

Substitute for HOUSE BILL No. 2271

By Committee on Agriculture and Natural Resources

2-23

1 AN ACT concerning agriculture; relating to plant pest inspection and
2 control; amending K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117,
3 2-2118, 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and
4 2-2129 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2010 Supp. 2-2113 is hereby amended to read as
8 follows: 2-2113. As used in this act:

9 (a) "Plant pests" include any stage of development of any insect,
10 nematode, arachnid, or any other invertebrate animal, or any bacteria,
11 fungus, virus, weed or any other parasitic plant or microorganism, which
12 can injure plants or plant products.

13 (b) "Secretary" means the secretary of the Kansas department of
14 agriculture, or the authorized representative of the secretary.

15 (c) "Plants ~~and plant products~~" means trees, shrubs, grasses, vines,
16 forage and cereal plants and all other plants; cuttings, grafts, scions, buds
17 and all other parts of plants; ~~and~~.

18 (d) "*Plant products*" means fruit, vegetables, roots, bulbs, seeds,
19 wood, lumber, grains and all other plant products.

20 ~~(d)~~ (e) "Location" means any grounds or premises on or in which live
21 plants are propagated, or grown, or from which live plants are removed for
22 sale, or any grounds or premises on or in which live plants are being
23 fumigated, treated, packed, stored; or offered for sale.

24 ~~(e)~~ (f) "Live plant dealer" means any person, unless excluded by rules
25 and regulations ~~of the secretary~~ *adopted hereunder*, who *engages in*
26 *business in the following manner:*

27 (1) Grows live plants for sale or distribution;

28 (2) buys or obtains live plants for the purpose of reselling or
29 reshipping within this state;

30 (3) plants, transplants or moves live plants from place to place within
31 the state with the intent to plant such live plants for others and receives
32 compensation for the live plants, for the planting of such live plants or for
33 both live plants and plantings; or

34 (4) gives live plants as a premium or for advertising purposes.

1 (f) (g) "Person" means a corporation, company, society, association,
2 partnership, governmental agency and any individual or combination of
3 individuals.

4 (g) (h) "Permit" means a document issued or authorized by the
5 secretary to provide for the movement of regulated articles to restricted
6 destinations for limited handling, utilization, or processing.

7 (h) (i) "Host" means any plant or plant product upon which a plant
8 pest is dependent for completion of any portion of its life cycle.

9 (i) (j) "Regulated article" means any host or any article of any
10 character as described in a quarantine or regulation carrying or being
11 capable of carrying the plant pest against which the quarantine or
12 regulation is directed.

13 (j) (k) "Live plant" means any living plant, cultivated or wild, or any
14 part thereof that can be planted or propagated unless specifically exempted
15 by the rules or regulations of the secretary.

16 (k) (l) "Quarantine pest" means a pest of potential economic
17 importance to the area endangered thereby and not yet present there, or
18 present but not widely distributed and being officially controlled.

19 (l) (m) "Regulated nonquarantine pest" means a nonquarantine pest
20 whose presence in plants for planting affects the intended use of those
21 plants with an economically unacceptable impact and which is therefore
22 regulated.

23 (m) (n) "Official control" means the active enforcement of mandatory
24 ~~phytosanitary~~ *phytosanitary* regulations and the application of mandatory
25 ~~phytosanitary~~ *phytosanitary* procedures with the objective of eradication
26 or containment of quarantine pests or for the management of regulated
27 nonquarantine pest.

28 (n) (o) "Regulated area" means an area into which, within which
29 ~~and/or~~ *or* from which plants, plant products and other regulated articles are
30 subjected to ~~phytosanitary~~ *phytosanitary* regulations or procedures in
31 order to prevent the introduction ~~and/or~~ *or* spread, ~~or both,~~ of quarantine
32 pests or to limit the economic impact of regulated nonquarantine pests.

33 (o) (p) "Bee" means a honey-producing insect of the genus *Apis*
34 including all life stages of the insect.

35 (p) (q) "Beekeeping equipment" means all hives, supers, frames or
36 other devices used in the rearing or manipulation of bees or their brood.

37 (q) ~~"Bee pest" means any infectious, contagious or communicable~~
38 ~~disease or harmful parasite or insects affecting honey bees or their brood.~~

39 Sec. 2. K.S.A. 2010 Supp. 2-2115 is hereby amended to read as
40 follows: 2-2115. To effectuate the purposes of this act *and any rules or*
41 *regulations adopted hereunder*, the secretary shall have the right to:

42 (a) Enter and inspect, *monitor and place and inspect monitoring*
43 *equipment in, and obtain samples from* any property in this state, except

1 private dwellings, *at any reasonable time*; or;
 2 (b) ~~to~~ stop and inspect any means of conveyance moving within this
 3 state, upon ~~probable cause~~ *reasonable suspicion* to believe it contains or
 4 carries any plant pest or other article subject to this act.
 5 (c) *If access to any property sought under the provisions of this*
 6 *section for the purposes authorized is denied, the secretary may apply to*
 7 *any court of competent jurisdiction for an order providing for such access.*
 8 *The court shall, upon proper application, issue an order providing for*
 9 *access to such property.*

10 Sec. 3. K.S.A. 2010 Supp. 2-2116 is hereby amended to read as
 11 follows: 2-2116. Wherever the secretary finds a plant, plant product or
 12 other regulated article that is infested by a plant pest or finds that a plant
 13 pest exists on any premises in this state or is in transit in this state, the
 14 secretary; *may*:

15 (a) Upon giving notice to the ~~owner or an agent of the owner in~~
 16 ~~possession thereof~~ ***person in possession thereof, or agent of such person,***
 17 ~~may~~ seize, quarantine, treat; or otherwise dispose of such plant pest in such
 18 manner as the secretary deems necessary to suppress, control, eradicate, ~~or~~
 19 prevent or retard the spread of such plant pest; ~~or~~

20 (b) ~~the secretary may order such~~ ~~owner or agent~~ ***person in possession***
 21 ***thereof, or agent of such person*** to so treat or otherwise dispose of ~~the~~
 22 such plant pest. *If such* ~~owner~~ ***person*** *fails to comply with such order, the*
 23 *secretary may treat or otherwise dispose of such plant pest;* ~~or~~

24 (c) ***if such person is a live plant dealer, after notice and opportunity***
 25 *for a hearing in accordance with the provisions of the Kansas*
 26 *administrative procedure act, the secretary may assess against such* ~~owner~~
 27 ~~any live plant dealer~~ ***any reasonable*** *expense incurred by the secretary in*
 28 *treating or otherwise disposing of such plant pest.*

29 Sec. 4. K.S.A. 2010 Supp. 2-2117 is hereby amended to read as
 30 follows: 2-2117. The secretary is authorized to quarantine this state or any
 31 portion thereof when the secretary determines that such action is necessary
 32 to prevent or retard the spread of a plant pest and to quarantine any other
 33 state or portion thereof whenever the secretary determines that a plant pest
 34 exists therein and that such action is necessary to prevent or retard its
 35 spread into this state. Before promulgating the determination that a
 36 quarantine is necessary, the secretary, after *providing* due notice to
 37 interested parties, shall hold a public hearing at which any interested party
 38 may appear and be heard either in person or by attorney. The secretary
 39 may impose a temporary quarantine for a period not to exceed 90 days
 40 during which time a public hearing, as provided in this section, shall be
 41 held if it appears that a quarantine for more than the 90-day period will be
 42 necessary to prevent or retard the spread of the plant pest. The secretary
 43 may limit the application of the quarantine to the infested portion of the

1 quarantined area and appropriate environs, to be known as the regulated
 2 area, and, without further hearing, may extend the regulated area to
 3 include additional portions of the quarantined area. Following the
 4 establishment of the quarantine, no person shall move the plant pest
 5 against which the quarantine is established or move any regulated article
 6 described in the quarantine, within, from, into or through this state
 7 contrary to the quarantine promulgated by the secretary. The quarantine
 8 may restrict the movement of the plant pest and any regulated articles from
 9 the quarantined or regulated area in this state into or through other parts of
 10 this state or other states and from the quarantined or regulated area in other
 11 states into or through this state. The secretary shall impose such
 12 inspection, disinfection, certification or permit and other requirements as
 13 the secretary shall deem necessary to effectuate the purposes of this act.
 14 The secretary is authorized to establish regulations defining pest freedom
 15 standards for live plants, plants and plant products or other regulated
 16 articles that pose risk of moving plant pests that may cause economic or
 17 environmental harm.

18 Sec. 5. K.S.A. 2010 Supp. 2-2118 is hereby amended to read as
 19 follows: 2-2118. Upon request the secretary may provide inspection
 20 services for any person who owns or possesses plants or plant products or
 21 for certification purposes of regulated articles intended for shipment
 22 ~~interstate or internationally~~. Upon payment of the appropriate fee as
 23 established by rule and regulation and as inspection personnel are
 24 available, the inspection shall be conducted and a report or certificate
 25 setting forth the inspection results shall be issued if requested. Inspection
 26 fees shall not exceed ~~\$30~~ **\$80** per hour. *The secretary shall***[may]** *assess*
 27 **reasonable diagnostic and identification fees as established by rules and**
 28 **regulations adopted by the secretary.** Mileage incurred shall also be paid
 29 by the person requesting the inspection at the rate established by *rules and*
 30 ~~regulation~~ *regulations*. If certificate is requested an additional fee not to
 31 exceed \$50, *as established by rules and regulations*, plus any fee amount
 32 charged by the United States government for the acquisition of federal
 33 certificates shall be assessed. The fees for such inspection and certificate in
 34 effect on the day preceding the effective date of this act shall continue in
 35 effect until the secretary adopts rules and regulations fixing a different fee
 36 therefor under this subsection. In any case where any intended receiving
 37 state or country requires or authorizes the certification of plants or plant
 38 products, bees or beekeeping equipment or other regulated articles to be
 39 based on origin, special handling, treatment or any other procedure in
 40 addition to or in lieu of actual visual inspection of such articles, the
 41 secretary may provide such certification. The secretary may refuse to
 42 perform any inspection if the regulated article to be inspected is found to
 43 be in such condition that it cannot be adequately inspected or the environs

1 in which the regulated article is located present a danger to the health and
 2 safety of the inspection personnel.

3 Sec. 6. K.S.A. 2010 Supp. 2-2120 is hereby amended to read as
 4 follows: 2-2120. (a) Every live plant dealer, before selling or offering for
 5 sale or delivering any live plants in this state, shall procure from the
 6 secretary a live plant dealer's license for each location ~~and vehicle~~ from
 7 which ~~the~~ such live plant dealer offers such live plants for sale. *engages in*
 8 *business as a live plant dealer.*

9 (b) Application for such license shall be made on a form furnished by
 10 the secretary, ~~and~~. The fee for each application shall be fixed by rules and
 11 regulations adopted by the secretary, except that such fee shall not exceed
 12 \$60, *excluding the plant pest emergency fee, authorized pursuant to K.S.A.*
 13 *2010 Supp. 2-2129, and amendments thereto.* ~~and shall not apply to live~~
 14 ~~plant dealers whose total annual retail live plant sales are less than~~
 15 ~~\$10,000. The application fee in effect on the day preceding the effective~~
 16 ~~date of this act shall continue in effect until the secretary adopts rules and~~
 17 ~~regulations fixing a different application fee under this section.~~

18 (c) *A live plant dealer shall not be required to obtain a license if such*
 19 *live plant dealer does not import or export plants into or from the state*
 20 *and the annual gross receipts of such live plant dealer's business is less*
 21 *than \$10,000.*

22 (d) ~~The~~ *Such* live plant dealer's license shall expire on January 31,
 23 following date of issue, ~~except that all valid certificates of nursery~~
 24 ~~inspection and nursery dealer licenses issued by the secretary that are~~
 25 ~~scheduled to expire in 2002 shall remain valid until January 31, 2003.~~

26 (e) A live plant dealer may *only engage in the live plant business with*
 27 ~~sell only~~ live plants which are:

28 (1) In compliance with all quarantines and regulated nonquarantine
 29 pest freedom standards established by the secretary; or

30 (2) ~~live plants~~ accompanied by a valid certificate of inspection of a
 31 federal inspector or inspector of another state; stating that such live plants
 32 comply with all applicable quarantines and regulated nonquarantine pest
 33 freedom standards. ~~Except where restricted by a quarantine, live plants~~
 34 ~~transplanted on one contiguous property are exempt from the provisions of~~
 35 ~~this act.~~

36 Sec. 7. K.S.A. 2010 Supp. 2-2122 is hereby amended to read as
 37 follows: 2-2122. ~~If it is found that any live plant dealer license issued by~~
 38 ~~the secretary is being used in connection with live plants which do not~~
 39 ~~meet the quarantines and regulated nonquarantine pest freedom standards~~
 40 ~~established by the secretary, or other precautionary measures prescribed by~~
 41 ~~the secretary under the provisions of this act and amendments thereto, or if~~
 42 ~~it is found that any live plant dealer's license is being used by a person~~
 43 ~~other than the one to whom it was issued, the secretary may revoke the live~~

1 plant dealer's license after notice and opportunity for a hearing are given in
2 accordance with the provisions of the Kansas administrative procedure act
3 to show cause why the license should not be revoked.

4 *The secretary, after providing notice and opportunity for a hearing in*
5 *accordance with the provisions of the Kansas administrative procedure*
6 *act, may deny any application or revoke, suspend, modify or refuse to*
7 *renew any license, permit or certificate issued pursuant to this act if such*
8 *applicant or holder of such license, permit or certificate has:*

9 (a) *Failed to comply with any provision or requirement of this act or*
10 *any rule or regulation adopted hereunder;*

11 (b) *failed to comply with any laws, rules or regulations of any other*
12 *state, or the United States, related to the licensing of live plant dealers,*
13 *plant pests, plants, plant products or commodity certification; or*

14 (c) *had any license, certificate or permit issued by any other state, or*
15 *the United States, related to the licensing of live plant dealers, plant pests,*
16 *plants or plant products revoked, suspended or modified.*

17 Sec. 8. K.S.A. 2010 Supp. 2-2123 is hereby amended to read as
18 follows: 2-2123. ~~It shall be unlawful to deliver, transport or ship into or~~
19 ~~within this state live plants or other regulated articles which are not in~~
20 ~~compliance with the provisions of this act.~~

21 (a) ~~Any such live plants intended for resale and any such live plants~~
22 ~~transported by public carrier sold, delivered, transported or shipped into~~
23 ~~or within this state by a live plant dealer shall have attached to each~~
24 ~~quantity or package shall be accompanied by a tag, or label, itemized bill~~
25 ~~of lading, receipt or other document on which shall appear the name and~~
26 ~~address of the consigner or shipper; a description of the contents and the~~
27 ~~place of origin.~~

28 (b) *All live plants and regulated articles shipped or moved into this*
29 *state shall be accompanied by a copy of a valid document documentation*
30 *issued by the proper official of the state, territory, district or country from*
31 *which it was shipped, sent, or brought or moved, showing that such live*
32 *plants or regulated articles are in compliance with Kansas quarantines and*
33 *regulated nonquarantine pest freedom standards as established by the*
34 *secretary.*

35 (c) *Live plants brought into the state under a document, as required*
36 *by this section, may be sold and moved under a valid Kansas live plant*
37 *dealer license, and this shall not preclude inspection by the secretary at any*
38 *time within the state.*

39 (d) *Electronic or mail order sales of live plants are subject to the*
40 *provisions of this act. All regulated articles shipped or moved into Kansas*
41 *shall be accompanied by valid documentation issued by the proper official*
42 *of the state, territory, district or county [country] from which it was*
43 *shipped or moved showing that the regulated article is in compliance with*

1 ~~Kansas quarantines or pest freedom standards, or both, established for~~
2 ~~such article.~~

3 Sec. 9. K.S.A. 2010 Supp. 2-2124 is hereby amended to read as
4 follows: 2-2124. (a) It shall be a violation of this act for any person to:

5 ~~(a)~~ (1) ~~To~~ Sell, barter, offer for sale, or move, transport, deliver, ship
6 or offer for shipment into or within this state any plant pests in any living
7 stage without first obtaining approval for such shipment from the
8 secretary;

9 ~~(b)~~ (2) ~~to~~ hinder or prevent the secretary from carrying out ~~his or her~~
10 duties under this act;

11 ~~(c)~~ (3) ~~to~~ fail to carry out the treatment or destruction of any plant
12 pest or regulated article in accordance with official notification from the
13 secretary;

14 ~~(d)~~ (4) ~~to~~ sell, transport, deliver, distribute, offer or expose for sale
15 live plants which are not in compliance with the provisions of this act;

16 ~~(e)~~ (5) ~~to use~~ *engage in business as a live plant dealer and use* an
17 invalid, *suspended* or revoked certificate of inspection, *permit* or live plant
18 dealer license, ~~in the sale or distribution of live plants;~~

19 ~~(f)~~ (6) ~~to~~ fail to comply with any of the provisions of this act, or the
20 rules and regulations ~~promulgated~~ *adopted* hereunder; and

21 ~~(g)~~ (7) ~~to~~ knowingly move any regulated article into *or within* this
22 state from a quarantined area ~~of any other state~~ when such article has not
23 been treated or handled as provided by the requirements of said quarantine
24 at the point of origin of such article.

25 *(b) Each day a violation of this act occurs or continues shall*
26 *constitute a separate violation.*

27 *(c) The district court shall have jurisdiction over violations of this act*
28 *or rules and regulations adopted hereunder. Such court may issue*
29 *temporary restraining orders without first requiring proof that an*
30 *adequate remedy at law does not exist. Any such orders shall be issued*
31 *without bond. Such orders may be issued prior to the initiation of any*
32 *criminal, administrative or civil penalty proceedings.*

33 Sec. 10. K.S.A. 2010 Supp. 2-2125 is hereby amended to read as
34 follows: 2-2125. (a) Any person violating any of the provisions of this act
35 shall be deemed guilty of a misdemeanor and upon conviction shall be
36 punished by a fine of not less than \$25 nor more than \$500.

37 (b) The secretary, *after providing notice and opportunity for a*
38 *hearing, in accordance with the Kansas administrative procedure act,* may
39 assess a civil penalty against any person who violates or fails to comply
40 with the requirements of this act, *or any rules or regulations adopted*
41 *hereunder,* of not less than \$100 nor more ~~than \$1,000~~ \$2,000 per
42 ~~offense-violation. In the case of a continuing offense, each day the~~
43 ~~violation continues may be deemed a separate violation. A separate civil~~

1 *penalty may be assessed for each separate violation.* Such civil penalty
2 may be assessed in addition to any other penalty provided by law. ~~Such~~
3 ~~assessment shall be made in accordance with the Kansas administrative~~
4 ~~procedure act.~~

5 Sec. 11. K.S.A. 2010 Supp. 2-2126 is hereby amended to read as
6 follows: 2-2126. The secretary shall ~~promulgate~~ *adopt*, amend and repeal
7 such rules and regulations as, in the discretion of the secretary, are
8 necessary for the ~~efficient execution~~ *administration and enforcement* of the
9 provisions of this act.

10 Sec. 12. K.S.A. 2010 Supp. 2-2128 is hereby amended to read as
11 follows: 2-2128. (a) The secretary shall remit all moneys received by or
12 for the secretary under article 21 of chapter 2 of Kansas Statutes
13 Annotated, and amendments thereto, to the state treasurer in accordance
14 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
15 receipt of each such remittance, the state treasurer shall deposit the entire
16 amount in the state treasury to the credit of the ~~entomology plant~~ *plant*
17 *protection* fee fund. All expenditures from such fund shall be made in
18 accordance with appropriation acts upon warrants of the director of
19 accounts and reports issued pursuant to vouchers approved by the
20 secretary ~~of agriculture or by a person or persons designated by the~~
21 ~~secretary.~~

22 (b) *The entomology fee fund is hereby redesignated the plant*
23 *protection fee fund.*

24 Sec. 13. K.S.A. 2010 Supp. 2-2129 is hereby amended to read as
25 follows: 2-2129. (a) There is hereby created a plant pest emergency
26 response fund in the state treasury. Such fund shall be funded by a fee
27 assessed in addition to the fees assessed a live plant dealer under article 21
28 of chapter 2 of the Kansas Statutes Annotated, *and amendments thereto.*
29 The additional fee shall be fixed by ~~rule and regulation promulgated~~ *rules*
30 *and regulations adopted* by the secretary of agriculture, except that such
31 additional fee shall not exceed \$5 annually on each live plant dealer
32 license. The secretary is authorized and empowered to collect the fees
33 provided in this section. ~~When the total amount of fees deposited in the~~
34 ~~fund is equal to or exceeds \$15,000, the secretary shall not collect any~~
35 ~~such fees as provided in this section. When expenditures made from the~~
36 ~~fund result in the total amount of the fees deposited in the fund to be less~~
37 ~~than \$15,000, the secretary may resume the assessment and collection of~~
38 ~~such fees as provided in this section.~~

39 (b) The secretary is authorized and empowered to make expenditures
40 from the plant pest emergency response fund and that in the discretion of
41 the secretary mitigate pests that have been identified by the secretary as
42 high risk pests having the potential to damage agriculture, horticulture or
43 the environment. Such expenditures may include the costs of enforcement

1 to protect against high risk pests identified by the secretary. All
2 expenditures from such fund shall be made in accordance with
3 appropriation acts upon warrants of the director of accounts and reports
4 issued pursuant to vouchers approved by the secretary ~~or by a designee of~~
5 ~~the secretary.~~

6 (c) The plant pest emergency response fund shall be a fund separate
7 and distinct from the ~~entomology~~ *plant protection* fee fund referred to in
8 K.S.A. 2-2128, and amendments thereto.

9 (d) The provisions of this section shall be part of and supplemental to
10 this act.

11 Sec. 14. K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117, 2-2118,
12 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 2-2129 are
13 hereby repealed.

14 Sec. 15. This act shall take effect and be in force from and after its
15 publication in the statute book.

16