

CHAPTER 60

SENATE BILL No. 393
(Amended by Chapter 155)

AN ACT concerning agriculture; relating to administrative hearings; amending K.S.A. 34-298, 65-6a34a, 83-308 and 83-407 and K.S.A. 2009 Supp. 2-2122, 2-2449, 2-2469, 2-2512, 2-3311, 65-780 and 74-596 and repealing the existing sections.

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

New Section 1. (a) The secretary may suspend temporarily any license or permit issued under K.S.A. 65-778 and 65-779, and amendments thereto, without a hearing and subject to the notice requirements of the emergency adjudication procedures of the provisions of the Kansas administrative procedure act if the secretary finds all of the following:

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

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

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

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

Sec. 2. K.S.A. 2009 Supp. 2-2122 is hereby amended to read as follows: 2-2122. If it is found that any live plant dealer license issued by the secretary is being used in connection with live plants which do not meet the quarantines and regulated nonquarantine pest freedom standards established by the secretary, or other precautionary measures prescribed by the secretary under the provisions of this act and amendments thereto, or if it is found that any live plant dealer's license is being used by a person other than the one to whom it was issued, the secretary may ~~require the owner of the license to appear~~ *revoke the live plant dealer's license after notice and opportunity* for a hearing, ~~on a specified date, to be conducted~~ *are given* in accordance with the provisions of the Kansas administrative procedure act to show cause why the license should not be revoked. ~~If, after such hearing, the secretary finds that such license has been wrongfully used in one or more of the ways specified in this section, or if the owner of such license fails to appear at such hearing, the secretary may issue an order revoking such license.~~

Sec. 3. K.S.A. 2009 Supp. 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~~ *opportunity for a hearing are given* 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, or been convicted of or pleaded guilty to a felony under the laws of this state or of the United States, if the 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, or the pest control or pesticide use laws of any other state revoked.

Sec. 4. K.S.A. 2009 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. 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 for all claims and recommendations for use of pesticides *made by such employees*. The dealer's registration shall be subject to denial, suspension, or revocation after *notice and opportunity* for a hearing *are given* 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. 5. K.S.A. 2009 Supp. 2-2512 is hereby amended to read as follows: 2-2512. (a) The secretary may deny, suspend, revoke or modify the provisions of any license issued under this act, if the secretary finds, after notice and *opportunity for a hearing*, ~~conducted~~ *are given* in accordance with the provisions of the Kansas administrative procedure act, that the applicant, licensee or permit holder has:

(1) Been convicted of or pleaded guilty to a violation of the Kansas egg law, and amendments thereto, or been convicted of or pleaded guilty to a felony under the laws of this state or of the United States, if the department determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(2) 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 eggs; or

(3) had any license, certificate or permit issued to the person under the Kansas egg law, and amendments thereto, or the egg laws of any other state revoked.

(b) The provisions of this section shall be part of and supplemental to the Kansas egg law.

Sec. 6. K.S.A. 2009 Supp. 2-3311 is hereby amended to read as follows: 2-3311. ~~Before any chemigation user registration or~~ *The secretary may revoke, deny renewal or suspend, for any cause, a chemigation user's permit shall be revoked, denied renewal or before it shall be suspended for any cause, the secretary shall conduct a hearing*, *after notice and opportunity for a hearing are given* in accordance with the provisions of the Kansas administrative procedure act. The notice of hearing shall be sent to the registrant or permit holder ~~at least 15 days prior to the hearing date and shall be served upon the registrant or permit holder by letter sent to~~ *at* such person's address as shown by the records of the secretary, setting out the ~~time and place of the hearing and~~ alleged grounds for revocation or suspension. The registrant or permit holder shall have the right to appear in person and by counsel and to testify and introduce evidence. If such person fails to appear, the matter may be heard in such person's absence. Any such hearing may be conducted by the secretary or a presiding officer from the office of administrative hearings.

Sec. 7. K.S.A. 34-298 is hereby amended to read as follows: 34-298. (a) Unless otherwise provided in this act, any person or entity that violates any provision of this act is guilty of a class A nonperson misdemeanor.

(b) ~~If, after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act,~~ *after notice and opportunity for a hearing are given in accordance with the Kansas administrative procedure act,* the secretary finds that the provisions of this act have been violated by any person holding a license to conduct a public warehouse in this state, the secretary shall revoke the person's license. No new li-

cense shall be granted to the person whose license is revoked or to anyone engaged, either directly or indirectly, in the public warehouse business with that person for a period of one year.

Sec. 8. K.S.A. 65-6a34a is hereby amended to read as follows: 65-6a34a. (a) The secretary may deny, suspend, revoke or modify the provisions of any registration issued under the Kansas meat and poultry inspection act, if the secretary finds, after notice and ~~hearing opportunity~~ *for a hearing are given in accordance with the Kansas administrative procedure act*, that the applicant or registrant has:

(1) Been convicted of or pleaded guilty to a violation of the Kansas meat and poultry inspection act or any rule and regulation promulgated thereunder;

(2) failed to comply with any provision or requirement of the Kansas meat and poultry inspection act or any rule and regulation adopted thereunder;

(3) interfered with or prevented the secretary or any authorized inspector or any other authorized representative of the secretary from the performance of that person's job duties regarding any inspection or the administration of the provisions of the Kansas meat and poultry inspection act; or

(4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions of the Kansas meat and poultry inspection act.

~~(b) Before any registration shall be suspended, modified, revoked or denied renewal, the secretary shall inform the registrant of the date and place of hearing upon such proposed revocation, denial or suspension. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.~~

~~(c) (b) The registration holder may appeal from the decision and order, in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.~~

~~(d) (c) This section shall be part of and supplemental to the Kansas meat and poultry inspection act, article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.~~

Sec. 9. K.S.A. 2009 Supp. 65-780 is hereby amended to read as follows: 65-780. The secretary may deny, suspend, revoke or modify or refuse to renew the provisions of any license or permit issued under this act if the secretary finds, after notice and *opportunity for a hearing conducted are given* in accordance with the provisions of the Kansas administrative procedure act that the applicant, licensee or permit holder or any agent or employee, thereof has:

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

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

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

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

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

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

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

Sec. 10. K.S.A. 2009 Supp. 74-596 is hereby amended to read as follows: 74-596. (a) Any person or entity who shall violate any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, may incur a civil penalty in an amount not more than \$1,000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. *The secretary of agriculture may assess the civil penalty after notice and opportunity for a hearing are given in accordance with the Kansas administrative procedure act.* Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the act for judicial review ~~and civil enforcement of agency actions.~~

(b) Any person or entity who shall violate any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, in an intentional or reckless manner shall be guilty of a class A, nonperson misdemeanor.

(c) Any food misbranded or adulterated or containing or suspected of containing any substance or substances injurious to public health or which is offered or exposed for sale in violation of any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, shall be subject to seizure in place until such time that the final disposition of the food has been determined by sampling and analysis. Within 30 days of seizure in place, upon verification that the suspected food was misbranded, adulterated or contains a substance or substances that may be injurious to public health the secretary of agriculture shall issue an order establishing measures to prevent further contamination or the threat to public health. The opportunity for hearing pursuant to the Kansas administrative procedure act shall be provided upon issuance of the order. The secretary of agriculture may order the destruction of contaminated food if no alternative assures that further contamination of [or] health hazards are averted, and may be imposed in addition to any other penalty established by law. The district courts of the state of Kansas shall have jurisdiction to restrain violations of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, by injunction.

Sec. 11. K.S.A. 83-308 is hereby amended to read as follows: 83-308. At any time after *notice and opportunity for a hearing are given* in accordance with the provisions of the Kansas administrative procedure act, the secretary may revoke, suspend, decline to renew or decline to issue a service company license or technical representative's license, when the service company or technical representative:

(a) Has refused to provide the secretary with reasonably complete and accurate information regarding methods used, materials used or work performed as required by the secretary;

(b) has failed to comply with any provision or requirement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;

(c) has failed to perform work in a manner consistent with the standards set forth in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder; or

(d) has committed an unlawful act as established in K.S.A. 83-219, and amendments thereto.

Sec. 12. K.S.A. 83-407 is hereby amended to read as follows: 83-407. At any time after *notice and opportunity for a hearing held are given* in accordance with the provisions of the Kansas administrative procedure act, the secretary may revoke, suspend, decline to renew or decline to issue a service company license or a technical representative's license, when the service company or technical representative:

(a) Has refused to provide the secretary with reasonably complete and accurate information regarding methods used, materials used or work performed;

(b) has failed to comply with any provision or requirement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder;

(c) has failed to perform work in a manner consistent with the standards set forth in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder; or

(d) has committed an unlawful act pursuant to K.S.A. 83-219, and amendments thereto, or any rules and regulations adopted thereunder.

Sec. 13. K.S.A. 34-298, 65-6a34a, 83-308 and 83-407 and K.S.A. 2009 Supp. 2-2122, 2-2449, 2-2469, 2-2512, 2-3311, 65-780 and 74-596 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 6, 2010.
