

HOUSE BILL No. 2121

AN ACT concerning agriculture; relating to application of swine waste; pesticide and fertilizer programs; fees; milk and dairy products; fees and labeling requirements; amending K.S.A. 2-2203, 2-2205, 2-2206, 2-2207, 2-2209, 2-2214, 2-2440a, 2-2440c, 2-2440e, 2-2446, 2-2449, 2-2450, 2-2454, 2-2455, 2-2470 and 2-2471 and K.S.A. 2008 Supp. 2-1205, 2-2202, 2-2204, 2-2438a, 2-2440, 2-2440b, 2-2441a, 2-2443a, 2-2445a, 2-2469, 2-2905, 2-2906, 2-3304, 2-3306, 2-3309, 2-3318, 65-778, 65-781 and 65-1,182 and repealing the existing sections; also repealing K.S.A. 2-1211 and 2-2466.

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

Section 1. K.S.A. 2008 Supp. 2-1205 is hereby amended to read as follows: 2-1205. An inspection fee shall be collected upon all commercial fertilizers sold, offered or exposed for sale, or distributed in Kansas, which shall be at a rate per ton of 2,000 pounds fixed by rules and regulations adopted by the secretary of agriculture, except that such rate shall not exceed \$1.67 per ton of 2,000 pounds. The secretary of agriculture may adopt rules and regulations establishing the inspection fee rate under this section. Each person registering any commercial fertilizer shall pay the inspection fee on such commercial fertilizer sold, offered or exposed for sale, or distributed in Kansas. Each such person shall keep adequate records showing the tonnage of each commercial fertilizer shipped to or sold, offered or exposed for sale, or distributed in Kansas. The secretary, and duly authorized representatives of the secretary, shall have authority to examine such records and other pertinent records necessary to verify the statement of tonnage.

Each person registering any commercial fertilizer shall file an affidavit semiannually, with the secretary, within 30 days after each January 1 and each July 1, showing the tonnage of commercial fertilizer sold or distributed in Kansas for the preceding six-month period. Each such person shall pay to the secretary the inspection fee due for such six-month period, except that the registrant shall not be required to pay the inspection fee or report the tonnage of commercial fertilizers or fertilizer materials sold and shipped directly to fertilizer manufacturers or mixers. The fertilizer manufacturers or mixers shall keep adequate records of the commercial fertilizers sold or distributed in this state, and report to the secretary the tonnage and pay the inspection fee due. If the affidavit is not filed and the inspection fee is not paid within the 30-day period, or if the report of tonnage is false, the secretary may revoke the registrations filed by such person. If the affidavit is not filed and the inspection fee is not paid within the 30-day period, or any extension thereof granted by the secretary, ~~a penalty of \$5 per day, or commencing on July 1, 2002, and ending on June 30, 2010;~~ a penalty of \$10 per day shall be assessed against the registrant, *except that on and after July 1, 2015, a penalty of \$5 per day shall be assessed against the registrant*, and the inspection fee and penalty shall constitute a debt and become the basis for a judgment against such person. The secretary may grant a reasonable extension of time.

The secretary of agriculture is hereby authorized and empowered to reduce the inspection fee by adopting rules and regulations under this section whenever the secretary determines that the inspection fee is yielding more than is necessary for the purpose of administering the provisions of this act as listed below and the plant pest act. The secretary is hereby authorized and empowered to increase the inspection fee by adopting rules and regulations under this section when it finds that such is necessary to produce sufficient revenues for the purposes of administering the provisions of this act, except that the inspection fee shall not be increased in excess of the maximum fee prescribed by this section. The secretary shall remit all moneys received by or for the secretary under article 12 of chapter 2 of Kansas Statutes Annotated, and amendments thereto, 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 and shall credit such remittance as follows: (1) An amount equal to \$1.40 per ton shall be credited to the state water plan fund created by K.S.A. 82a-951, and amendments thereto; (2) an amount equal to \$.04 per ton shall be credited to the fertilizer research fund; *and* (3) ~~commencing July 1, 2002, and ending on June 30, 2010, an amount equal to \$.05 per ton shall be credited to the fertilizer and pesticide compliance and administration fund,~~ and (4) the remainder shall be credited to the fertilizer fee fund. All expenditures from the fertilizer fee fund shall be made in accordance with appropriation acts upon warrants of the director of ac-

counts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

Sec. 2. K.S.A. 2008 Supp. 2-2202 is hereby amended to read as follows: 2-2202. For the purpose of this act: (a) The terms “agricultural chemical” and ~~“economic poison”~~ “*pesticide*” shall be construed as synonymous terms, *shall apply to substances used for both agricultural and non-agricultural uses* and shall mean and include any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling, or mitigating any insects, rodents, predatory animals, fungi, weeds, nematodes and other forms of plant or animal life or viruses, which the secretary shall declare to be a pest, and any substance labeled, designed or intended for use as a defoliant, and any substance or mixture of substances, labeled, designed or intended for use as a plant regulator, or desiccant. Viruses on or in living man or other animals are specifically excepted and excluded from this definition. Drugs recognized by the United States pharmacopoeia or the national formulary, the label of which bears the descriptive abbreviations for these compendia, U.S.P. or N.F. as the case may be, are specifically excepted and excluded from this definition.

(b) The term “insecticide” means and includes any substance or mixture of substances, labeled, designed or intended for use in preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(c) The term “fungicide” means and includes any substance or mixture of substances, labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any fungi.

(d) The term “rodenticide” means and includes any substance or mixture of substances, labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals which the secretary shall declare to be a pest.

(e) The term “herbicide” means and includes any substance or mixture of substances, labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any weed.

(f) The term “nematocide” means any substance or mixture of substances, labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any nematodes.

(g) The term “defoliant” means and includes any substance or mixture of substances, labeled, designed, or intended for use for defoliating plants, preparatory to harvest for purpose of obtaining early or controlled maturity.

(h) The term “plant regulator” means any substance or mixture of substances, labeled, designed, or intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(i) The term “desiccant” means any substance or mixture of substances labeled, designed, or intended for artificially accelerating the drying of plant tissues.

(j) The term “insect” means a small invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(k) The term “fungi” means and includes any nonchlorophyll-bearing thallophytes (any nonchlorophyll-bearing plants of a lower order than mosses and liverworts) and includes rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(l) The term “weed” means and includes any plant which grows where not wanted.

(m) The term “nematode” means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(n) The term “fumigant” means any substance or mixture of substances which emits or liberates a gas or gases, which are used in controlling, destroying, or mitigating insects or rodents and which are usually dangerous to man and other animals.

(o) The term “ingredient statement” means a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the agricultural chemical. If the agricultural chemical contains arsenic in any form, the statement shall include the percentages of total and water soluble arsenic, each calculated as elemental arsenic. If the agricultural chemical is not highly toxic to man, and if the agricultural chemical does not contain arsenic in any form, and if the agricultural chemical is not a fumigant, and if a statement of the total percentage of each active ingredient is filed with the secretary, then the term “ingredient statement” shall be construed to mean a statement of the name of each active ingredient listed in the order of greatest percentage of each present in the product, together with the name and total percentage of the inert ingredients, if any there be in the agricultural chemical.

(p) The term “active ingredient” means (1) in the case of any agricultural chemical other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds or other pests;

(2) in the case of a plant regulator an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(q) The term “inert ingredient” means an ingredient which is not an active ingredient.

(r) The term “antidote” means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(s) The term “person” means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(t) The term “secretary” means the secretary of agriculture.

(u) The term “registrant” means the person registering any agricultural chemical pursuant to the provisions of this act.

(v) The term “label” means the written, printed, or graphic matter on, or attached to, the agricultural chemical or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be.

(w) The term “labeling” means all labels and other written, printed or graphic matter:

(1) Upon the agricultural chemical or any of its containers or wrappers;

(2) accompanying the agricultural chemical at any time;

(3) to which reference is made on the label or in literature accompanying the agricultural chemical, except when accurate, nonmisleading reference is made to current official publications of the United States ~~department~~ *departments* of agriculture or, interior, ~~the United States public health service, health and human services, environmental protection agency and state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of agricultural chemicals and federal experimental stations and extension services.~~

(x) The term “adulterated” shall apply to any agricultural chemical:

(1) The strength or purity of which falls below the professed standard or quality as expressed on labeling or under which it is sold;

(2) if any substance has been substituted wholly or in part for the article;

(3) if any valuable constituent of the article has been wholly or in part abstracted.

(y) The term “misbranded” shall apply:

(1) To any agricultural chemical if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;

(2) to any agricultural chemical:

(a) Which is an imitation of or is offered for sale under the name of another agricultural chemical;

(b) the labeling of which bears any reference to registration under this act;

(c) the labeling accompanying which does not contain instructions for use which are necessary for effective results; and which, if complied with, are adequate for the protection of the public *and the environment*;

(d) if the label of which does not contain a warning or caution statement which, if complied with, is adequate to prevent injury to living man and other vertebrate animals *or does not bear a hazard or cautionary statement sufficient to prevent harm to the environment, especially the waters of the state*;

(e) the label of which does not bear an ingredient statement on the immediate container;

(f) the label of which does not bear an ingredient statement on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read;

(g) upon which there appears any word, statement, or other information required by or under the authority of this act to appear on the labeling, which is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; *and*

(h) *the label of which does not bear an EPA registration number, unless exempted from the requirement under the provisions of FIFRA.*

(3) To any insecticide, fungicide, nematocide, or herbicide which when used as directed, or when used in accordance with commonly recognized practices:

(a) Shall be injurious to living man or other vertebrate animals, to which it is applied, or to the person applying such agricultural chemical;

(b) shall be injurious *to the environment or to vegetation*, other than weeds, to which it is applied, or to the person applying such agricultural chemical. Physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(z) *The term “emergency exemption” shall mean an authorization to use a pesticide product, under emergency conditions, in a manner other than as stated on the product label as registered under section 3 of FIFRA which must be obtained by the secretary.*

(aa) *The term “restricted use” shall mean and include any pesticide, the use of which is either registered as restricted-use by the secretary or labeled as restricted-use by a federal agency responsible for making the classification or designation.*

(bb) *The term “special local need registration” shall mean a registration under section 24 of FIFRA authorized by the administrator of the EPA when certain conditions are met that indicate that there is a specific and special need within the state.*

(cc) *The term “suspended pesticide” shall mean any product whose registration is suspended under the provisions of this act or of FIFRA which would immediately stop the distribution or use, or both, of the product.*

(dd) *The term “distribute” shall mean to sell, offer for sale, hold for sale, hold for shipment, ship, deliver for shipment or release for shipment. The term does not include the holding or application of pesticides or the dilution of pesticide products by commercial pesticide applicators for the control of pests without delivering any unapplied pesticide to any customer of such applicators.*

(ee) *“EPA” shall mean the United States environmental protection agency.*

(ff) *“FIFRA” shall mean the federal insecticide, fungicide and rodenticide act (7 U.S.C. 136 et seq. (1996)) and regulations adopted pursuant thereto.*

Sec. 3. K.S.A. 2-2203 is hereby amended to read as follows: 2-2203.

(a) It shall be unlawful for any person to distribute, sell, or offer for sale

within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following: (1) Any agricultural chemical which has not been registered pursuant to the provisions of K.S.A. 2-2204, *and amendments thereto*; (2) any agricultural chemical, if any of the claims made for it, or if any of the directions for its use, differ in substance from the representations made in connection with its registration; (3) any agricultural chemical if the composition thereof differs from its composition as represented in connection with its registration, unless within the discretion of the secretary, or an authorized representative of the secretary, a change in the labeling or formula of an agricultural chemical within a registration period, has been authorized, without requiring a reregistration of the product. (4) Any agricultural chemical, unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing the following: (a) The name and address of the manufacturer, registrant, or person for whom manufactured; (b) the name, brand, or trademark of said article and (c) the minimum net weight or measure of the contents: ~~Provided, That~~ *except that* herbicides shall be labeled to state the net weight of contents. (5) Any agricultural chemical which contains any substance or substances in quantities highly toxic to man, determined as provided in K.S.A. 2-2205, *and amendments thereto*, unless the label shall bear, in addition to any other matter required by this act: (a) The skull and crossbones; (b) the word "poison" prominently, in red, on a background of distinctly contrasting color; and (c) a statement of an antidote for the ~~economic poison pesticide~~. (6) ~~Any standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate and barium fluosilicate unless such agricultural chemicals have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder agricultural chemical which the secretary, or authorized representatives, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored. Provided, That the secretary, or an authorized representative of the secretary, may exempt any agricultural chemical to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he or she determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health or safety.~~ (7) Any agricultural chemical which is adulterated or misbranded.

(b) It shall be unlawful: (1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act, or by regulations promulgated hereunder, or to add any substance to, or take any substance from, an agricultural chemical in any manner which may defeat the purposes of this act. (2) For any person to use for his or her own advantage or to reveal, other than to the secretary or an authorized representative of the secretary, or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of K.S.A. 2-2204, *and amendments thereto*.

Sec. 4. K.S.A. 2008 Supp. 2-2204 is hereby amended to read as follows: 2-2204. (a) Every agricultural chemical which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered ~~in the office of~~ *by* the secretary. ~~The secretary shall have the authority to classify or designate as restricted-use any pesticide registered for sale, use or distribution in the state of Kansas, according to rules and regulations promulgated by the secretary.~~ The secretary may adopt rules and regulations to allow products to be registered for a period not to exceed three years. All registration of products shall expire on December 31 of the year the regis-

tration is set to expire, unless such registration shall be renewed, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated. Products which have the same formula, and are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same agricultural chemical may be registered as a single product and additional names and labels shall be added by supplement statements during the current period of registration. Within the discretion of the secretary, or an authorized representative of the secretary, a change in the labeling or formulas of an agricultural chemical may be made within the current period of registration without requiring a reregistration of the product. Any agricultural chemical imported into this state which is subject to the provisions of any federal act providing for the registration and which has been duly registered under the provisions of such federal act, in the discretion of the secretary, may be exempted from registration under this act when such agricultural chemical is sold or distributed in the unbroken immediate container in which such agricultural chemical was originally shipped.

(b) The registrant shall file with the secretary, a statement including: (1) The name and address of the registrant and the name and address of the person whose name will appear on the label if other than the registrant; (2) the name of the agricultural chemical; (3) a complete copy of the labeling accompanying the agricultural chemical and a statement of all claims made and to be made for it and a statement of directions for use; and (4) if requested by the secretary, or an authorized representative of the secretary, a full description of the tests made and the results thereof upon which the claims are based. ~~In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the product was registered or last reregistered.~~

(c) *The secretary may require the registrant to submit a copy of the product label registered by the EPA under the provisions of FIFRA.*

(d) *Any time the registrant modifies the label, the modified label shall be submitted to the secretary for review and approval prior to implementing the new label in Kansas.*

~~(e)~~ (e) On the date of registration, the registrant shall pay a fee fixed by rules and regulations adopted by the secretary of agriculture. Such fee shall equal an amount per registered agricultural chemical, not to exceed \$150, ~~multiplied by the number of years registered per year.~~ Such fee shall be deposited in the state treasury and credited as follows: (1) An amount equal to \$100 for each year of registration shall be credited to the state water plan fund created by K.S.A. 82a-951, and amendments thereto; and (2) the remainder shall be credited to the agricultural chemical fee fund to be used for carrying out the provisions of this act. The annual fee for each agricultural chemical registered which is in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. The secretary of agriculture is hereby authorized and empowered, whenever it determines that the fee imposed by this subsection and paid into the state treasury as provided by law is yielding more revenue than is required for the purposes to which such fee is devoted by law, to reduce the fee imposed by this subsection for such period as the secretary shall deem justified by adopting rules and regulations under this subsection but not for less than one year. In the event that the secretary, after reducing such fee, finds that sufficient revenues are not being produced by such reduced fee, the secretary is authorized and empowered by adopting rules and regulations under this subsection, to restore in full or in part such fee to an amount which, in the judgment of the secretary, will produce sufficient revenues for the purposes as provided in this section, but not exceeding the maximum amount of the fee imposed by this subsection.

~~(d)~~ (f) The secretary, or an authorized representative of the secretary, whenever it is deemed essential in the administration of this act, may require the submission of the complete formula ~~of or any other data in support of the registration for any agricultural chemical pesticide.~~ *The complete formula and any other trade secrets submitted to support the registration application shall be considered as confidential.* If it appears to the secretary, or an authorized representative of the secretary, that the

composition of the product is such as to warrant the proposed claims for the product and if the product and its labeling and other material required to be submitted comply with the requirements of this act, the secretary shall register the product.

~~(e)~~ (g) If it does not appear to the secretary, or an authorized representative of the secretary, that the product is such as to warrant the proposed claims for it or if the product and its labeling and other material required to be submitted do not comply with the provisions of this act, the secretary shall notify the registrant of the manner in which the product, labeling, or other material required to be submitted fail to comply with the act *and rules and regulations adopted pursuant thereto* so as to afford the registrant an opportunity to make the necessary corrections. *If, upon receipt of such notice, the registrant does not make the required changes within 30 days, the secretary may deny registration of the product. In addition, the secretary may deny registration of a product if the application for registration fails to comply with this act or any rule or regulation adopted pursuant thereto. If the secretary denies a registration, the registrant may request a hearing in accordance with the provisions of the Kansas administrative procedure act.*

(h) *Any pesticide registration canceled or suspended under the provisions of FIFRA shall be considered to be canceled or suspended under provisions of the agricultural chemical act of 1947, unless such cancellation is due to the nonpayment of registration fees required under FIFRA.*

(i) *If the secretary determines that a registered product fails to meet the claims made on its label, the secretary may suspend or revoke the product registration after a hearing in accordance with the provisions of the Kansas administrative procedure act. In addition, if the secretary determines that a registered product or its labeling fails to comply with this act, or a rule or regulation adopted pursuant to this act, the secretary may suspend or revoke the product registration after a hearing in accordance with the provisions of the Kansas administrative procedure act.*

~~(f)~~ (j) In order to protect the public, the secretary, or a duly authorized representative of the secretary, on the secretary's own motion, may at any time, after written notice to the registrant, ~~cancel~~ *suspend or revoke* the registration of an agricultural chemical. Any person so notified shall be given an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act with regard to the secretary's contemplated action, before any registration is ~~canceled~~ *suspended* or revoked.

~~(g)~~ (k) Notwithstanding any other provisions of this act, registration is not required in the case of an agricultural chemical shipped from one plant within this state to another plant within this state operated by the same person.

(l) *Any information required to be filed pursuant to this section, may be filed electronically pursuant to rules and regulations promulgated by the secretary.*

Sec. 5. K.S.A. 2-2205 is hereby amended to read as follows: 2-2205.

(a) The secretary is authorized, after opportunity for a hearing (1) to declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances; (2) to determine whether agricultural chemicals are highly toxic to man; (3) to determine standards of coloring or discoloring for agricultural chemicals; and (4) to subject agricultural chemicals to the requirements of K.S.A. 2-2203 (a)(6), *and amendments thereto.*

(b) The secretary is authorized, after due public hearing, to make appropriate rules and regulations for carrying out the provisions of this act, including rules and regulations providing for the collection and examination of samples of agricultural chemicals.

(c) In order to avoid confusion endangering the public health and safety resulting from diverse requirements, particularly as to the labeling and coloring of agricultural chemicals and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such products, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such products. To this end the secretary is authorized, after due public hearing, to adopt regulations, applicable to and in conformity with the primary standards established by

this act; or as have or may be prescribed by the ~~United States department of agriculture~~ EPA with respect to agricultural chemicals or ~~economic poisons~~ pesticides.

Sec. 6. K.S.A. 2-2206 is hereby amended to read as follows: 2-2206.

(a) The examination of agricultural chemicals shall be made under the direction of the secretary, or an authorized representative of the secretary, for the purpose of determining whether they comply with the requirements of this act. If it appears from such examination that an agricultural chemical fails to comply with the provisions of this act and the secretary, or an authorized representative of the secretary, contemplates instituting criminal proceedings against any person, the secretary or the authorized representative of the secretary shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present such person's views, either orally or in writing, with regard to such contemplated proceedings. If thereafter in the opinion of the secretary, or an authorized representative of the secretary, it appears that the provisions of the act have been violated by such person, then the secretary or an authorized representative of the secretary may refer the facts to the county attorney or district attorney for the county in which the violation occurred with a copy of the results of the analysis or the examination of such article. Nothing in this act shall be construed as requiring the secretary or the authorized representative of the secretary to report for prosecution or for the institution of libel proceedings any minor violations of the act whenever the secretary or the authorized representative of the secretary believes that the public interests will be best served by a suitable notice of warning in writing.

(b) It shall be the duty of each county attorney or district attorney to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(c) The secretary, or an authorized representative of the secretary, is authorized to give notice of all judgments entered in actions instituted under the authority of this act by publication in such manner as the secretary may prescribe.

(d) The secretary or a duly authorized representative of the secretary, acting as the enforcing officer, may issue and enforce a written or printed stop sale, *use or removal* order to the owner or custodian of any quantity of an agricultural chemical which the secretary or duly authorized representative determines is adulterated or misbranded, is not registered as required under K.S.A. 2-2204 and amendments thereto, fails to bear on its label the required information ~~or is a white powder agricultural chemical which is not colored in violation of the provisions of the statutes contained in article 22 of chapter 2 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto, or any rules and regulations adopted thereunder~~, *has an altered or defaced label or the pesticide product has pesticide or pesticide residue on the container or packaging*. The stop sale, *use or removal* order shall prohibit further sale and movement of such agricultural chemical, except on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale, *use or removal* order. Any stop sale, *use or removal* order issued pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the statutes contained in article 22 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

(e) *The representative of the secretary may issue a stop sale, use or removal order for any pesticide product held for distribution to any pesticide dealer who has failed to register as a pesticide dealer under the requirements of K.S.A. 2-2469, and amendments thereto.*

(f) *During reasonable business hours, the secretary or secretary's representative shall have the authority to enter any locations where pesticides, pest control devices or pest control systems are being held for sale and distribution in order to conduct inspections, obtain samples and other evidence, obtain copies of records and otherwise document compliance with the provisions of this act.*

Sec. 7. K.S.A. 2-2207 is hereby amended to read as follows: 2-2207.
(a) The secretary may issue a permit for an experimental use pesticide in lieu of registration, as prescribed by rules and regulations adopted by the secretary.

~~(A)~~ *(b) The penalties provided for violations of subsection (a) of K.S.A. 2-2203 and amendments thereto shall not apply to: (1) Any carrier while engaged in transporting an agricultural chemical within this state, if such carrier, upon request, permits the secretary or the secretary's designated representative or agent to copy all records showing the transactions in and movement of the products; (2) public officials of this state and the federal government engaged in the performance of their official duties; (3) the manufacturer or shipper of an agricultural chemical for experimental use only ~~(a)~~ (A) by or under the supervision of any agency of this state or of the federal government authorized by law to conduct research in the field of agricultural chemicals, or ~~(b)~~ (B) by others if the agricultural chemical is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only not to be sold," together with the manufacturer's name and address. If a written permit has been obtained from the secretary, or an authorized representative of the secretary, an agricultural chemical may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.*

~~(B)~~ *(c) No article shall be deemed in violation of this act when consigned for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported all of the provisions of this act shall apply.*

~~(C)~~ *(d) This act shall not limit or abridge in any manner the right of any pharmacist licensed in the state of Kansas to sell chemicals and drugs in broken packages in compliance with the Kansas pharmacy laws.*

(e) Any pesticide product that is permitted for distribution and use under the provisions of an emergency exemption shall be exempt from the requirements for registration of the label allowing for use in an emergency.

(f) Any pesticide product label for which the secretary seeks registration under the provisions for special local need (SLN) registration shall be exempt from the registration fee for the remainder of the first year the SLN is in place. A registration fee in an amount fixed by the secretary shall be required for renewal of the SLN registration.

Sec. 8. K.S.A. 2-2209 is hereby amended to read as follows: 2-2209.

(a) Any agricultural chemical that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any court of competent jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation if it: (1) Is adulterated or misbranded; (2) has not been registered under the provisions of K.S.A. 2-2204, and amendments thereto; or (3) fails to bear on its label the information required by the agricultural chemical act of 1947; ~~or (4) is a white powder agricultural chemical and is not colored as required under the agricultural chemical act of 1947.~~

(b) If the article is condemned, after entry of decree, it shall be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the state treasurer. The article shall not be sold contrary to the provisions of the agricultural chemical act of 1947. Upon payment of costs and upon the execution and delivery to the clerk of such court, of a good and sufficient bond to be approved by the judge, conditioned that the article shall not be disposed of unlawfully, the court may direct that such article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(c) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

Sec. 9. K.S.A. 2-2214 is hereby amended to read as follows: 2-2214.

(a) Jurisdiction in all matters pertaining to the distribution, sale and transportation of agricultural chemicals is by this act vested exclusively in the secretary, and an authorized representative of the secretary, except as otherwise specifically provided in this act.

(b) The secretary shall have the authority to apply for a permit for pesticide use in emergency situations as provided for under the provisions

of section 18 of FIFRA and to apply for special local need registrations under the provisions of subsection (c) of section 24 of FIFRA.

Sec. 10. K.S.A. 2008 Supp. 2-2438a is hereby amended to read as follows: 2-2438a. As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) “Animal” means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

(b) “Department” means the Kansas department of agriculture of the state of Kansas.

(c) “Certified applicator” means any individual who is certified under this act to use or supervise the use of any restricted use pesticide which is classified for restricted use by a certified applicator.

(1) “Certified commercial applicator” means a certified applicator, whether or not a private applicator with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided in paragraph (2) of this subsection (c).

(2) “Certified private applicator” means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of: ~~(A) producing any agricultural commodity, (A) on property owned or rented by such person or such person’s employer or;~~ ~~(ii) (B) if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person; or (B) controlling ornamental shrubbery or turf pests on property which is owned or rented by such person and which is used as such person’s residence.~~

(d) “Defoliant” means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

(e) “Desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(f) “Equipment” means any ground, water or aerial apparatus, used to apply any pesticide but shall not include any pressurized hand size household apparatus used to apply any pesticide or any equipment, apparatus or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(g) “Fungus” means any nonchlorophyll-bearing thallophyte, including, but not limited to, rust, smut, mildew, mold, yeast and bacteria, except those on or in man or other animals and those on or in processed food, beverages or pharmaceuticals.

(h) “General use pesticide” shall mean and include all pesticides which have not been designated, by rule or regulation of the secretary, as being restricted use pesticides.

(i) “Insect” means any small invertebrate animal having the body segmented, belonging to the class insecta and other classes of arthropods, including, but not limited to, beetles, bugs, bees, flies, spiders, mites, ticks and centipedes.

(j) “Registered pest control technician” means an uncertified commercial applicator who applies pesticides for wood destroying pest control, for structural pest control, for ornamental pest control, ~~or~~ for turf pest control, *for interior landscape pest control* or for any combination of these types of pest control, and who has received verifiable training.

(k) “Nematode” means any unsegmented roundworms of the class nematoda, with elongated, fusiform, or saclike bodies covered with cuticle, inhabiting soil, water, plants or plant parts. Such roundworms may also be referred to as nemas or eelworms.

(l) “Person” means any individual, partnership, association of persons, corporation or governmental agency.

(m) “Pest” means, but is not limited to, any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in man or other animals, or which the secretary may declare to be a pest.

(n) “Pesticide” means, but is not limited to, (1) any substance or mixture of substances used to prevent, destroy, control, repel, attract or mit-

igate any pest and (2) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant.

(o) “Pesticide business” means any individual, partnership, association of persons or corporation which applies pesticides to the property of another for compensation.

(p) “Pesticide business licensee” shall mean an individual, business, association of persons or corporation who is licensed or would be required to be licensed under the provisions of K.S.A. 2-2440, and amendments thereto.

(q) “Pesticide dealer” means any person who sells a pesticide to another person for application.

(r) “Plant regulator” means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants but shall not include substances insofar as they are used as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments. The term “plant regulator” shall not include any such nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants, and not for pest destruction if such mixtures or soil amendments, in the undiluted packaged concentration are nontoxic and nonpoisonous.

(s) “Restricted use pesticide” shall mean and include all pesticide uses designated as such by rules and regulations of the secretary ~~or the board~~.

(t) “Secretary” means the secretary of agriculture.

(u) “Under the supervision of” means, unless otherwise provided by the labeling of the pesticide product, acting under the instructions and control of another person who is available if and when needed, even though such other person is not physically present at the time and place the act is done.

(v) “Weed” means any plant or part thereof which grows where not wanted.

(w) “Use of any pesticide in a manner inconsistent with its label or labeling” means to use any pesticide in a manner not permitted by the label or labeling.

(x) “Pest control” means the destruction, prevention, repulsion or mitigation of a population, infection or infestation of a pest.

(y) “Pesticide management area” means a site or area designated by the secretary pursuant to K.S.A. 2-2472, and amendments thereto, within which a pesticide management plan is deemed necessary for the protection of the public health, safety, welfare or natural resources of the state.

(z) “Natural resources” means and includes soils, water and any form of terrestrial or aquatic or animal life.

(aa) “Pesticide rinsate” means the water contaminated with pesticides from the cleaning of the inside of pesticide containers or pesticide tanks.

Sec. 11. K.S.A. 2008 Supp. 2-2440 is hereby amended to read as follows: 2-2440. (a) Subject to the provisions of subsection (d), it is unlawful for any pesticide business which has not been issued a pesticide business license to:

(1) Advertise, offer for sale, sell or perform any service for the control of a pest on the property of another or apply a pesticide to the property of another within this state; or

(2) perform any service for the control of a pest or apply any pesticide on or at the premises of another person under any commission, division of receipts or subcontracting arrangement with a licensed pesticide business.

Nothing in this subsection shall be construed to require the licensing of any person applying restricted use pesticides to the property of another as a certified private applicator or under the supervision of a certified private applicator.

(b) Application for a pesticide business license or renewal shall be made ~~in writing to the secretary~~ on a designated form obtained from the ~~secretary's office~~ secretary and shall be accompanied by an application fee per category in which the licensee applies, and an additional fee for each uncertified individual employed by the applicant to apply pesticides. The application fee per category shall be ~~\$112, or commencing July 1,~~

~~2002, and ending June 30, 2010, the application fee per category shall be \$140 per category in which the licensee applies, except that on and after July 1, 2015, the application fee per category shall be \$112 per category in which the licensee applies. An additional fee of \$10, or commencing July 1, 2002, and ending June 30, 2010, an additional fee of \$15 shall be paid for each uncertified individual employed by the applicant to apply pesticides, except that on and after July 1, 2015, an additional fee of \$10 shall be paid for each uncertified individual employed by the applicant to apply pesticides.~~ The application fee per category and the additional fee for each uncertified employee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee under this subsection. Any uncertified individual employed for a period of more than 10 days in a 30-day period or for five consecutive days by a licensee to apply pesticides subsequent to such application shall be reported to the secretary within 30 days of such employee's hiring and the fee shall be paid at that time. Each application shall also include the following:

- (1) The business name of the person applying for such license or renewal;
- (2) if the applicant is an individual, receiver, trustee, representative, agent, firm, partnership, association, corporation or other organized group of persons, whether or not incorporated, the full name of each owner of the firm or partnership or the names of the officers of the association, corporation or group;
- (3) the principal business address of the applicant in the state and elsewhere; and
- (4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(c) The secretary may issue a pesticide business license to apply pesticides in categories for which an applicant has applied if the applicant files the bond, insurance, letter of credit or proof of an escrow account as required under K.S.A. 2-2448, and amendments thereto, satisfies the requirements of subsection (b), and pays the required fees. Such license shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(d) The following persons shall be exempted from the licensing requirements of this act:

- (1) State or federal personnel using pesticides or pest control services while engaged in pesticide use research;
- (2) veterinarians or physicians using pesticides as a part of their professional services; and
- (3) any person or such person's employee who applies pesticides on or at premises owned, leased or operated by such person.

(e) Subject to the provisions of subsection (d), it is unlawful for any governmental agency which has not been issued a government agency registration to apply pesticides within this state. Application for government agency registration shall be made ~~in writing to the secretary~~ on a designated form obtained from the ~~secretary's office~~ secretary and shall be accompanied by a fee fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed ~~\$35, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$50, except that on and after July 1, 2015, such fee shall not exceed \$35.~~ The governmental agency registration fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. No fee shall be required of any township located within a county which has previously applied for and received government agency registration. Each application for registration shall contain information including, but not limited to:

- (1) The name of the government agency;
- (2) the mailing address of the applicant;
- (3) the name and mailing address of the person who heads such agency and who is authorized to receive correspondence and legal papers. Such person shall be: (A) The mayor or city manager for municipalities; (B) the chairperson of the board of county commissioners for counties;

(C) the township trustee for townships; or (D) any person designated by any other governmental agency; and

(4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(f) If the secretary finds the application to be sufficient, the secretary shall issue a government agency registration. The government agency is not required to furnish a surety bond under this act. Such government agency registration shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a registration is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(g) A pesticide business license or government agency registration may be renewed by meeting the same requirements as for a new license or registration. Neither the pesticide business license nor the government agency registration shall be transferable, except that, in the event of the disability, incapacity or death of the owner, manager or legal agent of a pesticide business licensee, a permit may be issued by the secretary to permit the operation of such business until the expiration period of the license in effect at the time of such disability, incapacity or death if the applicant therefor can show that the policies and services of such business will continue substantially as before, with due regard to protection of the public and the environment.

(h) No pesticide business license may be issued to any person until such person is or has in such person's employ one or more individuals who are certified commercial applicators in each of the categories for which the license application is made.

Sec. 12. K.S.A. 2-2440a is hereby amended to read as follows: 2-2440a. (a) A pesticide business licensee applying pesticides for the control of wood destroying pests, structural pests, ornamental pests ~~or~~, turf pests ~~or interior landscape pests~~ shall ensure that registered pest control technicians who handle, mix or apply pesticides have been trained as provided in this act. The pesticide business licensee shall notify the secretary ~~by the 10th of the month~~ *within 30 days* following the date of employment of the employment of a registered pest control technician or a person to be trained as a registered pest control technician. The pesticide business licensee shall ensure that all persons employed by the pesticide business who apply pesticides and who are not registered pest control technicians meet the requirements of this act within 90 days after they are employed. This requirement shall not apply to certified commercial applicators employed by the pesticide business licensee.

(b) This section shall be part of and supplemental to the Kansas pesticide law.

Sec. 13. K.S.A. 2008 Supp. 2-2440b is hereby amended to read as follows: 2-2440b. (a) It shall be unlawful for any pesticide business licensee to apply pesticides for the control of wood destroying pests, structural pests, ornamental pests ~~or~~, turf pests ~~or interior landscape pests~~ unless the applicator of the pesticide is a certified commercial applicator or is a registered pest control technician, except that an uncertified commercial applicator may apply pesticides when either a certified applicator or registered pest control technician is physically present.

(b) Any such employee applying for a pest control technician registration shall file an application on a form prescribed by the secretary. Application for such registration shall be accompanied by an application fee established by rules and regulations adopted by the secretary, except that such fee shall not exceed ~~\$25, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$40, except that on and after July 1, 2015, such fee shall not exceed \$25,~~ and shall be reduced, but not below zero, by an amount equal to the additional fee paid under subsection (b) of K.S.A. 2-2440 and amendments thereto for such uncertified individual.

(c) If the secretary finds the applicant qualified to be a registered pest control technician after meeting the training requirements determined by the secretary in rules and regulations, the secretary shall issue a pest control technician registration which will expire at the end of the calendar year.

(d) This section shall be part of and supplemental to the Kansas pesticide law.

Sec. 14. K.S.A. 2-2440c is hereby amended to read as follows: 2-2440c. (a) Each registered pest control technician shall have received training, to the extent prescribed by the secretary by rules and regulations in each of the subjects enumerated in K.S.A. 2-2443a, and amendments thereto.

(b) Within 90 days after the effective date of this act, each pesticide business licensee who applies pesticides or causes pesticides to be applied for the control of wood destroying pests, structural pests, ornamental pests ~~or~~, turf pests *or interior landscape pests* shall submit its training materials to the secretary for approval. After initial approval, each such pesticide business licensee shall resubmit its training materials for approval every five years. Training materials submitted to the secretary shall be approved or disapproved within 60 days of the date of receipt by the secretary. If the training materials submitted are disapproved, the secretary shall provide the pesticide business licensee within 60 days of receipt of the training materials a written explanation of the reason for such disapproval.

(c) Each pesticide business licensee who applies pesticides or causes pesticides to be applied for the control of wood destroying pests, structural pests, ornamental pests ~~or~~, turf pests *or interior landscape pests* shall maintain records to verify that each registered pest control technician employed by such pesticide business licensee has been properly trained. These records shall contain the name of each person who takes the training to become a registered pest control technician, the date or dates of such training, the date the training was completed and any other information required by the secretary. These records shall be maintained for a period of three years after the training has been given. These records shall be made available to the secretary or the secretary's authorized designee upon request.

(d) This section shall be part of and supplemental to the Kansas pesticide law.

Sec. 15. K.S.A. 2-2440e is hereby amended to read as follows: 2-2440e. (a) Any pesticide business licensee *or pesticide dealer* who violates any of the provisions of K.S.A. 2-2453 or 2-2454, 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 \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues ~~shall~~ *may* be deemed a separate violation.

(b) A duly authorized agent of the secretary, upon a finding that a pesticide business licensee *or pesticide dealer* or any employee or agent thereof or any person or entity required to be licensed as a pesticide business licensee *or registered as a pesticide dealer* who violates any of the provisions of K.S.A. 2-2453 and 2-2454, and amendments thereto, may impose a civil penalty as provided in this section upon such licensee *or dealer*.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the pesticide business licensee *or pesticide dealer* who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such pesticide business licensee *or pesticide dealer* to appeal to the secretary. Any such licensee *or dealer*, within 20 days after notification, may make written request to the secretary for a hearing or informal conference 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.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(e) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer. 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.

(f) This section shall be a part of and supplemental to the Kansas pesticide law.

Sec. 16. K.S.A. 2008 Supp. 2-2441a is hereby amended to read as follows: 2-2441a. No individual except the following shall use any restricted use pesticide without a commercial applicator's certificate issued by the secretary: (a) Individuals applying restricted use pesticides under a private applicator certification;

(b) employees of a pesticide business licensee using only nonaerial methods of applying pesticides and who work only under the supervision of a certified commercial applicator. The secretary may authorize any certified aerial applicator to apply restricted use pesticides in a category *or subcategory* other than one in which such applicator is certified under the supervision of an applicator certified in the category *or subcategory* in which the pesticide is being applied during an emergency situation declared by the secretary with the consent of the governor;

(c) veterinarians or physicians using pesticides as a part of their professional services;

(d) qualified laboratory personnel employed by recognized pesticide research facilities, using pesticides or pest control services while engaged in pesticide use research; and

(e) federal employees using pesticides as a part of their employment by a federal agency which has its own certification program which is the full equivalent of the requirements of this state.

Such a commercial applicator's certificate shall be required in addition to any other license or permit required by law for the operation or use of pesticide application equipment. Any person applying for such commercial applicator's certificate shall file an application on a form prescribed by the secretary. ~~Application for a certificate to apply pesticides shall be accompanied by an application fee per category in which the applicant applies which fee is fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed \$35, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$50 per category in which the applicant applies. The commercial applicator's certificate fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section.~~ If the secretary finds the applicant qualified to apply pesticides in the categories *or subcategories* the applicant has applied for after examinations on the same basis as provided for in K.S.A. 2-2443a, and amendments thereto, the secretary shall issue a commercial applicator's certificate limited to the categories *or subcategories* for which the applicant is qualified, which certificate shall expire at the end of the second calendar year after the year of issue. If a certificate is not issued as applied for, the secretary shall inform the applicant in writing of the reasons for such denial.

Sec. 17. K.S.A. 2008 Supp. 2-2443a is hereby amended to read as follows: 2-2443a. An applicant for a commercial applicator's certificate shall show upon written examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the categories *or subcategories* for which the applicant has applied. ~~Upon the recommendation of the secretary, a~~ A commercial applicator who holds a current certificate to apply pesticides commercially in any other state or political subdivision of the United States may be exempted from examination for certification in this state upon ~~approval of the secretary and~~ payment of ~~proper fees~~ a \$75 fee per category, unless a fee not to exceed \$75 is established in rules and regulations adopted by the secretary. ~~Such fees shall not be less than any comparable fees charged by the commercial applicator's state to Kansas certificate holders, if such state or political subdivision's requirements for certification were the full equivalent of the requirements of this state at the time it was issued and if the proper authorities of the state from which the applicant holds such commercial applicator's certificate, or its equivalent, agree to accept on an equal basis holders of certificates issued by the authorities of this state.~~

Applicants shall submit with each application ~~an examination~~ a fee per category in which the applicant is to be examined which fee is ~~examination taken, including each category, subcategory and general core examination.~~ The examination fee shall be fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed \$25, ~~or commencing July 1, 2002, and ending June 30, 2010, such fee shall~~

~~not exceed \$35 \$45 per category in which the applicant is to be examined. The examination fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section examination, except that on and after July 1, 2015, such fee shall not exceed \$35 per examination. Applicants who fail to pass the examination may reapply and take another examination upon paying another examination fee per category in which the applicant is to be reexamined, which fee is shall be fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed \$25, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$35 \$45 per category in which the applicant is to be reexamined. The reexamination fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section examination, except that on and after July 1, 2015, such fee shall not exceed \$35 per examination. The general core examination shall include, but is not limited to, the following:~~

- (a) The proper use of the equipment.
- (b) The hazards that may be involved in applying the pesticides, including:
 - (1) The effect of drift of the pesticides on adjacent and nearby lands and other non-target organisms;
 - (2) the proper meteorological conditions for the application of pesticides and the precautions to be taken with such application;
 - (3) the effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;
 - (4) the effect of the application of pesticides to wildlife in the area, including aquatic life;
 - (5) the identity and classification of pesticides used and the effects of their application in particular circumstances; and
 - (6) the likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects and vegetation.
- (c) Calculating the concentration of pesticides to be used.
- (d) Identification of common pests to be controlled and damages caused by such pests.
- (e) Protective clothing and respiratory equipment for handling and application of pesticides.
- (f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use.
- (g) Applicable state and federal pesticide laws and regulations.
- (h) Any other subject which the secretary deems necessary.

Sec. 18. K.S.A. 2008 Supp. 2-2445a is hereby amended to read as follows: 2-2445a. In lieu of obtaining a commercial applicator's certificate under the provisions of K.S.A. 2-2441a and amendments thereto, a private applicator's certificate may be applied for by and issued to individuals using restricted use pesticides for the purpose of: ~~(a) Producing~~ *producing* any agricultural commodity on property owned or rented by the individual or such individual's employer, or on the property of another for no compensation other than the trading of personal services between producers; ~~or (b) controlling ornamental shrubbery or turf pests on property owned or rented by the individual and such property is used as the individual's residence.~~ Such certificates shall expire on the anniversary of the individual's date of birth occurring in the fifth calendar year following the year of issue. No certification shall be required hereunder for individuals operating under the supervision of a certified private applicator.

Certified private applicator certificates may be issued to individuals who have paid: (a) A fee fixed by rules and regulations adopted by the secretary of agriculture, except that ~~such fee shall not exceed \$10, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$25~~ *on an after July 1, 2015, such fee shall not exceed \$10*; and (b) who have acquired practical knowledge of pest problems, proper storage, use, handling and disposal of pesticides and pesticide containers, pertinent information found on the pesticide labels, pesticide use safety and environmental considerations, either through Kansas state university

extension service educational training or through individual study of educational materials available at county extension offices or the secretary of agriculture. The certified private applicator certificate fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. Individuals shall indicate adequate knowledge of the subjects enumerated herein by passing an open-book examination approved by the secretary.

Educational materials and examination blanks shall be made available at county extension offices and at places where extension educational training is conducted. The examinations shall be scored by members of the extension or secretary's staff. If an individual passes the examination by equaling or exceeding a standard authorized by the secretary, a certified private applicator's certificate shall be issued to such individual. Such staff member shall send a copy of the certificate issued, together with the fee, to the secretary.

~~Upon the recommendation of the secretary, a~~ A certified applicator who holds a current certificate to apply pesticides as a certified private applicator in any other state or political subdivision of the United States may be exempted from examination for private applicator certification in this state upon payment of proper fees *and approval by the secretary*. ~~Such fees shall not be less than any comparable fees charged by the certified private applicator's state to Kansas certificate holders, if such state or political subdivision's requirements for certification were the full equivalent of the requirements of this state at the time it was issued and if the proper authorities of the state from which the applicant holds such certified private applicator's certificate, or its equivalent, agree to accept on an equal basis holders of certificates issued by the authorities of this state.~~

Sec. 19. K.S.A. 2-2446 is hereby amended to read as follows: 2-2446. (a) A commercial applicator's certification may be renewed for a succeeding three-year period by paying the fees prescribed in K.S.A. 2-2441a, and amendments thereto, passing the ~~examination~~ *examinations* provided for in K.S.A. 2-2443a, and amendments thereto, and completing the renewal application form prescribed by the secretary.

(b) In lieu of such ~~examination~~ *examinations*, the secretary may accept attendance and satisfactory completion of a training course approved by the secretary. *If certification is renewed by training, the renewal application form shall be accompanied by a recertification-by-training fee of \$50 per category unless a fee not to exceed \$50 is established in rules and regulations adopted by the secretary.*

(c) *A certified commercial applicator may recertify by training following the expiration of the certification period, if:*

(1) *All training requirements were completed during the certification period; and*

(2) *the renewal application form and all appropriate fees were received by the secretary on or before 30 days following expiration of the certification period.*

~~(b)~~ (d) A private applicator's certification may be renewed for a succeeding five-year period by paying the fee prescribed in K.S.A. 2-2445a, and amendments thereto, passing the examination provided for in K.S.A. 2-2445a, and amendments thereto, and completing the renewal application form prescribed by the secretary. Such examination shall be offered by the ~~board~~ *secretary* by mail. County extension agricultural meetings shall include pertinent pesticide information for private applicators.

~~(c)~~ (e) A pest control technician's registration may be renewed for a succeeding one-year period by paying the fees prescribed in K.S.A. 2-2440b, *and amendments thereto*, completing the renewal form prescribed by the secretary, and completing any requirements concerning retraining prescribed by rules and regulations.

Sec. 20. K.S.A. 2-2449 is hereby amended to read as follows: 2-2449. The secretary may deny, suspend, revoke or modify the provisions of any license, registration, permit or certificate issued under this act, if the secretary finds, after notice and hearing, conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant, licensee, registrant, permit holder or certificate holder has:

(a) Been convicted of or pleaded guilty to a violation of this act, ~~the~~

~~Kansas pest control act (K.S.A. 2-2401 to 2-2412, and acts amendatory thereof or supplemental thereto) or the Kansas pesticide use law (K.S.A. 2-2413 to 2-2437);~~ or been convicted of or pleaded guilty to a felony under the laws of this state or of the United States, if the ~~board~~ *secretary* determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(b) failed to comply with any provision or requirement of this act or any rule and regulation adopted thereunder, or any of the laws or rules and regulations of any other state or the United States relating to licensing or other provisions concerning pesticide use or control; or

(c) had any license, certificate, registration or permit issued to the person under this act, ~~the Kansas pest control act (K.S.A. 2-2401 to 2-2412, and acts amendatory thereof or supplemental thereto), the Kansas pesticide use law (K.S.A. 2-2413 to 2-2437)~~ or the pest control or pesticide use laws of any other state revoked.

Sec. 21. K.S.A. 2-2450 is hereby amended to read as follows: 2-2450.

(a) If the surety bond, certificate of liability insurance, letter of credit or proof of an escrow account previously furnished by the licensee expires or is canceled or terminated, the secretary shall suspend without a hearing the *pesticide business* license until an acceptable substitute surety bond, letter of credit, proof of an escrow account or certificate establishing acceptable replacement of liability insurance is supplied.

(b) *If the pesticide business fails to employ one or more commercial applicators certified in each category and subcategory in which the pesticide business makes commercial pesticide applications, the secretary shall suspend, without a hearing, the pesticide business license for that category until the pesticide business employs a commercial applicator with the appropriate certification.*

Sec. 22. K.S.A. 2-2454 is hereby amended to read as follows: 2-2454.

It shall be unlawful for any person required to be licensed, registered or certified under the provisions of this act to:

(a) Make false or fraudulent claims through any media, misrepresenting the effect of material or methods to be utilized;

(b) except as provided for in K.S.A. 2-2470, *and amendments thereto*, make a pesticide recommendation or use not in accordance with the directions for use shown on the label registered under the Kansas agricultural chemical act or by the environmental protection agency, or both;

(c) knowingly use ineffective or improper methods or materials;

(d) knowingly operate faulty, unsafe or, if registration is required, unregistered equipment, or operate any equipment in a negligent manner;

(e) refuse or neglect to keep and maintain records required by this act, or refuse or neglect to make records available when and as required by this act;

(f) make false or fraudulent records, invoices or reports;

(g) use fraud or misrepresentation in making an application for or renewal of a license, registration, permit or certificate;

(h) refuse or neglect to comply with any limitations or restrictions on or in a duly issued license, registration, permit or certificate;

(i) aid, abet or conspire with any person to evade any of the provisions of this act, or allow a license, registration, permit or certificate to be used by an unlicensed or uncertified person;

(j) impersonate any state, county or city inspector or official, as acting in their official capacity;

(k) make any misrepresentation or defraud any member of the public;

(l) permit a pesticide business license or contract forms to be used by any unlicensed person who is not a salaried or commissioned employee or representative of such licensee, for use in applying pesticides under any commission or subcontracting arrangement;

(m) use any method or material without regard to public health, safety or welfare;

(n) engage in or advertise to provide pest control services without benefit of proper licenses, certification or registration;

(o) use, store, dispose of any pesticide material, pesticide rinsate or container without regard to public health or environmental damage;

(p) fail to maintain and provide a copy of pesticide product labels and material safety data sheets to customers when so requested; ~~or~~

(q) use any pesticide in a manner inconsistent with limitations imposed by the secretary pursuant to K.S.A. 2-2471, *and amendments thereto*;

(r) *distribute, sell, make available for use or use any restricted use pesticide other than by a certified applicator or under the supervision of a certified applicator*;

(s) *distribute, sell or offer for sale any pesticide unless it is in the pesticide registrant's or the pesticide manufacturer's unbroken immediate container and there is affixed to such container the registrant's label which is complete and legible and which can be read through any package wrappers*;

(t) *distribute, sell or offer for sale any pesticide product with altered, defaced or detached labeling*; or

(u) *distribute, sell or offer for sale any pesticide product with pesticide or pesticide residue on the container or packaging*.

Sec. 23. K.S.A. 2-2455 is hereby amended to read as follows: 2-2455.

(a) Each pesticide business shall present to each customer for whom such business performs a pest control service involving the application of pesticides a written statement of services or contract setting forth the following information: (1) Business name and address of the pesticide business licensee;

(2) name and address of the customer;

(3) pest or pests to be controlled, which may be stated in general terms;

(4) pesticide to be used including the quantity applied and total area to which the pesticide is applied;

(5) the concentration or rate of application, when applicable;

(6) the date and location of the application of the pesticide;

(7) the expiration date of all guarantees, if any be given;

(8) the signature of the individual who performed or supervised the performance of the pest control service or the application of pesticides;

(9) the wind direction and velocity, when applicable; and

(10) that the application was less than label rate, when applicable.

(b) Whenever the service involving the application of pesticides is performed for the purpose of controlling termites, powder-post beetles, wood borers, wood-rot fungus or any other wood destroying pest, the following information shall be included in addition to that required under subsection (a): (1) The conditions under which retreatments, if any are to be made;

(2) the approximate date or dates of inspections, for any to be made after the original application of the pesticide; and

(3) a diagram of the structure to be treated, showing the location of visible evidence of active and inactive infestations by any wood destroying pest or pests for which the treatment is proposed; where a partial or spot treatment is to be made, this diagram shall also show the area or areas of the structure which are to be treated.

(c) The required written statement of services or contract for services involving the application of pesticides may be incorporated into any business form used by the pesticide business licensee. The written statement of services or contract shall be presented to the customer at a time established by rules and regulations promulgated by the secretary ~~or board~~. Any pesticide business licensee using aerial methods of applying pesticides may present such information at any time prior to the time payment is accepted. The pesticide business licensee shall retain a copy of each written statement of services or contract in such licensee's files for a period of three years from the expiration date of any written statement of services or contract. Each pesticide business licensee shall faithfully carry out the stipulations set forth in any written statement of services or contract prepared by such licensee or any of its representatives.

(d) Each pesticide business licensee shall make available to the secretary upon request, a copy of any written statement of services or contract, records of all pesticide applications during any specified period, records of all employees who performed any service involving, or in conjunction with, the application of pesticides and any other requested information pertinent to the administration of this act or any rule or regulation adopted hereunder by the ~~board~~ secretary.

(e) The secretary shall require certified commercial applicators who

are not employed by or otherwise acting for a business licensee to maintain records concerning applications of restricted use pesticides. The secretary shall specify by rules and regulations the information to be contained in such records, which shall be maintained for three years from the date of application of the pesticide concerned. Such records shall be open to inspection by the secretary or the secretary's authorized representative during normal business hours, and copies shall be furnished to the secretary or the secretary's authorized representative upon request.

Sec. 24. K.S.A. 2008 Supp. 2-2469 is hereby amended to read as follows: 2-2469. (a) Each person who is a pesticide dealer shall register with the secretary of agriculture. Registration shall be required for each business location distributing pesticides and shall be on a form provided by the secretary. Each registration shall expire on June 30 following issuance unless such registration is renewed annually. A registration fee of \$20 shall accompany the application.

(b) The provisions of this section shall not apply to a licensed pesticide business which sells pesticides only as an integral part of such business' pesticide application service when the pesticides are dispensed only through equipment used for this pesticide application, nor to the sale of general use pesticides purchased for household use only, nor to any federal, state, county or municipal agency which provides pesticides only for its own programs nor to any individual who is the final purchaser of a pesticide for application to property or property rights owned, leased, or otherwise acquired by such person.

(c) Each registered pesticide dealer is responsible for the acts of each individual employed by such dealer in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The dealer's registration shall be subject to denial, suspension, or revocation after a hearing in accordance with the provisions of the Kansas administrative procedure act for any violation of this act whether committed by the dealer or by the dealer's officers, agents or employees.

(d) All fees received under this section shall be remitted to the state treasurer in accordance with K.S.A. 2-2464a and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and 75% of such amount shall be credited to the pesticide use fee fund and 25% of each such amount shall be credited to the publications fee fund of the Kansas department of agriculture.

Sec. 25. K.S.A. 2-2470 is hereby amended to read as follows: 2-2470. Unless limited by K.S.A. 2-2471, *and amendments thereto, or prohibited by the pesticide product label*, the applicator may: (1) Apply a pesticide at any dosage, concentration or frequency less than that specified on the label or labeling; or (2) apply a pesticide against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling, and if the secretary has determined that the use of the pesticide against other pests would not cause an unreasonable effect on the environment.

Sec. 26. K.S.A. 2-2471 is hereby amended to read as follows: 2-2471. Notwithstanding the provisions of K.S.A. 2-2470, *and amendments thereto*, whenever the secretary deems it necessary to preserve the health, safety and welfare or the natural resources of the state, the secretary is hereby authorized to promulgate rules and regulations imposing limitations on the use of any pesticide ~~in a manner inconsistent with its label or labeling.~~

Sec. 27. K.S.A. 2008 Supp. 2-2905 is hereby amended to read as follows: 2-2905. Every manufacturer of liming materials to be distributed in this state shall on July 1 of each year, or prior to manufacture or distribution of such liming materials, register each manufacturing facility on a form furnished by the secretary of agriculture, the application to be accompanied by a fee of ~~\$25, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$30, except that on and after July 1, 2015, such application shall be accompanied by a fee of \$25.~~ All such licenses shall expire on June 30 of the following year.

Sec. 28. K.S.A. 2008 Supp. 2-2906 is hereby amended to read as follows: 2-2906. (a) Within 30 days following expiration of registration, each registrant shall submit, on a form furnished by the secretary of agriculture, an annual statement setting forth the number of net tons of

each agricultural liming material sold by such registrant for use within the state during the previous 12-month period. Such statement shall be accompanied by payment of an inspection fee which shall be at the rate of ~~\$.05, or commencing July 1, 2002, and ending June 30, 2010, the rate of \$.07 per ton, except that on and after July 1, 2015, such inspection fee shall be at the rate of \$.05 per ton.~~

(b) The secretary is hereby authorized and empowered to reduce the inspection fee provided for in subsection (a) whenever the secretary determines that such fee is yielding more than is necessary for the purpose of administering the provisions of this act. The secretary is authorized and empowered to increase such inspection fee, or restore such inspection fee, in full or in part, when such inspection fee is necessary to produce sufficient revenues for the purposes of administering the provisions of this act, but not in excess of the fee as provided in this section.

Sec. 29. K.S.A. 2008 Supp. 2-3304 is hereby amended to read as follows: 2-3304. (a) Any user of the chemigation process shall register and obtain a chemigation user's permit before using the process.

(b) Registration shall consist of making application on a form supplied by the secretary. Such application shall include, but not be limited to:

- (1) The name of the persons to whom a permit is to be issued, including an owner or operator of land on which chemigation is to be used;
- (2) a plan for using anti-pollution devices;
- (3) a plan for handling tail water or accumulations of water;
- (4) the number and locations, including a legal description, of well-heads which may be involved in the chemigation process and surface water supply withdrawal points, not to include siphon tubes; and
- (5) payment of fees.

(c) The application fee for a chemigation user's permit shall be ~~\$55 plus \$10 for each additional point of diversion, or commencing July 1, 2002, and ending June 30, 2010, shall be \$75 plus \$15 for each additional point of diversion, except that on and after July 1, 2015, a chemigation user's permit shall be \$55 plus \$10 for each additional point of diversion.~~ A chemigation user's permit may be renewed each year upon making an application, payment of the application fee and completing the report form providing information used in chemigation the previous year.

Sec. 30. K.S.A. 2008 Supp. 2-3306 is hereby amended to read as follows: 2-3306. (a) Any individual operating chemigation equipment under a chemigation user permit shall be responsible for the safe operation of such chemigation equipment and any such equipment shall be considered to be under the direct supervision of the chemigation user permit holder.

(b) The secretary shall not issue a chemigation user permit to any person unless such person is a certified chemigation equipment operator or has in such person's employment at least one certified chemigation equipment operator. A chemigation equipment operator is an individual who has successfully completed an examination given by the secretary or the secretary's designee. Except as provided in subsection (c), if the chemigation user permit is issued to an individual, that individual must have successfully completed the chemigation equipment operator examination. Such examination shall include, but not be limited to, the following:

- (1) The proper use of anti-pollution devices;
- (2) preparing the chemical solution and filling the chemical supply container;
- (3) calibrating of injection equipment;
- (4) supervision of chemigation equipment to assure its safe operation;
- (5) environmental and human hazards that may be involved in chemigation;
- (6) protective clothing and respiratory equipment;
- (7) general precautions to be followed in disposal of containers and decontamination of the equipment;
- (8) handling of tail water and other accumulations of water containing chemicals;
- (9) information of procedures to be followed should chemicals inadvertently enter the water supply source as a result of the chemigation process;
- (10) label information, especially chemigation instructions;

- (11) applicable state and federal laws and regulations; and
- (12) any other subject which the secretary deems necessary.

(c) The examination provided for in subsection (b) may be waived for any individual who has been certified as a pesticide applicator in the category of chemigation pursuant to the Kansas pesticide law.

(d) The chemigation equipment operator certification shall expire on December 31 of the fourth calendar year after the year of issue. A chemigation equipment operator certification shall be renewed for a succeeding five year period upon payment of the certification fee and passing the examination specified in either subsection (b) or (c).

(e) The fee for certification as a chemigation equipment operator or for renewal of such certification shall be ~~\$10, or commencing July 1, 2002, and ending June 30, 2010, such certification shall be \$25, except that on and after July 1, 2015, such certification shall be \$10.~~

Sec. 31. K.S.A. 2008 Supp. 2-3309 is hereby amended to read as follows: 2-3309. (a) The secretary of agriculture shall administer this act and shall have authority to employ such qualified persons deemed necessary to carry out the provisions of this act.

(b) The secretary shall adopt, ~~within 60 days after the effective date of this act,~~ such rules and regulations the secretary deems necessary to carry out the provisions of this act. *Such rules and regulations shall be promulgated on or before July 1, 2010.*

Sec. 32. K.S.A. 2008 Supp. 65-778 is hereby amended to read as follows: 65-778. (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, ~~2010~~ 2015, a license fee of \$155.

(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, ~~2010~~ 2015, a license fee of \$155. 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, ~~2010~~ 2015, 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, ~~2010~~ 2015, a license fee of \$65.

(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, ~~2010~~ 2015, a license fee of \$65.

(f) The dairy manufacturing plant license, milk distributor license, milk or cream station license and single service manufacturing license shall expire on December 31 of the year for which 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.

(g) 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.

(h) Each applicant for a 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.

Sec. 33. K.S.A. 2008 Supp. 65-781 is hereby amended to read as follows: 65-781. 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, ~~2010~~ 2015, 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, ~~2010~~ 2015, a fee of \$.015 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 \$.01, or commencing July 1, 2002, and ending June 30, ~~2010~~ 2015, a fee of \$.015 per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of Kansas which is processed into grade A milk or grade A milk products shall be paid. Each milk processor is hereby charged with such fee which shall be remitted to the secretary.

(d) A milk fee of \$.01, or commencing July 1, 2002, and ending June 30, ~~2010~~ 2015, 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, ~~2010~~ 2015, a fee of \$.01 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, the term dairy products shall 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.

(f) In lieu of the fee prescribed in subsection (e), a fee of \$1, or commencing July 1, 2002, and ending June 30, ~~2010~~ 2015, a fee of \$1.50 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, ~~2010~~ 2015, a fee of \$1.50 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) 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.

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

(1) The fees established in subsections (a) 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 (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 quantity of frozen

dairy dessert or frozen dairy dessert mix upon which the remittance is based.

(j) 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.

New Sec. 34. (a) As used in this section:

- (1) “rBST” means recombinant bovine somatotropin.
- (2) “rBGH” means recombinant bovine growth hormone.
- (3) “BST” means bovine somatotropin.

(b) Milk, milk products and dairy products shall be deemed misbranded, as defined in K.S.A. 65-771, and amendments thereto, if the labels on the containers in which the products are sold or offered for sale contain any false or misleading statements as specified in this section.

(c) Each milk, milk product or dairy product label that contains a production claim stating that: “This milk is from cows not supplemented with rBST,” or a substantially equivalent statement regarding hormones, shall be deemed misleading unless both of the following conditions are met:

(1) The owner or operator of each dairy manufacturing plant, as defined in K.S.A. 65-771, and amendments thereto, verifies that the claim is accurate and has in its possession a milk producer’s affidavit that the milk is from cows not supplemented with rBST and any other written records deemed necessary by the dairy manufacturing plant owner or operator to support the claim, and these documents are made readily available to the department of agriculture for inspection.

(2) The label panel contains, in a similar font, style, case, size and color as used in the production claim, the following qualifying statement: “The FDA has determined that no significant difference has been shown between milk derived from rBST-supplemented and non-rBST-supplemented cows”, or a substantially equivalent statement regarding hormones. The color of the qualifying statement shall be of sufficient contrast to the background color to be easily read.

(d) If a milk, milk product or dairy product label contains a statement indicating the absence of a compound that is not permitted by the United States food and drug administration to be present in the product, including antibiotics and pesticides, the label shall be deemed false and misleading. Such statement shall not be permitted on milk, milk product, and dairy product labels.

(e) The provisions of this section shall not be construed to prohibit any seals or marks authorized by a federal law or Kansas statute.

(f) (1) On and after January 1, 2011, this section shall apply to the labels on all nonreusable containers of milk, milk products and dairy products.

(2) Each reusable container for milk, a milk product or a dairy product purchased by the owner or operator of a dairy manufacturing plant before January 1, 2011, that includes on the label the production claim that “this milk is from cows not supplemented with rBST” or a substantially equivalent statement regarding hormones, shall include the qualifying language specified in paragraph (c)(2) of this section affixed to the container. The qualifying language shall not be required to be on the same label, immediately after the production claim on the label or in exactly the same font, style, case, size and color as used in the production claim.

(3) On and after January 1, 2011, this section shall apply to the labels on all reusable containers of milk, milk products and dairy products purchased by the owner or operator of a dairy processing plant on or after that date.

(g) The provisions of this section shall not apply to agricultural products certified as organic agricultural products pursuant to the national organic program of the United States department of agriculture.

Sec. 35. K.S.A. 2008 Supp. 2-3318 is hereby amended to read as follows: 2-3318. (a) Regardless of whether irrigation water is added, whenever swine waste is applied to crops or land, the secretary of *health and environment* is authorized to investigate, inspect or conduct any manner of examination or review of the application of swine waste. No swine

waste shall be applied to crops or land in excess of agronomic application rates.

(b) The secretary of *health and environment* shall review and approve all nutrient utilization plans that provide for the application of swine waste to crops or land and that are submitted by swine confined feeding facilities pursuant to K.S.A. 65-1,182 and amendments thereto if the plans demonstrate that swine waste will be applied pursuant to agronomic application rates and include all required information. Nutrient utilization plans shall be submitted on a form required by the secretary. ~~The secretary shall notify the secretary of health and environment when a nutrient utilization plan has been approved and whether the approval is conditioned on any amendments or revisions to the plan of health and environment.~~

(c) Failure of the operator of a swine confined feeding facility to implement a nutrient utilization plan approved by the secretary of *health and environment* shall be considered a violation of the Kansas chemigation safety law for which the secretary may suspend a permit pursuant to K.S.A. 2-3310 and amendments thereto or may impose a civil penalty pursuant to K.S.A. 2-3317 and amendments thereto, or both.

(d) This section shall be part of and supplemental to the Kansas chemigation safety law.

Sec. 36. K.S.A. 2008 Supp. 65-1,182 is hereby amended to read as follows: 65-1,182. (a) The department of health and environment shall not issue or renew a permit for any swine facility that has an animal unit capacity of 1,000 or more and that applies manure or wastewater to land unless:

(1) The land application process complies with the applicable requirements of this section; and

(2) the nutrient utilization plan required by this section is approved by the ~~secretary of agriculture~~ *secretary of health and environment as specified by K.S.A. 2008 Supp. 2-3318, and amendments thereto.*

(b) (1) If the manure management plan prepared pursuant to K.S.A. 65-1,181 and amendments thereto provides for land application of manure or wastewater:

(A) The applicant for a permit for construction of a new swine facility or for expansion of an existing swine facility shall submit with the application for a permit a nutrient utilization plan on a form prescribed by ~~the secretary of agriculture~~ *the secretary of health and environment as applicable* and shall comply with the plan when the permit is issued by the department of health and environment; and

(B) the operator of an existing swine facility shall submit to the department of health and environment, within six months after the rules and regulations implementing this act are adopted, a nutrient utilization plan on a form prescribed by ~~the secretary of agriculture~~ *the secretary of health and environment*, for approval by ~~the secretary of agriculture~~ *the secretary of health and environment*; and shall comply with the plan by a date established by ~~the secretary of agriculture~~ *the secretary of health and environment*.

(2) Each nutrient utilization plan shall address site-specific conditions for land application of manure, wastewater and other nutrient sources, comply with the requirements of this section and contain, at minimum, the following:

(A) A site map of all land application areas, including section, township and range;

(B) crop rotations on the land application areas;

(C) annual records of soil tests, manure nutrient analyses, and calculations required by subsection (c);

(D) nutrient budgets for the land application areas;

(E) rates, methods, frequency and timing of application of manure, wastewater and other nutrient sources to the land application areas;

(F) the amounts of nitrogen and phosphorus applied to the land application areas;

(G) precipitation records and the amounts of irrigation and other water applied;

(H) records of inspections and preventive maintenance of equipment required by subsection (f)(6);

(I) copies of all landowner agreements for land that is not owned by the swine facility and is scheduled to receive manure or wastewater;

(J) names of employees and contractors whom the operator of the swine facility has identified pursuant to subsection (f)(7) to supervise the process of transferring manure or wastewater to land application equipment and the process of land application;

(K) records of training of all personnel who supervise and conduct the land application of manure or wastewater, as required by subsection (f)(7); and

(L) any other information required by ~~the secretary of agriculture~~ *the secretary of health and environment* to facilitate approval.

(3) (A) A swine facility that is required to have a nutrient utilization plan shall amend such plan whenever warranted by changes in the facility, soil test results or other conditions affecting the facility.

(B) Amendments to the nutrient utilization plan must be approved by ~~the secretary of agriculture~~ *the secretary of health and environment*.

(4) A swine facility that is required to have a nutrient utilization plan shall maintain such plan in accordance with K.S.A. 65-1,185 and amendments thereto.

(c) (1) Each swine facility that has a manure management plan that includes land application of manure or wastewater shall:

(A) Conduct soil tests, including but not limited to tests for nitrogen, phosphate, chloride, copper and zinc, on the land application areas prior to preparation of the nutrient utilization plan and at least annually thereafter, or as often as required by best available soil science and standards relative to the soils of, and crops to be grown on, the land application areas or as required by ~~the secretary of agriculture~~ *the secretary of health and environment*; and

(B) include the results of such tests in its nutrient utilization plan.

(2) Each swine facility that has a manure management plan that includes land application of manure or wastewater or sells or gives manure or wastewater to third persons pursuant to subsection (h) of K.S.A. 65-1,181 and amendments thereto shall:

(A) Conduct manure nutrient analyses of its manure and wastewater prior to preparation of its nutrient utilization plan and at least every two years thereafter; and

(B) include the results of such analyses in its nutrient utilization plan.

(3) Each swine facility that has a manure management plan that includes land application of manure or wastewater shall:

(A) Compare the manure nutrient analyses required by subsection (c)(2) with the soil tests required by subsection (c)(1) to calculate needed fertility and application rates for pasture production and crop target yields on the land application areas prior to the preparation of the nutrient utilization plan and each time thereafter when new soil tests or manure nutrient analyses are conducted; and

(B) include such calculations in the nutrient utilization plan.

(d) If a swine facility is required to have a nutrient utilization plan and finds that the soil tests required pursuant to this act indicate that the phosphorus holding capacity for any soils in the facility's land application areas may be exceeded within five years, the facility shall promptly initiate the process to obtain access to the additional land application areas needed, or make other adjustments, to achieve the capability to apply manure or wastewater at appropriate agronomic rates.

(e) ~~The Kansas department of agriculture~~ *of health and environment* may require a swine facility that is required to have a nutrient utilization plan to apply manure or wastewater on all or a portion of the facility's land application areas at a rate within the agronomic phosphorus needs of the crops or pasture, or the soil phosphorus holding capacity, in less than the time originally allowed in the approved nutrient utilization plan if ~~the department of agriculture~~ *the department of health and environment* finds that the land application actions of the facility are contributing to the impairment of groundwater or surface water.

(f) (1) Each swine facility that is required to have a nutrient utilization plan shall include in such plan, and thereafter comply with, the requirements that manure or wastewater shall not be applied on bare ground by any process, other than incorporation into the soil during the same day, within 1,000 feet of any habitable structure, wildlife refuge or city, county, state or federal park, unless:

(A) The manure or wastewater has been subjected to physical, biological or biochemical treatment or other treatment method for odor reduction approved by the department of health and environment;

(B) the manure or wastewater is applied with innovative treatment or application that is best available technology for swine facilities and best management practices for swine facilities or other technology approved by the department of health and environment; or

(C) the owner of the habitable structure has provided a written waiver to the facility.

(2) The separation distance requirements of subsection (f)(1) shall not apply to any structure constructed or park designated as a city, county, state or federal park after the effective date of this act, for swine facilities in existence on the effective date of this act, or any structure constructed or park designated as a city, county, state or federal park after submission of an application for a permit for a new swine facility or expansion of an existing swine facility.

(3) Swine facilities that are required to have a nutrient utilization plan shall not apply manure or wastewater:

(A) To lands classified as highly erodible according to the conservation compliance provisions of the federal food security act of 1985, as in effect on the effective date of this act, and classified as highly erodible on the basis of erosion resulting from water runoff, except where soil conservation practices to control erosion and runoff in compliance with the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility;

(B) during rain storms, except where soil conservation practices to control erosion and runoff in compliance with the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility;

(C) to frozen or saturated soil, except where soil conservation practices to control runoff in compliance with the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility; and

(D) to any areas to which the separation distance requirements of subsection (f) apply.

(4) Swine facilities that are required to have a nutrient utilization plan shall follow procedures and precautions in the land application of manure or wastewater to prevent discharge of manure or wastewater to surface water and groundwater due to excess infiltration, penetration of drainage tile lines, introduction into tile inlets or surface runoff, including appropriate soil conservation practices to protect surface water from runoff carrying eroded soil and manure particles.

(5) Swine facilities that are required to have a nutrient utilization plan and that conduct wastewater irrigation shall:

(A) Employ measures to irrigate under conditions that reasonably prevent surface runoff; and

(B) use reasonable procedures and precautions to avoid spray drift from the land to which it is applied.

(6) Each swine facility that is required to have a nutrient utilization plan and that land applies manure or wastewater shall ensure that any equipment used in the land application process is properly maintained and calibrated and monitor the use of the equipment so that any malfunction that develops during the land application process is detected and the process ceases until the malfunction is corrected.

(7) The operator of each swine facility that is required to have a nutrient utilization plan and that land applies manure or wastewater shall:

(A) Identify, train and keep current the training of each employee and contractor who supervises the transfer of manure or wastewater to land application equipment and the conducting of land application activities; and

(B) train, and keep current the training of, all employees and contractors who conduct land application activities.

(g) Each swine facility that is required to have a nutrient utilization plan shall amend such plan whenever warranted by changes in conditions. The operator of the facility shall file such plan and any amendments to such plan with the department of health and environment ~~and the department shall forward such plan and any amendments to the secretary of agriculture.~~

(h) The ~~secretary of agriculture~~ *secretary of health and environment* shall make a determination to approve or disapprove a nutrient utilization plan not later than 45 days after the plan is received from the department of health and environment.

Sec. 37. K.S.A. 2-1211, 2-2203, 2-2205, 2-2206, 2-2207, 2-2209, 2-2214, 2-2440a, 2-2440c, 2-2440e, 2-2446, 2-2449, 2-2450, 2-2454, 2-2455, 2-2466, 2-2470 and 2-2471 and K.S.A. 2008 Supp. 2-1205, 2-2202, 2-2204, 2-2438a, 2-2440, 2-2440b, 2-2441a, 2-2443a, 2-2445a, 2-2469, 2-2905, 2-2906, 2-3304, 2-3306, 2-3309, 2-3318, 65-778, 65-781 and 65-1,182 are hereby repealed.

Sec. 38. 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.