

HOUSE BILL No. 2131

AN ACT concerning waste tires; amending K.S.A. 2000 Supp. 65-3424, 65-3424a, 65-3424b, 65-3424d, 65-3424g, 65-3424k, 65-3424m and 65-3426 and repealing the existing sections; also repealing K.S.A. 2000 Supp. 65-3424f.

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

Section 1. K.S.A. 2000 Supp. 65-3424 is hereby amended to read as follows: 65-3424. As used in K.S.A. 65-3424 through 65-3424i, and amendments thereto, unless the context otherwise requires:

(a) *Terms have the meaning provided by K.S.A. 65-3402, and amendments thereto.*

(b) "Abatement" means the processing or removing to an approved storage site of waste tires which are creating a danger or nuisance.

~~(b)~~ (c) "Beneficial use" means the use or storage of waste tires in a way that creates an on-site economic benefit, ~~other than from processing or recycling~~, to the owner of the tires.

~~(c)~~ (d) "Contaminated waste tire" means a tire which, as determined in accordance with rules and regulations adopted by the secretary, is recovered in a project to abate a waste tire accumulation and is so coated by or filled with dirt, mud, sludge or other natural substances as to render the tire substantially unsuitable for processing.

~~(d)~~ (e) "Landfill" means a disposal site in which the method of disposing of solid waste is by landfill, dump or pit and which has a solid waste disposal area permit issued under K.S.A. 65-3401 et seq., and amendments thereto.

~~(e)~~ (f) "Mobile waste tire processor" means a person who processes waste tires at other than a fixed site.

~~(f)~~ "Municipal landfill" means a landfill where residential waste, or residential and other nonhazardous waste, is placed for disposal.

~~(g)~~ "Person" means any individual, association, partnership, limited partnership, corporation or other entity.

~~(h)~~ (g) "Process" means ~~bale or~~: (1) Cut or otherwise alter whole waste tires so that they are no longer whole; or (2) bale for disposal or beneficial use.

~~(i)~~ "Secretary" means the secretary of health and environment.

~~(j)~~ (h) "Store" or "storage" means the placing of waste tires in a manner that does not constitute disposal of the waste tires. Storage includes the beneficial use of waste tires as silo covers and such other beneficial uses as the secretary determines do not create health or environmental risks.

~~(k)~~ (i) "Tire" means a continuous solid or pneumatic rubber covering used to encircle the wheel of a vehicle or aircraft, or an innertube of such a covering.

~~(l)~~ (j) "Tire retailer" means a person in the business of selling new or used replacement tires at retail.

~~(m)~~ (k) "Used tire" means a tire that: (1) Has been removed from a wheel following a period of use or remains on a wheel removed from a vehicle or aircraft following a period of use; and (2) has been determined to have value in accordance with rules and regulations established pursuant to subsection (e)(7) of K.S.A. 65-3424b, and amendments thereto.

~~(n)~~ (l) "Vehicle" has the meaning provided by K.S.A. 8-1485 and amendments thereto and includes implements of husbandry, as defined by K.S.A. 8-1427 and amendments thereto.

~~(o)~~ (m) "Waste tire" means a whole tire that: (1) Has been removed from a wheel following a period of use or remains on a wheel removed from a vehicle or aircraft following a period of use; and (2) is no longer suitable for its original intended purpose because of wear, damage or defect.

~~(p)~~ (n) "Waste tire collection center" means a site where used or waste tires are collected from the public or from customers of a business prior to being offered for recycling or disposal.

~~(q)~~ (o) "Waste tire processing facility" means a fixed site where equipment is used to process waste tires.

~~(r)~~ (p) "Waste tire site" means a site at which 1,000 or more whole waste tires are accumulated. "Waste tire site" does not include: (1) A site that is an integral part of a permitted waste tire processing facility; (2) an accumulation of tires on the premises of a tire retreading business, for use in the business; (3) an accumulation of tires on the premises of a business that, in the ordinary course of business, removes tires from motor vehicles; ~~or~~ (4) an accumulation of tires on the premises of a tire

retailer, accumulated in the normal course of the tire retailer's business; or (5) an accumulation of tires which has a beneficial use approved by statute or rules and regulations adopted by the secretary, or by the secretary pursuant to statute or rules and regulations.

Sec. 2. K.S.A. 2000 Supp. 65-3424a is hereby amended to read as follows: 65-3424a. (a) The owner or operator of any waste tire site shall provide the department with information concerning the site's location and size and the approximate number of waste tires that are accumulated at the site.

(b) No person shall:

(1) Maintain a waste tire site unless such person holds a valid permit issued for such site pursuant to K.S.A. 65-3424b and amendments thereto;

(2) dispose of waste tires in the state unless the waste tires are disposed of for processing, or collected for processing, at a solid waste processing facility, a waste tire site which is an integral part of a waste tire processing facility, a waste tire processing facility or a waste tire collection center or are made available to: (A) The department of wildlife and parks for use by the department; or (B) a person engaged in a farming or ranching activity, including the operation of a feedlot as defined by K.S.A. 47-1501, and amendments thereto, as long as the accumulation has a beneficial use to the person accumulating the tires and (i) the secretary determines that the use has no adverse environmental effects and (ii) the accumulation is in accordance with all applicable zoning regulations;

(3) deposit waste tires in a landfill as a method of ultimate disposal, except that the secretary *may authorize*, by rules and regulations, ~~may authorize or by permits issued pursuant to K.S.A. 65-3407, and amendments thereto:~~ (A) The final disposal, ~~before July 1, 1999, of uncontaminated of processed waste tires at a municipal landfill if the tires have been cut into sufficiently small parts to assure their proper disposal;~~ (B) the final disposal of processed waste tires at a permitted waste tire monofill; ~~(C) permitted municipal solid waste landfills and permitted waste tire monofills;~~ (B) the final disposal of contaminated whole, unprocessed waste tires at a ~~municipal landfill or permitted waste tire monofill;~~ ~~(D) permitted municipal solid waste landfills and permitted waste tire monofills;~~ (C) the use of waste tires in their original state as part of a proven and approved leachate collection system at a landfill; or ~~(E) (D) the use of waste tires which have been cut into two or more parts as daily cover material for a landfill; or~~

(4) receive money in exchange for waste tires unless: (A) The person holds a permit issued by the secretary pursuant to K.S.A. 65-3424b, and amendments thereto; or (B) the person is a tire retailer who collects waste tires from the public in the ordinary course of business.

Sec. 3. K.S.A. 2000 Supp. 65-3424b is hereby amended to read as follows: 65-3424b. (a) The secretary shall establish a system of permits for mobile waste tire processors and waste tire processing facilities and permits for waste tire transporters and collection centers. Such permits shall be issued for a period of one year and shall require an application fee established by the secretary in an amount not exceeding \$250 per year.

(b) The secretary shall adopt rules and regulations establishing standards for mobile waste tire processors, waste tire processing facilities and associated waste tire sites, waste tire collection centers and waste tire transporters. Such standards shall include a requirement that the permittee file with the secretary a bond or other financial assurance in an amount determined by the secretary to be sufficient to pay any costs which may be incurred by the state to process any waste tires or dispose of any waste tires or processed waste tires if the permittee ceases business or fails to comply with this act.

(c) Any person who contracts or arranges with another person to collect or transport waste tires for storage, processing or disposal shall so contract or arrange only with a person holding a permit from the secretary. Any person contracting or arranging with a person, permitted by the secretary, to collect or transport waste tires for storage, processing or disposal, transfers ownership of those waste tires to the permitted person and the person contracting or arranging with the person holding such permit to collect or transport such tires shall be released from liability

therefor. Any person contracting or arranging with any person, permitted by the secretary, for the collection ~~or~~, *transportation, storage, processing or disposal* of such tires shall maintain a record of such transaction for a period of not less than five years following the date of the transfer of such tires.

(d) No person shall:

(1) Own or operate a waste tire processing facility or waste tire collection center or act as a mobile waste tire processor or waste tire transporter unless such person holds a valid permit issued therefor pursuant to subsection (a); or

(2) own or operate a waste tire processing facility or waste tire collection center or act as a mobile waste tire processor or waste tire transporter except in compliance with the standards established by the secretary pursuant to subsection (b).

(e) The provisions of subsection (d)(1) shall not apply to:

(1) A tire retreading business where fewer than 1,000 waste tires are kept on the business premises;

(2) a business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,500 of these tires are kept on the business premises;

(3) a retail tire-selling business which is serving as a waste tire collection center if fewer than 1,500 waste tires are kept on the business premises;

(4) the department of wildlife and parks;

(5) a person engaged in a farming or ranching activity, including the operation of a feedlot as defined by K.S.A. 47-1501, and amendments thereto, as long as the accumulation has a beneficial use;

(6) a waste tire collection center where fewer than 1,500 used tires are kept on the premises;

(7) a waste tire collection center where 1,500 or more used tires are kept on the premises, if the owner demonstrates through sales and inventory records that such tires have value, as established in accordance with standards adopted by rules and regulations of the secretary;

(8) local units of government operating solid waste processing facilities and solid waste disposal areas permitted by the secretary under the authority of K.S.A. 65-3407 and amendments thereto;

(9) a person transporting: (A) Waste tires mixed with other municipal solid waste; (B) fewer than five waste tires for lawful disposal; (C) waste tires generated by the business, farming activities of the person or the person's employer; or (D) waste tires for a beneficial use approved by statute or rules and regulations adopted by the secretary; or

(10) a business engaged in processing, for resource recovery purposes, only waste tires generated by the business.

(f) All fees collected by the secretary pursuant to this section shall be remitted to the state treasurer. The state treasurer shall deposit the entire amount of the remittance in the state treasury and credit it to the waste tire management fund.

Sec. 4. K.S.A. 2000 Supp. 65-3424d is hereby amended to read as follows: 65-3424d. (a) In addition to any other tax imposed upon the retail sale of new vehicle tires, there is hereby imposed on retail sales of new vehicle tires (excluding innertubes), including new tires mounted on a vehicle sold at retail for the first time, an excise tax ~~at the following rate: (1) Before July 1, 2001, \$.50 per vehicle tire; and (2) on or after July 1, 2001, \$.25 of \$.25 per vehicle tire.~~ Such tax shall be paid by the purchaser of such tires and collected by the retailer thereof.

(b) The tax imposed by this section collected by the retailer shall become due and payable as follows: When the total tax for which any retailer is liable under this act does not exceed the sum of \$80 in any calendar year, the retailer shall file an annual return on or before January 25 of the following year; when the total tax liability does not exceed \$1,600 in any calendar year, the retailer shall file returns quarterly on or before the 25th day of the month following the end of each calendar quarter; when the total tax liability exceeds \$1,600 in any calendar year, the retailer shall file a return for each month on or before the 25th day of the following month. Each person collecting the tax imposed pursuant to this section shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may

be necessary to determine the amounts of taxes due and payable hereunder for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of sales of new tires shall be kept separate and apart from the records of other retail sales made by the person charged to collect the tax imposed pursuant to this section in order to facilitate the examination of books and records as provided herein.

(c) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of the person required to collect the tax imposed pursuant to this section as may be necessary to determine the accuracy of such reports required hereunder.

(d) The secretary of revenue is hereby authorized to administer and collect the tax imposed by this section and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any person liable to collect the taxes imposed hereunder refuses or neglects to pay them, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617 and amendments thereto.

(e) The secretary of revenue shall remit daily to the state treasurer all revenue collected under the provisions of this section. The state treasurer shall deposit the entire amount of each remittance in the state treasury and credit it to the waste tire management fund.

(f) Whenever, in the judgment of the secretary of revenue, it is necessary, in order to secure the collection of any taxes, penalties or interest due, or to become due, under the provisions of this act, the secretary may require any person charged with the collection of such tax to file a bond with the director of taxation under conditions established by and in such form and amount as prescribed by rules and regulations adopted by the secretary.

(g) The secretary of revenue and the secretary of health and environment shall cooperate to: (1) Ensure that retailers required to collect the tax imposed by this section collect such tax on sales of tires for all vehicles, as defined by K.S.A. 65-3424 and amendments thereto; and (2) develop and distribute to tire retailers educational materials that emphasize appropriate waste tire management practices.

Sec. 5. K.S.A. 2000 Supp. 65-3424g is hereby amended to read as follows: 65-3424g. (a) There is hereby established in the state treasury the waste tire management fund.

(b) Money from the following sources shall be credited to the waste tire management fund:

(1) Revenue collected from the excise tax by K.S.A. 65-3424d and amendments thereto;

(2) permit application and renewal fees provided for by K.S.A. 65-3424b and amendments thereto;

(3) interest provided for by subsection (e);

(4) additional sources of funding such as reimbursements and appropriations intended to be used for the purposes of the fund;

(5) any recoveries from abatement and enforcement actions provided for by K.S.A. 2000 Supp. 65-3424k and amendments thereto; and

~~(6) any interagency fund transfers relevant to providing business development grants for businesses engaged in recycling or utilizing waste tires in resource recovery programs provided for by K.S.A. 65-3424f and amendments thereto; and~~

~~(7) (6) any other moneys provided by law.~~

(c) Moneys in the waste tire management fund shall be used only for the purpose of:

~~(1) Making grants as provided by K.S.A. 65-3424f, and amendments thereto;~~

~~(2) (1) Paying compensation and other expenses of employing personnel to carry out the duties of the secretary pursuant to K.S.A. 65-3424 through 65-3424h, and amendments thereto, but not more than the following shall be used for such purpose: (A) For fiscal years beginning before July 1, 2002, 16% or \$200,000, whichever amount is less, of the moneys credited to the fund during the preceding fiscal year; and (B) for~~

~~fiscal years beginning on or after July 1, 2002, 32% or \$200,000, whichever amount is less, of the moneys credited to the fund during the preceding fiscal year \$250,000 or 36%, whichever is less, of the moneys credited to the fund during the preceding fiscal year;~~

~~(3) action by the department before July 1, 2001, to abate waste tires accumulated prior to July 1, 1990, or to abate a nuisance or risk to the public health or the environment created or which could be created by waste tires accumulated after July 1, 1990, if the owner or operator of the site has not been identified or has not abated the nuisance;~~

~~(4) action by the department before July 1, 2001, to abate waste tires accumulated by a city or county as a result of a temporary waste tire amnesty collection program, authorized by the department, to allow residents of the city or county free disposal of waste tires generated by farming and ranching activities and waste tires not generated in the ordinary course of any other business, provided that not more than one such amnesty program is conducted by the city or county after January 1999; and~~

~~(5) action by the department after July 1, 2001, to implement interim measures to minimize nuisances or risks to public health or the environment that are or could be created by waste tire accumulations, until the responsible party or county can fully abate the site~~

~~(2) action by the department before July 1, 2003, to abate waste tires accumulated prior to July 1, 1990;~~

~~(3) action by the department to implement interim measures to minimize nuisances or risks to public health or the environment that are or could be created by waste tire accumulations, until the responsible party can fully abate the site or until a state clean-up occurs pursuant to K.S.A. 65-3424k, and amendments thereto;~~

~~(4) action by the department, with the consent of the city or county, to pay for the removal and disposal or on-site stabilization of waste tires which have been illegally accumulated after July 1, 1990, or, with respect to the conditions of a permit issued by the department pursuant to K.S.A. 65-3407 or 65-3424b, and amendments thereto, illegally managed, when the responsible party is unknown or unwilling or unable to perform the necessary corrective action, provided moneys in the fund shall only be used to pay up to 75% of the costs of the required abatement action and the city or county shall pay the remaining 25% of such costs; and~~

~~(5) the costs of using contractors to provide: (A) Public education regarding proper management of waste tires; (B) technical training of persons on the requirements of solid waste laws and rules and regulations relating to waste tires; and (C) services described in subsection (i) of K.S.A. 65-3424k, and amendments thereto.~~

~~(d) All expenditures from the waste tire management fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.~~

~~(e) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the waste tire management fund interest earnings based on: (1) The average daily balance of moneys in the waste tire management fund for the preceding month; and (2) the net earnings rate for the pooled money investment portfolio for the preceding month.~~

Sec. 6. K.S.A. 2000 Supp. 65-3424k is hereby amended to read as follows: 65-3424k. (a) ~~Before July 1, 2001, the secretary may undertake appropriate abatement action and may enter into contracts, including grant contracts, for abatement of waste tire accumulations, utilizing funds from the waste tire management fund. After July 1, 2001, the secretary's actions shall be limited to contractual services to perform interim measures designed to minimize nuisances or risks to public health or the environment created by a waste tire accumulation. Before July 1, 2003, the secretary may undertake appropriate abatement action and may enter into contracts for the abatement of waste tires accumulated before July 1, 1990, utilizing funds from the waste tire management fund.~~

~~(b) Any authorized representative of the secretary may enter, at reasonable times and upon written notice, onto any property or premises where an accumulation of waste tires is located to conduct an abatement of the accumulation or to perform interim measures to minimize nui-~~

~~stances or risks:~~ (1) *An inspection and site assessment to determine whether the accumulation creates a nuisance or risk to public health or safety or to the environment created by a waste tire accumulation;* or (2) *interim measures to minimize risk to public health and safety or to the environment.*

(c) Whenever the secretary has reason to believe that an ~~owner or operator has accumulated waste tires that create~~ accumulation of waste tires creates a nuisance or risk to public health or safety or to the environment or is in violation of rules and regulations adopted by the secretary or conditions of a permit issued by the secretary, the secretary may require that ~~owner or operator to abate the accumulation~~ the person or persons responsible for the accumulation to carry out abatement activities. Such abatement activities shall be performed in accordance with a plan approved by the secretary. The secretary shall give notice, by letter, to the *property owner and operator responsible parties* that the waste tires constitute a nuisance or risk to public health or the environment, and that the waste tire accumulation must be abated within a specified period. ~~Before July 1, 2001, The secretary may undertake abatement action utilizing funds from the waste tire management fund if the owner or operator fails to take the required action within the specified time period. After July 1, 2001, the secretary's actions shall be limited to contractual services to perform interim measures designed to minimize nuisances or risks to public health or the environment created by a waste tire accumulation.~~ (1) *The waste tires were accumulated before July 1, 1990, and abated before July 1, 2003; or*

(2) *the waste tires were accumulated after July 1, 1990, and the responsible parties fail to take the required action within the time period specified in the notice. The department and its representatives are authorized to enter private property to perform abatement activities if the responsible party fails to perform required clean-up work, but no entry shall be made without the property owner's consent except upon notice and hearing in accordance with the Kansas administrative procedures act.*

(d) All costs incurred by the secretary in abatement of waste tires accumulated after July 1, 1990, or in performing interim measures, including administrative and legal expenses, are recoverable from ~~an owner or operator~~ a responsible party or parties and may be recovered in a civil action in district court brought by the secretary. ~~Abatement costs recovered under this section~~ *If any abatement costs are recovered under this section, the city or county that shared in the cost of the abatement action shall be reimbursed its costs not to exceed 25% of the amount recovered. The remaining amount recovered shall be remitted to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the waste tire management fund. An action to recover abatement or interim measures costs may be commenced at any stage of an abatement.*

~~(d)~~ (e) In performing or entering contracts for abatement actions under this section, the secretary shall give preference to actions that recycle the waste tires or burn the waste tires for energy recovery. Direct abatement expenditures may include landfilling when waste tires are contaminated or when ~~practical~~ feasible in-state markets cannot be identified.

(f) *Permits granted by the secretary pursuant to K.S.A. 65-3424b, and amendments thereto, shall not be transferable and may be revoked or suspended whenever the secretary determines that the permit holder is operating in violation of this act or rules and regulations adopted pursuant to the act; is creating or threatens to create a hazard to persons, property or the environment; or is creating or threatens to create a public nuisance. The secretary may also revoke, suspend or refuse to issue a permit when the secretary determines that past or continuing violations of the provisions of K.S.A. 65-3409, and amendments thereto, have been committed by the applicant or permit holder.*

~~(e)~~ (g) Neither the state of Kansas nor the waste tire management fund shall be liable to any owner or operator or responsible party for the loss of business, damages or taking of property associated with any abatement or enforcement action taken pursuant to this section.

(h) *The secretary shall enter into contracts with one or more associations of tire retailers to: (1) Assist in disseminating information to all tire retailers on the requirements of solid waste laws and rules and regulations relating to waste tires; (2) establish a point of contact for persons requesting information on solid waste laws and rules and regulations relating to*

waste tires; (3) assist in planning and implementing conferences, workshops, and other requested training events for persons involved in the generation, transportation, processing, or disposal of waste tires; and (4) assemble and analyze data on waste tire management by tire retailers in Kansas.

Sec. 7. K.S.A. 2000 Supp. 65-3424m is hereby amended to read as follows: 65-3424m. (a) The county official, or the official of a designated city, responsible for solid waste management in each county shall report to the secretary any known waste tire accumulation within the county not later than three months after the accumulation becomes known, if unknown before July 1, 1996.

(b) After July 1, ~~2001~~ 2003, each county shall be responsible for abatement of any waste tire accumulation within the county.

Sec. 8. K.S.A. 2000 Supp. 65-3426 is hereby amended to read as follows: 65-3426. (a) There is hereby established within the department of health and environment the solid waste grants advisory committee, which shall be composed of seven members as follows:

(1) Six members appointed by the governor, two of whom shall represent the interests of regional solid waste management entities, two of whom shall represent the interests of counties, one of whom shall represent the interests of cities and one of whom shall represent the interests of the private sector;

(2) the secretary of health and environment or the secretary's designee.

(b) Appointive members of the solid waste grants advisory committee shall serve terms of two years. The secretary of health and environment or the person designated by the secretary shall serve as chairperson of the advisory committee.

(c) Members of the solid waste grants advisory committee shall receive amounts provided by subsection (e) of K.S.A. 75-3223 and amendments thereto for each day of actual attendance at any meeting of the advisory committee or any subcommittee meeting authorized by the advisory committee.

(d) The secretary of health and environment shall provide technical support related to the activities of the solid waste grants advisory committee, including but not limited to establishing project selection criteria, performing technology evaluations, assessing technical feasibility and determining consistency with the statewide solid waste management plan, the applicable county or regional solid waste management plan and regional activities.

(e) In accordance with schedules established by the secretary of health and environment, the solid waste grants advisory committee shall meet to review competitive grant applications submitted pursuant to subsection ~~(e)~~ (b) of K.S.A. 65-3415, and amendments thereto. The advisory committee shall establish a project priority list for each fiscal year based upon the availability of funds as estimated by the secretary and shall make recommendations regarding the selection of grantees and the disbursement of moneys.

Sec. 9. K.S.A. 2000 Supp. 65-3424, 65-3424a, 65-3424b, 65-3424d, 65-3424f, 65-3424g, 65-3424k, 65-3424m and 65-3426 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.