

## HOUSE BILL No. 2279

By Committee on Agriculture and Natural Resources

2-10

---

1 AN ACT concerning agriculture; relating to administrative procedure;  
2 division of water resources; fertilizer; amending K.S.A. 2014 Supp. 2-  
3 1201b, 2-1201c, 2-1208a and 82a-1901 and repealing the existing  
4 sections; also repealing K.S.A. 2014 Supp. 82a-1902.  
5

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

7 Section 1. K.S.A. 2014 Supp. 2-1201b is hereby amended to read as  
8 follows: 2-1201b. (a) It shall be deemed a violation of K.S.A. 2-1201 and  
9 2-1201a, and amendments thereto, for any person to: (1) Sell or distribute  
10 in this state any custom blended fertilizer when such person does not hold  
11 a valid license as required by this act; or (2) fail to comply with the  
12 requirements of K.S.A. 2-1201a, and amendments thereto, and, except as  
13 otherwise provided, the provisions of K.S.A. 2-1208, and amendments  
14 thereto. Failure to comply with the provisions of ~~subsection (1)(a) of~~  
15 K.S.A. 2-1208(1)(a), and amendments thereto, shall not be deemed a  
16 violation of this section. The penalties as provided in K.S.A. 2-1208, and  
17 amendments thereto, shall apply to persons as described in this section  
18 who fail to comply with the provisions of K.S.A. 2-1208, and amendments  
19 thereto.

20 (b) On and after July 1, 2003, any person or custom blender who  
21 violates any provision of article 12 of chapter 2 of Kansas Statutes  
22 Annotated, and amendments thereto, or the rules and regulations adopted  
23 pursuant thereto, *after notice and opportunity for a hearing in accordance*  
24 *with the provisions of the Kansas administrative procedure act*, may incur  
25 a civil penalty in an amount not more than \$5,000 per violation. In the case  
26 of a continuing violation, every day such violation continues may be  
27 deemed a separate violation. Such civil penalty may be assessed in  
28 addition to any other penalty provided by law. *Any final order issued by*  
29 *the secretary assessing a civil penalty* ~~assessed~~ pursuant to this subsection  
30 is subject to review in accordance with the Kansas judicial review act. The  
31 secretary shall remit any civil penalty collected pursuant to this act to the  
32 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
33 amendments thereto. Upon receipt of each such remittance, the state  
34 treasurer shall deposit the entire amount in the state treasury to the credit  
35 of the state general fund.

36 Sec. 2. K.S.A. 2014 Supp. 2-1201c is hereby amended to read as

1 follows: 2-1201c. (a) Ammonium nitrate dealers shall register with the  
2 secretary of agriculture. Registration shall be required for each business  
3 location selling ammonium nitrate. Each registration shall expire on  
4 December 31 following issuance unless the registration is renewed  
5 annually. A registration fee not to exceed \$25 shall accompany the  
6 application for registration for any ammonium nitrate dealer that is not  
7 registered as a custom blender, if the fee is fixed by the secretary in rules  
8 and regulations.

9 (b) Ammonium nitrate storage shall be secured to provide reasonable  
10 protection against vandalism, theft and unauthorized access.

11 (c) Ammonium nitrate dealers shall obtain the following regarding  
12 any sale of ammonium nitrate:

13 (1) Date of sale;

14 (2) quantity purchased;

15 (3) license number of the purchaser's valid state or federal driver's  
16 license or other picture identification card number deemed acceptable by  
17 the secretary in rules and regulations;

18 (4) the purchaser's name, current physical address and telephone  
19 number;

20 (5) if the ammonium nitrate is received to a person other than the  
21 purchaser, the name, current physical address, telephone number and  
22 license number of that person's valid state or federal driver's license or  
23 other picture identification card number deemed acceptable by the  
24 secretary in rules and regulations; and

25 (6) the physical address of the person to whom the ammonium nitrate  
26 is delivered if different than the physical address of the purchaser.

27 (d) Ammonium nitrate dealers shall maintain records of all  
28 information required to be obtained pursuant to subsection (c) for a  
29 minimum of three years. The records shall be subject to inspection upon  
30 request by the secretary of agriculture or the secretary's designee.

31 (e) Ammonium nitrate dealers may refuse to sell to any person  
32 attempting to purchase ammonium nitrate out of season, in unusual  
33 quantities or under suspect purchase patterns.

34 (f) In addition to any other penalties provided by law, each  
35 ammonium nitrate dealer registration shall be subject to denial, suspension  
36 or revocation ~~pending~~, *after notice and opportunity for a hearing* in  
37 accordance with the provisions of the Kansas administrative procedure act  
38 for any violation of this act whether committed by the dealer or by the  
39 dealer's officers, agents or employees.

40 (g) The provisions of this section are part of and supplemental to  
41 article 12 of chapter 2 of the Kansas Statutes Annotated, and amendments  
42 thereto.

43 Sec. 3. K.S.A. 2014 Supp. 2-1208a is hereby amended to read as

1 follows: 2-1208a. ~~(a) If it shall appear to the secretary or an authorized~~  
2 ~~representative of the secretary from examination or analysis of an official~~  
3 ~~sample of a commercial fertilizer that the commercial fertilizer is falsely~~  
4 ~~labeled or fails to comply with the provisions of this act, the secretary shall~~  
5 ~~cause notice to be given to the person in possession of the commercial~~  
6 ~~fertilizer and the registrant that a hearing in relation thereto will be held at~~  
7 ~~a date and place named in such notice. Whereupon the secretary or a~~  
8 ~~presiding officer from the office of administrative hearings shall hold a~~  
9 ~~hearing in accordance with the provisions of the Kansas administrative~~  
10 ~~procedure act.~~

11 ~~(b) If it is established at the hearing to the satisfaction of the secretary~~  
12 ~~or a presiding officer from the office of administrative hearings, that any~~  
13 ~~commercial fertilizer has been registered in error, or has been sold in~~  
14 ~~violation of any of the provisions of this act, or that any provision of this~~  
15 ~~act has been violated, the secretary shall have power to cancel the~~  
16 ~~registration of such brand or brands of commercial fertilizer, and after~~  
17 ~~notice and opportunity for a hearing in accordance with the Kansas~~  
18 ~~administrative procedure act. The secretary may report the facts, the~~  
19 ~~results of any analysis or other examination, and the record of any~~  
20 ~~proceedings to the proper prosecuting attorney and furnish that officer~~  
21 ~~with an official report of the record of such hearing and a copy of the~~  
22 ~~result of any analysis or other examination which may have a bearing on~~  
23 ~~the case. Prosecution may be instituted under the provisions of this act in~~  
24 ~~the district court of the county where the offense is alleged to have been~~  
25 ~~committed, upon complaint of the secretary or an authorized representative~~  
26 ~~of the secretary or any citizen of this state, or by any county attorney and~~  
27 ~~shall be prosecuted by the county attorney in the name of the state of~~  
28 ~~Kansas.~~

29 Sec. 4. K.S.A. 2014 Supp. 82a-1901 is hereby amended to read as  
30 follows: 82a-1901. (a) Orders of the chief engineer of the division of water  
31 resources of the department of agriculture pursuant to K.S.A. 42-703, 42-  
32 722, 42-722a, 82a-708b, 82a-711, 82a-718 and 82a-1038 and K.S.A. 2014  
33 Supp. 82a-1041, and amendments thereto, and failure of the chief engineer  
34 to act pursuant to K.S.A. 82a-714, and amendments thereto, shall be  
35 subject to *administrative review by a hearing officer designated according*  
36 *to subsection (b) and otherwise* in accordance with the provisions of the  
37 Kansas administrative procedure act.

38 ~~Such review shall be conducted by the secretary of agriculture or a~~  
39 ~~presiding officer from the office of administrative hearings within the~~  
40 ~~department of administration. The secretary of agriculture shall not have~~  
41 ~~the authority otherwise to designate a presiding officer to conduct such~~  
42 ~~review unless at the party's request pursuant to K.S.A. 75-37,121, and~~  
43 ~~amendments thereto.~~

1       (b) ~~The order of the secretary of agriculture or the administrative law~~  
2 ~~judge or presiding officer upon review pursuant to subsection (a) shall be a~~  
3 ~~final order under the Kansas administrative procedure act. Such order shall~~  
4 ~~not be subject to reconsideration pursuant to K.S.A. 77-529, and~~  
5 ~~amendments thereto, and shall be subject to review in accordance with the~~  
6 ~~Kansas judicial review act~~ *The chief engineer shall provide an opportunity*  
7 *for a hearing to be conducted before the chief engineer or before a*  
8 *hearing officer appointed by the chief engineer. Such hearing officer shall*  
9 *not be a current employee of the department of agriculture, shall be a*  
10 *licensed attorney in this state, and shall be knowledgeable in the area of*  
11 *water policies and administrative procedure. Such hearing officer, as*  
12 *directed by the chief engineer, shall either provide recommendations to the*  
13 *chief engineer for issuance of an initial order or issue an initial order.*

14       (c) *Any order issued pursuant to subsection (b) shall be subject to*  
15 *review by the secretary of agriculture pursuant to K.S.A. 77-527, and*  
16 *amendments thereto. Any final order of the department of agriculture*  
17 *pursuant to this section shall not be subject to reconsideration pursuant to*  
18 *K.S.A. 77-529, and amendments thereto.*

19       (d) *This act shall not affect any administrative proceeding pending*  
20 *before the chief engineer of the division of water resources of the*  
21 *department of agriculture, the secretary of agriculture or any*  
22 *administrative hearing officer on July 1, 1999 2015, and such matter shall*  
23 *proceed as though no change in the law had been made with regard to such*  
24 *proceeding.*

25       Sec. 5. *K.S.A. 2014 Supp. 2-1201b, 2-1201c, 2-1208a, 82a-1901 and*  
26 *82a-1902 are hereby repealed.*

27       Sec. 6. *This act shall take effect and be in force from and after its*  
28 *publication in the statute book.*