

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2730

As Amended by House Committee on
Agriculture and Natural Resources

Brief*

HB 2730 would rename the Kansas Food Service and Lodging Act 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 that any lodging establishment that also has a food establishment license would have fees set by rule and regulation;
- Clarify that a lodging establishment operated in connection with any premise licensed, registered or 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;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Set a late fee of \$25 and provide that if a licensee does not renew within a 30-day period, then 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
- Give express authority to the Secretary of Agriculture to obtain a search warrant from a court when access to a premise is denied (After showing due cause, the court then may issue the search warrant).

Other amendments to this portion of the bill are clarifying in nature.

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.

In addition, 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 of 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 by less than 10,000 square feet;
- No more than \$500 for any food establishment of 10,000 square feet or more by 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 that elementary and secondary schools that have a school lunch program would have separate application and license fees; and
- Establish in statute the list of business entities which would be exempt from licensing and inspection. Those exempt business 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;
 - Person 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 packaged certain foods that are non-hazardous and are received directly from a licensed food production facility in packaged form; and
 - Persons who provide food samples, without charge.

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

Background

This bill was introduced at the request of a spokesperson for the Kansas Department of Agriculture. At the 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 Department of Agriculture in 2008 from the Kansas Department of Health and Environment 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 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 Committee.

The House Committee on Agriculture made numerous amendments to the bill including:

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

Other amendments were technical in nature.

The fiscal note on the original bill states that many of the changes in the bill are technical in nature; therefore, it considers the bill to be revenue neutral and not require additional expenditures for FY 2013.