

SENATE BILL No. 489

AN ACT concerning fertilizers; relating to civil actions and civil penalties; owners of anhydrous ammonia, immunity from liability; civil penalty for certain persons or custom blenders of fertilizer; mobile containers; amending K.S.A. 2-1201b and repealing the existing section.

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

New Section 1. As used in this act:

- (a) (1) "Owner" means:
  - (A) Any person who lawfully owns anhydrous ammonia;
  - (B) any person who lawfully owns a container, equipment or storage facility containing anhydrous ammonia;
  - (C) any person responsible for the installation or operation of such containers, equipment or storage facilities;
  - (D) any person lawfully selling anhydrous ammonia;
  - (E) any person lawfully purchasing anhydrous ammonia for agricultural purposes; or
  - (F) any person who operates or uses anhydrous ammonia containers, equipment or storage facilities when lawfully applying anhydrous ammonia for agricultural purposes.
- (2) "Tamperer" means a person who commits or assists in the commission of tampering.
- (3) "Tampering" means illegally transferring or attempting to transfer anhydrous ammonia from its present container, equipment or storage facility to another container, equipment or storage facility.
- (b) A tamperer assumes the risk of any personal injury, death and other economic and noneconomic loss to such tamperer arising from such tamperer's participation in the act of tampering. Owners are immune from suit by a tamperer based on the tamperer's actions.
- (c) Owners shall not be held liable or subject to a law suit for any negligent act or omission which may cause personal injury, death or other economic or noneconomic loss to any third party based on the tamperer's actions. The provisions of this subsection shall expire on July 1, 2006.
- (d) The immunity from liability and suit authorized by this section is expressly waived for owners whose acts or omissions constitute willful, wanton, reckless or intentional conduct.

Sec. 2. K.S.A. 2-1201b is hereby amended to read as follows: 2-1201b. (a) It shall be deemed a violation of ~~this act~~ K.S.A. 2-1201 and 2-1201a, and amendments thereto, for any person to: (1) Sell or distribute in this state any custom blended fertilizer ~~who~~ *when such person* does not hold a valid license as required by this act; or ~~to~~ (2) fail to comply with the requirements of K.S.A. 2-1201a ~~hereof, and amendments thereto,~~ and, *except as otherwise provided,* the provisions of K.S.A. 2-1208, ~~except subsection (1)(a), and amendments thereto.~~ *Failure to comply with the provisions of subsection (1)(a) of K.S.A. 2-1208, and amendments thereto, shall not be deemed a violation of this section.* The penalties as provided ~~therein~~ in K.S.A. 2-1208, and amendments thereto shall apply to persons as described in this section who fail to comply with the provisions of K.S.A. 2-1208, and amendments thereto.

(b) *On and after July 1, 2003, any person or custom blender who violates any provision of article 12 of chapter 2 of Kansas Statutes Annotated, and amendments thereto or the rules and regulations adopted pursuant thereto, may incur a civil penalty in an amount not more than \$5,000 per violation. In the case of a continuing violation, every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The secretary shall remit any civil penalty collected pursuant to this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.*

New Sec. 3. If the secretary of agriculture does not adopt a revised regulation related to storage of liquid fertilizer in mobile containers prior to February 1, 2003, then the requirements provided in K.A.R. 4-4-900 *et seq.* shall be applicable to each mobile container or combination of mobile containers which has a combined capacity of 2,000 gallons or more which is used to store liquid fertilizer for more than 60 consecutive days.

Sec. 4. K.S.A. 2-1201b is hereby repealed.

Sec. 5. 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 SENATE, and passed that body

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SENATE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE

as amended \_\_\_\_\_

HOUSE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*