2002, and ending June 30, 2028, a license fee of \$100.

(e) Any person who engages in business as a manufacturer of single service dairy containers or manufacturer of single service dairy container closures shall first apply for and obtain a single service manufacturing license from the secretary and shall pay a license fee of \$50, or commencing July 1, 2002, and ending June 30, 2028, a license fee of \$100.

(f) Any person who operates a milk tank truck cleaning facility shall first apply for and obtain a milk tank truck cleaning facility license from the secretary and shall pay a license fee of \$100.

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

(h) The dairy manufacturing plant license, milk distributor license, milk tank truck cleaning facility license, milk or cream station license and single service manufacturing license shall expire on December 31 of the year it was issued unless suspended or revoked by the secretary pursuant to this act. The milk hauler license shall expire on June 30 following the date of issuance unless suspended or revoked by the secretary pursuant to this act.

(i) No license issued under this section shall be transferable. No license shall be renewed if any assessments or fees required under this act are delinquent.

(j) Each applicant for a license or for the renewal of such license shall submit an application on a form supplied by the secretary accompanied by the license fee. All licenses shall be conspicuously displayed in the applicant's place of business.

(k) The secretary shall reduce any license fee in subsections (a) through (f) by adopting rules and regulations whenever the secretary determines that such fee is yielding more than is necessary for administering the provisions of this act. The secretary may increase any license fee in subsections (a) through (f) by adopting rules and regulations when such license fee is necessary to produce sufficient revenues for administering the provisions of this act. License fees in subsections (a) through (f) shall not be increased in excess of the maximum amounts provided in this section.

History: L. 2001, ch. 32, § 8; L. 2002, ch. 181, § 17; L. 2004, ch. 85, § 14; L. 2009, ch. 128, § 32; L. 2010, ch. 72, § 18; L. 2014, ch. 133, § 7; July 1; L. 2017, ch. 86, § 9, July 1; L. 2022, ch. 45, § 5; July 1.

65-779. Permit to sell grade A pasteurized milk or milk products. (a) Any person who is required to pay or remit a fee under this act in order to sell, offer for sale, receive or distribute grade A raw milk for

pasteurization, grade A pasteurized milk or grade A pasteurized milk products within this state shall first apply for and obtain a valid permit to do so from the secretary. Such permit shall be issued upon application to the secretary, and no fee shall be charged therefor.

(b) No permit issued under this section shall be transferable. No permit shall be renewed if any assessments or fees required under this act are delinquent.

History: L. 2001, ch. 32, § 9; July 1.

65-780. Loss of license; conditions therefor. The secretary may deny, suspend, revoke or modify or refuse to renew the provisions of any license or permit issued under this act if the secretary finds, after notice and opportunity for a hearing are given in accordance with the provisions of the Kansas administrative procedure act that the applicant, licensee or permit holder or any agent or employee, thereof has:

(a) Been convicted of or pleaded guilty to a violation of this act or any rules and regulations promulgated thereunder;

(b) failed to comply with any provision or requirement of this act or any rules and regulations promulgated thereunder;

(c) interfered with the secretary in the performance of any job duties regarding any inspection or the administration of the provisions of this act;

(d) denied access to premises required to be inspected under the provisions of this act;

(e) failed to pay or remit any required fee or fees, or any part thereof; or

(f) failed to submit a required report, or submitted a false report.

Any such hearing shall be held by the secretary or a presiding officer from the office of administrative hearings.

History: L. 2001, ch. 32, § 10; L. 2004, ch. 145, § 22; L. 2010, ch. 60, § 9; July 1.

65-780a. Temporary suspension of license; reinstatement. (a) The secretary may suspend temporarily any license or permit issued under K.S.A. 65-778 and 65-779, and amendments thereto, without a hearing and subject to the notice requirements of the emergency adjudication procedures of the provisions of the Kansas administrative procedure act if the secretary finds all of the following:

(1) The licensee or permit holder failed to comply with any provision or requirement of K.S.A. 65-771 to 65-791, and amendments thereto, or any rules and regulations promulgated thereunder; and

(2) public health or safety is endangered as a result thereof.

(b) In no case shall a temporary suspension of a license or permit under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the license or permit shall be reinstated unless the secretary has suspended or revoked the license or permit, after notice and opportunity for hearing, or the license or permit has expired.

(c) This section shall be a part of and supplemental to the provisions of K.S.A. 65-771 to 65-791, inclusive, and acts amendatory thereof or supplemental thereto.

History: L. 2010, ch. 60, sec. 1; July 1.

65-781. Fees for inspection and regulatory services; when due; delinquent fees. The following fees for the statewide system of milk inspection and regulatory services are hereby established:

(a) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$.015 for each 100 pounds of milk produced by milk producers under Kansas grade A inspection shall be paid. Each producer is hereby charged with such fee, which shall be paid to the milk producers' cooperative, milk processor or milk distributor to whom the milk is sold or delivered. Each cooperative, processor or distributor is hereby charged with the duty of collecting such fees, which shall be remitted to the secretary.

(b) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$.02 for each 100 pounds of packaged grade A pasteurized milk or milk products sold in Kansas at retail to the final consumer shall be paid. Each distributor is hereby charged with such fee, which shall be remitted to the secretary.

(c) A fee of \$.0075, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$.02 per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the

state of Kansas that is processed into grade A milk, grade A milk products or other dairy products shall be paid. Each milk processor is hereby charged with such fee, which shall be remitted to the secretary. This fee shall not be paid if the milk is processed or manufactured at the dairy where such milk is produced and less than 7,000,000 pounds of milk are processed annually.

(d) A milk fee of \$.01, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$.015 per 100 pounds of milk or cream for manufacturing purposes produced by milk producers under Kansas manufacturing grade milk inspection shall be paid. Each producer is hereby charged with such fee, which shall be paid to the milk producers' cooperative, dairy manufacturing plant or any other person to whom the milk or cream for manufacturing purposes is sold or delivered. Each cooperative, dairy manufacturing plant or other person is hereby charged with the duty of collecting such fees, which shall be remitted to the secretary.

(e) A fee of \$.0075, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$.02 per 100 pounds of Kansas produced milk or cream for manufacturing purposes or other Kansas produced milk delivered to a dairy manufacturing plant shall be paid on all Kansas milk used in the manufacturing of dairy products. As used in this subsection, "dairy products" does not include any frozen dairy dessert or frozen dairy dessert mix. Each dairy manufacturing plant shall pay such fee, which shall be remitted to the secretary. This fee shall not be paid if the milk is processed or manufactured at the dairy where such milk is produced and less than 7,000,000 pounds of milk are processed annually.

(f) In lieu of the fee prescribed in subsection (e), a fee of \$1, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$2 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix shall be paid by the manufacturer thereof. Each manufacturer of frozen dairy dessert or frozen dairy dessert mix is hereby charged with such fee, which shall be remitted to the secretary. Frozen dairy dessert mix which is further processed into the corresponding frozen dairy dessert by the manufacturer of the frozen dairy dessert mix shall not be subject to the fee required by this subsection.

(g) A fee of \$1, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$2 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix imported for retail sale in Kansas shall be paid by the milk distributor who imports these products.

(h) A fee of \$50 for the annual inspection of a milk tank truck as required by this act. The milk transportation company that owns or leases the milk tank truck shall pay such fee, which shall be remitted to the secretary.

(i) If any fee computed pursuant to subsection (a) through (e) is less than \$2.50, then the sum of \$2.50 shall be paid in lieu of the computed fee. If any fee computed pursuant to subsection (f) or (g) is less than \$7.50, a minimum fee of \$7.50 shall be paid in lieu of the computed fee.

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

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

(2) The fees established in subsections (b), (f) and (g) shall be remitted on April 30, July 31, October 31 and January 31 for the three calendar months immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the quantities upon which the remittance is based.

(3) The fee established in subsection (h) shall be remitted within 60 days from the date of inspection.

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

(l) The secretary shall reduce any inspection fee in subsections (a) through (h) by adopting rules and regulations whenever the secretary determines that such fee is yielding more than is necessary for administering the provisions of this act. The secretary may increase any inspection fee in subsections (a) through (h) by adopting rules and regulations when such inspection fee is necessary to produce sufficient revenues for administering the provisions of this act. License fees in subsections (a) through (h) shall not be increased in excess of the maximum amounts provided in this section.

History: L. 2001, ch. 32, § 11; L. 2002, ch. 181, § 18; L. 2004, ch. 85, § 15; L. 2009, ch. 128, § 33;

July 2022

L. 2010, ch. 72, § 19; L. 2014, ch. 133, § 8; L. 2017, ch. 86, § 10; January 1, 2018; L. 2022, ch. 45, § 6; July 1.

STATE OF KANSAS
BEFORE THE KANSAS DEPARTMENT OF AGRICULTURE

**ORDER REDUCING ANNUAL INSPECTION FEE
FOR MILK TANK TRUCK**

Pursuant to House Bill No. 2566, effective upon its publication in the statute book, the Secretary finds as follows:

1. House Bill No. 2566 was passed by both houses of the 2010 Session of the Kansas Legislature and signed by the Governor. The act is effective upon publication in the statute book as set forth in K.S.A. 45-310. The act amends K.S.A. 2009 Supp. 65-781 by adding new subsections h and l. New subsection h provides for a fee of \$50 for the annual inspection of a milk tank truck. New subsection l provides that the secretary is authorized to reduce the annual inspection fee whenever the secretary shall determine that such fee is yielding more revenue than is required for administering the provisions of the act.

2. The Secretary has determined that the revenue from the annual milk tank truck inspection fee in the amount of \$50 will yield more revenue than is required for administering the provisions of the act. Therefore, as authorized by law the annual milk tank truck inspection fee should be reduced.

IT IS THEREFORE ORDERED THAT:

1. The annual milk tank truck inspection fee established in K.S.A. 2009 Supp. 65-781(h) by House Bill No. 2566 shall be reduced to the sum of \$25.

2. The annual milk tank truck inspection fee of \$25 shall be applicable to annual milk tank truck inspections conducted after the effective date of the act.

3. This Order shall be effective from and after the publication of the act in the statute book and remain in effect until otherwise modified by the secretary as authorized by law.

Date: 4/20/10

/s/ Joshua Svaty

Joshua Svaty

Secretary

Kansas Department of Agriculture

65-782. Fees deposited in state treasury; dairy fee fund established. (a) The secretary shall remit all moneys received under this act to the state treasurer at least monthly. Upon receipt of such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the dairy fee fund, which is hereby created, unless otherwise stated.

(b) All expenditures from the dairy fee 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.

History: L. 2001, ch. 32, § 12; L. 2002, ch. 181, § 19; July 1.

65-783. Cleanliness of dairy equipment; use of approved water source. (a) Utensils, milk cans, milking machines, pipeline systems and other equipment used in the handling of milk and dairy

products shall be:

- (1) Maintained in good condition;
- (2) free from rust, open seams, milk stone or any unsanitary condition;
- (3) washed, rinsed and drained after each milking and stored in suitable facilities; and
- (4) sanitized immediately before use as required by rules and regulations promulgated pursuant to this act.

(b) Any source of water supply used by a dairy farm shall be safe, clean and ample for the cleaning of dairy utensils and equipment as required by rules and regulations promulgated under this act. If the source of water used by a dairy farm is not a public water supply, then the source of water shall be properly constructed in an approved location as required by rules and regulations promulgated under this act. Whenever any source of water supply does not meet the required standards, the water supply shall be deemed unacceptable and the dairy farm or producer shall be removed from production until evidence that necessary corrections have been made is presented to the secretary and the secretary determines that the water supply standards have been met.

History: L. 2001, ch. 32, § 13; July 1.

65-784. On-farm production of butter and sales thereof not subject to act. Nothing in this act pertaining to the manufacture of butter shall apply to farmers or producers of milk and cream when churning milk or cream produced on their own farm into what shall be known as dairy, country or farm butter or to prohibit such producers from making cheese out of milk and cream which are produced on their own farm, when such product is to be used as on-farm retail sales of milk or milk products.

History: L. 2001, ch. 32, § 14; July 1.

65-785. Secretary may issue stop sale or stop use order. (a) The secretary may issue and enforce a written or printed stop sale or stop use order to the owner or custodian of any quantity of milk, milk products or dairy products or any equipment used in the storage, handling, production or packaging of milk, milk products or dairy products which the secretary determines to be in violation of any provisions of this act or any rules or regulations adopted hereunder. The order shall prohibit the further sale, processing, movement, and use of such equipment or product, except on approval of the enforcing officer, until such enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the order issued.

(b) No person may sell, use or remove any milk, milk products or dairy products or otherwise violate the terms of any order issued pursuant to subsection (a).

(c) Any order issued pursuant to this subsection is subject to review in accordance with the Kansas judicial review act.

(d) The provisions of this subsection shall not be construed as limiting the right of the enforcing officer to proceed as authorized by other sections of this act.

History: L. 2001, ch. 32, § 15; L. 2010, ch. 17, § 126; July 1.

65-786. Secretary may issue emergency cease and desist order. (a) If the secretary determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of this act or any rules and regulations or order issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder. Any such hearing shall be held by the secretary or a presiding officer from the office of administrative hearings.

(b) If the secretary makes written findings of fact that there is a situation involving an immediate danger to the public health, safety or welfare or that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the secretary may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order, the secretary shall promptly notify the person subject to the order that:

- (1) It has been entered;
- (2) the reasons therefor; and

(3) that upon written request from the person subject to the order within 15 days after service of the order the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any such hearing shall be held by the secretary or presiding officer from the office of administrative hearings. If no hearing is requested and none is ordered by the secretary, the order will remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered the secretary, after giving notice of and opportunity for hearings to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order.

(c) When necessary to protect the public health, an imminent health hazard may be declared by the secretary at any point in a chain of events that ultimately may result in harm or danger to the public health. The occurrence of the final anticipated injury or other disease-related condition shall not be a prerequisite for the establishment of the existence of an imminent health hazard and the use of any authority granted pursuant to this act, including any action taken pursuant to subsection (a) or (b) or K.S.A. 65-780a or 65-785, and amendments thereto.

History: L. 2001, ch. 32, § 16; L. 2004, ch. 145, § 23; July 1, 2005; L. 2022, ch. 45, § 7; July 1.

65-787. Court may issue temporary restraining order. The district courts of the state of Kansas shall have jurisdiction to restrain violations of this act or the rules and regulations promulgated thereunder. The court may issue such orders, including temporary restraining orders, as the facts may warrant without first requiring proof that an adequate remedy at law does not exist. Any orders issued pursuant to this section shall be issued without bond. Proceedings may be instituted under this section without any criminal proceedings, administrative proceedings or civil penalty proceedings being first initiated.

History: L. 2001, ch. 32, § 17; July 1.

65-788. Civil penalty may be imposed; how; appeal therefrom. (a) Any licensee or any employee or agent thereof who violates any provision of this act or any rules and regulations promulgated thereunder and any person who violates section 1, and amendments thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$300 for each violation and, in the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary to the licensee who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the licensee to appeal to the secretary. Any such licensee 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. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(c) Any licensee person subject to and aggrieved by a final order of the secretary made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(d) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer, deposited in the state treasury and credited to the state general fund.

History: L. 2001, ch. 32, § 18; L. 2010, ch. 17, § 127; July 1; L. 2022, ch. 45, § 8; July 1.

65-789. Unlawful acts. It shall be unlawful for any person to:

- (a) Engage in any business or activity which requires a license or permit under this act without having a license or permit;
- (b) sell, offer or expose for sale:
 - (1) Any milk, milk products or dairy products which do not conform to the definition and standards of identity established under this act; or
 - (2) any milk, milk products or dairy products which are adulterated or misbranded.
- (c) adulterate or misbrand any milk, milk products or dairy products;

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(d) sell, offer for sale or have in such person's possession with the intent to sell at retail to the final consumer any milk or milk product which has not been inspected and designated grade A pasteurized in accordance with the provisions of this act and any rules and regulations adopted thereunder, except that on-farm retail sales of milk or milk products shall be exempt from the provisions of this act unless stated otherwise; or

(e) violate any provision of this act or any rules or regulations promulgated thereunder.

History: L. 2001, ch. 32, § 19; L. 2002, ch. 181, § 20; July 1.

65-790. Penalties for violation of act. Any person who violates any provision of this act or any rules and regulations promulgated thereunder shall be guilty of an unclassified misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500.

History: L. 2001, ch. 32, § 20; July 1.

65-791. Severability of act. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not effect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 2001, ch. 32, § 21; July 1.

New Section 1. (a) Except as provided in article 7 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and in rules and regulations adopted by the secretary hereunder, the secretary shall apply the definitions and standards of identity ascribed to milk and dairy products by the federal food and drug administration.

(b) Goat milk sold in retail packages shall contain not less than 2.5% milkfat and not less than 7.5% milk solids not fat. Goat milk shall be produced according to the sanitary standards of this act and may have been adjusted by separating part of the milkfat therefrom or by adding cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk or nonfat dry milk thereto. Goat milk may be homogenized.

(c) Milk that is not goat milk shall contain not less than 3.25% milkfat and not less than 8.25% milk solids not fat. Milk may have been adjusted by separating part of the milkfat therefrom or by adding cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk or nonfat dry milk thereto. Milk may be homogenized.

(d) Milk or cream for manufacturing purposes may contain less than 3.25% butterfat and shall be delivered pure, sweet and clean.

(e) Grade A pasteurized milk, grade A pasteurized milk products and grade A milk for pasteurization shall meet the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk within the statewide system of milk inspection and regulatory services, even if such grade A pasteurized milk does not have at least a 90% survey rating.

History: L. 2022, ch. 45, § 1; July 1.

New Sec. 2. (a) The on-farm retail sale of milk or milk products shall be lawful, so long as each container of unpasteurized raw milk sold or offered for sale bears a label that is clearly visible and states the following or its equivalent in a clearly visible font size: "Raw milk and Unpasteurized".

(b) Any person who engages in the on-farm retail sale of milk or milk products may advertise such milk or milk products. Any such advertisement shall not be false or misleading and shall state that such milk or milk products are raw and unpasteurized. If such advertisement is in print or other written or visual form, this statement shall be clearly visible.

(c) In addition to any other remedies available under the act, the secretary may issue a civil penalty pursuant to K.S.A. 65-788, and amendments thereto, against any person who violates this section.

History: L. 2022, ch. 45, § 2; July 1.

74-568. State board of agriculture and secretary of the state board of agriculture abolished;

transfer of powers and duties to the department of agriculture and secretary of agriculture. (a) The state board of agriculture created by K.S.A. 74-503, and amendments thereto, and the office of secretary of the state board of agriculture created by K.S.A. 74-503, and amendments thereto, are hereby abolished.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the existing state board of agriculture and the existing secretary of the state board of agriculture are hereby transferred to and conferred and imposed upon, the department of agriculture and the secretary of agriculture established by this act.

(c) Except as otherwise provided by this act, the department of agriculture and the secretary of agriculture established by this act shall be the successor in every way to the powers, duties and functions of the state board of agriculture and the secretary of agriculture in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the department of agriculture or the secretary of agriculture established by this act shall be deemed to have the same force and effect as if performed by the state board of agriculture or the secretary of the state board of agriculture, respectively, in which such powers, duties and functions were vested prior to the effective date of this act.

(d) Except as otherwise provided by this act, whenever the state board of agriculture, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(e) Except as otherwise provided by this act, whenever the secretary of the state board of agriculture, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(f) All rules and regulations of the state board of agriculture or the secretary of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture established by this act until revised, amended, revoked or nullified pursuant to law.

(g) All rules and regulations of the division of water resources of the state board of agriculture or the chief engineer of the division of water resources of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the chief engineer of the division of water resources of the department of agriculture established by this act until revised, amended, revoked or nullified pursuant to law.

(h) All orders and directives of the state board of agriculture or the secretary of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the secretary of agriculture established by this act, until revised, amended or nullified pursuant to law.

(i) On the effective date of this act, the secretary of agriculture shall succeed to whatever right, title or interest the state board of agriculture has acquired in any real property in this state, and the secretary shall hold the same for and in the name of the state of Kansas. On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the state board of agriculture or the secretary of the state board of agriculture to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

(j) The secretary of agriculture established by this act shall be continuations of the state board of agriculture and the secretary of the state board of agriculture.

History: L. 1995, ch. 236, § 9; May 4.