

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2050

By Committee on Agriculture and Natural Resources

1-23

1 AN ACT concerning agriculture; relating to agricultural chemicals,
2 registration; pesticide businesses, liability insurance; ~~repealing the~~
3 ~~Kansas agricultural liming materials act~~; amending K.S.A. 2-2448 and
4 K.S.A. 2012 Supp. 2-2204 and repealing the existing sections; ~~also~~
5 ~~repealing K.S.A. 2-2902, 2-2904, 2-2907, 2-2908, 2-2909 and 2-2910~~
6 ~~and K.S.A. 2012 Supp. 2-2901, 2-2903, 2-2905, 2-2906 and 2-2911.~~

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 2012 Supp. 2-2204 is hereby amended to read as
10 follows: 2-2204. (a) Every agricultural chemical which is distributed, sold
11 or offered for sale within this state or delivered for transportation or
12 transported in intrastate commerce or between points within this state
13 through any point outside this state shall be registered by the secretary.
14 The secretary shall have the authority to classify or designate as restricted-
15 use any pesticide registered for sale, use or distribution in the state of
16 Kansas, according to rules and regulations promulgated by the secretary.
17 The secretary may adopt rules and regulations to allow products to be
18 registered for a period not to exceed three years. All registration of
19 products shall expire on December 31 of the year the registration is set to
20 expire, unless such registration shall be renewed, in which event expiration
21 date shall be extended for each year of renewal registration, or until
22 otherwise terminated. Products which have the same formula, and are
23 manufactured by the same person, the labeling of which contains the same
24 claims, and the labels of which bear a designation identifying the product
25 as the same agricultural chemical ~~may be registered as a single product~~
26 ~~and additional names and labels shall be added by supplement statements~~
27 ~~during the current period of registration shall be registered under each~~
28 *separate alternative brand name or label.* Within the discretion of the
29 secretary, or an authorized representative of the secretary, a change in the
30 labeling or formulas of an agricultural chemical may be made within the
31 current period of registration without requiring a reregistration of the
32 product. Any agricultural chemical imported into this state which is subject
33 to the provisions of any federal act providing for the registration and
34 which has been duly registered under the provisions of such federal act, in
35 the discretion of the secretary, may be exempted from registration under
36 this act when such agricultural chemical is sold or distributed in the

1 unbroken immediate container in which such agricultural chemical was
2 originally shipped.

3 (b) The registrant shall file with the secretary, a statement including:

4 (1) The name and address of the registrant and the name and address of the
5 person whose name will appear on the label if other than the registrant; (2)
6 the name of the agricultural chemical; (3) a complete copy of the labeling
7 accompanying the agricultural chemical and a statement of all claims
8 made and to be made for it and a statement of directions for use; and (4) if
9 requested by the secretary, or an authorized representative of the secretary,
10 a full description of the tests made and the results thereof upon which the
11 claims are based.

12 (c) The secretary may require the registrant to submit a copy of the
13 product label registered by the ~~EPA~~ *environmental protection agency*
14 under the provisions of ~~FIFRA~~ *the federal insecticide, fungicide and*
15 *rodenticide act, 7 U.S.C. § 136 et seq.*

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

19 (e) On the date of registration, the registrant shall pay a fee fixed by
20 rules and regulations adopted by the secretary of agriculture. Such fee
21 shall equal an amount per registered agricultural chemical, not to exceed
22 \$150 per year. Such fee shall be deposited in the state treasury and credited
23 as follows: (1) An amount equal to \$100 for each year of registration shall
24 be credited to the state water plan fund created by K.S.A. 82a-951, and
25 amendments thereto; and (2) the remainder shall be credited to the
26 agricultural chemical fee fund to be used for carrying out the provisions of
27 this act. The annual fee for each agricultural chemical registered which is
28 in effect on the day preceding the effective date of this act shall continue in
29 effect until the secretary of agriculture adopts rules and regulations fixing
30 a different fee therefor under this subsection. The secretary of agriculture
31 is hereby authorized and empowered, whenever it determines that the fee
32 imposed by this subsection and paid into the state treasury as provided by
33 law is yielding more revenue than is required for the purposes to which
34 such fee is devoted by law, to reduce the fee imposed by this subsection
35 for such period as the secretary shall deem justified by adopting rules and
36 regulations under this subsection but not for less than one year. In the
37 event that the secretary, after reducing such fee, finds that sufficient
38 revenues are not being produced by such reduced fee, the secretary is
39 authorized and empowered by adopting rules and regulations under this
40 subsection, to restore in full or in part such fee to an amount which, in the
41 judgment of the secretary, will produce sufficient revenues for the
42 purposes as provided in this section, but not exceeding the maximum
43 amount of the fee imposed by this subsection.

1 (f) The secretary, or an authorized representative of the secretary,
2 whenever it is deemed essential in the administration of this act, may
3 require the submission of the complete formula or any other data in
4 support of the registration for any pesticide. The complete formula and any
5 other trade secrets submitted to support the registration application shall be
6 considered as confidential. If it appears to the secretary, or an authorized
7 representative of the secretary, that the composition of the product is such
8 as to warrant the proposed claims for the product and if the product and its
9 labeling and other material required to be submitted comply with the
10 requirements of this act, the secretary shall register the product.

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

26 (h) Any pesticide registration canceled or suspended under the
27 provisions of ~~FIFRA~~ *the federal insecticide, fungicide and rodenticide act*,
28 *7 U.S.C. § 136 et seq.*, shall be considered to be canceled or suspended
29 under provisions of the agricultural chemical act of 1947, unless such
30 cancellation is due to the nonpayment of registration fees required under
31 ~~FIFRA~~ *the federal insecticide, fungicide and rodenticide act, 7 U.S.C. §*
32 *136 et seq.*

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

41 (j) In order to protect the public, the secretary, or a duly authorized
42 representative of the secretary, on the secretary's own motion, may at any
43 time, after written notice to the registrant, suspend or revoke the

1 registration of an agricultural chemical. Any person so notified shall be
2 given an opportunity for a hearing in accordance with the provisions of the
3 Kansas administrative procedure act with regard to the secretary's
4 contemplated action, before any registration is suspended or revoked.

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

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

12 Sec. 2. K.S.A. 2-2448 is hereby amended to read as follows: 2-2448.

13 ~~(a) Except as provided by subsection (b);~~ The secretary shall not issue a
14 pesticide business license until the applicant has furnished proof of
15 financial responsibility by ~~one of the following:~~

16 ~~(1) A surety bond in an amount not less than \$6,000 per year. The~~
17 ~~bond shall be executed by a corporate surety and shall state the effective~~
18 ~~date and the expiration date. The surety bond shall be executed on a form~~
19 ~~approved by the secretary. The applicant shall be named as the principal in~~
20 ~~the bond. Such bond shall be to the state of Kansas and shall be~~
21 ~~conditioned upon compliance by the principal and by the principal's~~
22 ~~officers, agents, representatives and employees, with the provisions of this~~
23 ~~act and acts amendatory thereof and supplemental thereto. It shall be~~
24 ~~unlawful for any licensed person to use the words "bond" or "bonded" in~~
25 ~~advertising or in publicizing such person's operations in connection with~~
26 ~~the application of pesticides unless such bond is a performance bond and~~
27 ~~that fact and the amount of such bond are specified.~~

28 ~~(2) A certificate of liability insurance providing a certificate of~~
29 ~~liability insurance.~~ The certificate of liability insurance shall be executed
30 by an insurance company authorized to do business in Kansas or by a
31 licensed insurance agent operating under authority of K.S.A. 40-246b, and
32 amendments thereto, and shall state the effective date and the expiration
33 date of the policy. Such liability insurance shall be subject to the insurer's
34 policy provisions filed with and approved by the commissioner of
35 insurance pursuant to K.S.A. 40-216, and amendments thereto, except as
36 authorized by K.S.A. 40-246b, and amendments thereto. The liability
37 insurance policy shall provide: ~~(A)~~ (a) Coverage for not less than \$25,000
38 \$50,000 for bodily injury liability for each occurrence; and ~~(B)~~ (b)
39 coverage for not less than ~~\$5,000~~ \$25,000 for property damage liability for
40 each occurrence. In addition to the coverage specified above, if the
41 applicant for a pesticide business license is an aerial applicator, the
42 liability insurance policy shall provide coverage for any pesticide such
43 applicant will be applying and for comprehensive chemical coverage.

1 Pesticide application equipment, if required to be registered under K.S.A.
2 2-2456, and amendments thereto, shall be covered. The insurer shall notify
3 the secretary, in writing, of any expiration, reduction or cancellation of
4 liability insurance, furnished as a prerequisite of licensure, not later than
5 10 days before the expiration, reduction or cancellation takes effect. Upon
6 expiration, reduction or cancellation of the liability insurance, the secretary
7 shall suspend such pesticide applicator's business license until the
8 insurance requirement is met by the licensee for the current license period.
9 The certificate shall be executed on a form approved by the secretary.

10 ~~(3) A \$6,000 letter of credit from a Kansas financial institution, as~~
11 ~~defined in K.S.A. 16-117, and amendments thereto. The letter of credit~~
12 ~~shall be executed on a form approved by the secretary. The letter of credit~~
13 ~~shall state the effective date and the expiration date and shall be valid~~
14 ~~through the term of the applicant's business license. Upon cancellation of~~
15 ~~the letter of credit, the secretary shall suspend such pesticide applicator's~~
16 ~~business license until the letter of credit requirement is met by the licensee~~
17 ~~for the current license period.~~

18 ~~(4) Maintaining a minimum balance of \$6,000 in an escrow account~~
19 ~~in a Kansas financial institution as defined in K.S.A. 16-117, and~~
20 ~~amendments thereto. The escrow account shall maintain the minimum~~
21 ~~balance through the term of the applicant's business license. The secretary~~
22 ~~shall be notified in writing by the financial institution within 10 days if the~~
23 ~~amount in the escrow account falls below the \$6,000 minimum balance.~~
24 ~~Upon notification, the secretary shall suspend such pesticide applicator's~~
25 ~~business license until the escrow account minimum balance is at \$6,000.~~

26 ~~(b) Before June 1, 1994, the financial responsibility and proof of~~
27 ~~financial responsibility required pursuant to this section prior to March 1,~~
28 ~~1994, shall continue to apply to any pesticide business holding a valid~~
29 ~~pesticide business license on February 28, 1994, and no different or~~
30 ~~additional financial responsibility or proof of financial responsibility shall~~
31 ~~be required of such business. On or before June 1, 1994, each pesticide~~
32 ~~business licensed before March 1, 1994, shall furnish to the secretary proof~~
33 ~~of financial responsibility conforming to the requirements of this section~~
34 ~~as amended by this act.~~

35 ~~(c) The requirements of this section as amended by this act shall~~
36 ~~apply to any applicant applying for an original pesticide business license~~
37 ~~on or after March 1, 1994, and no different or additional financial~~
38 ~~responsibility or proof of financial responsibility shall be required of such~~
39 ~~applicant.~~

40 Sec. 3. ~~K.S.A. 2-2448, 2-2902, 2-2904, 2-2907, 2-2908, 2-2909 and~~
41 ~~2-2910 and K.S.A. 2012 Supp. 2-2204, 2-2901, 2-2903, 2-2905, 2-2906~~
42 ~~and 2-2911 are hereby repealed.~~

43 Sec. 4. This act shall take effect and be in force from and after its

- 1 publication in the statute book.