

HOUSE BILL No. 2652

By Committee on Federal and State Affairs

2-6

1 AN ACT concerning agriculture; relating to poultry confinement facilities;
2 providing for the establishment thereof in a county; amending K.S.A.
3 2017 Supp. 17-5903 and 17-5904 and repealing the existing sections.
4

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

6 New Section 1. (a) (1) Notwithstanding the provisions of K.S.A. 17-
7 5904, and amendments thereto, on or after July 1, 2018, no individual,
8 corporation, trust, limited liability company, limited partnership, corporate
9 partnership, family farm corporation, authorized farm corporation, limited
10 liability agricultural company, family farm limited liability agricultural
11 company, limited agricultural partnership, family trust, authorized trust or
12 testamentary trust shall, either directly or indirectly, own, acquire or
13 otherwise obtain or lease any agricultural land in this state for the purpose
14 of establishing a poultry confinement facility, as defined in K.S.A. 17-
15 5903, and amendments thereto.

16 (2) The restrictions provided in subsection (a)(1) do not apply to
17 agricultural land held by an individual, corporation, trust, limited liability
18 company, limited partnership, corporate partnership, family farm
19 corporation, authorized farm corporation, limited liability agricultural
20 company, family farm limited liability agricultural company, limited
21 agricultural partnership, family trust, authorized trust or testamentary trust
22 for use as a poultry confinement facility in any county that has voted
23 favorably pursuant to section 2, and amendments thereto, either by county
24 resolution or by the electorate.

25 (b) Any individual, corporation, trust, limited liability company,
26 limited partnership or corporate partnership, family farm corporation,
27 authorized farm corporation, limited liability agricultural company, family
28 farm limited liability agricultural company, limited agricultural
29 partnership, family trust, authorized trust or testamentary trust violating
30 the provisions of this section shall be subject to a civil penalty of not more
31 than \$50,000 and shall divest itself of any land acquired in violation of this
32 section within one year after judgment is entered in the action. The district
33 courts of this state may prevent and restrain violations of this section
34 through the issuance of an injunction. The attorney general or district or
35 county attorney shall institute suits on behalf of the state to enforce the
36 provisions of this section.

1 (c) Civil penalties sued for and recovered by the attorney general
2 shall be paid into the state general fund. Civil penalties sued for and
3 recovered by the county attorney or district attorney shall be paid into the
4 general fund of the county where the proceedings were instigated.

5 New Sec. 2. (a) (1) The board of county commissioners, by
6 resolution, shall permit or deny a poultry confinement facility, as defined
7 in K.S.A. 17-5903, and amendments thereto, to be established within the
8 county by an individual, corporation, trust, limited liability company,
9 limited partnership, corporate partnership, family farm corporation,
10 authorized farm corporation, limited liability agricultural company, family
11 farm limited liability agricultural company, limited agricultural
12 partnership, family trust, authorized trust or testamentary trust. Such
13 resolution shall be published once each week for two consecutive weeks in
14 the official county newspaper. The resolution shall take effect 60 days after
15 final publication, unless a valid petition in opposition to the same is filed.

16 (2) If, within 60 days of the final publication of the resolution, a valid
17 protest petition to submit the resolution to the qualified electors of the
18 county is signed by qualified electors of the county, equal in number to not
19 less than 5% of the electors of the county who voted for the office of
20 secretary of state at the last preceding general election at which such office
21 was elected and is filed with the county election officer, the county
22 election officer shall submit the question, as established in subsection (c),
23 of whether a poultry confinement facility shall be allowed to be
24 established in such county at the next state, county or special election.

25 (b) (1) The board of county commissioners, upon a petition filed in
26 accordance with subsection (b)(2), shall submit to the qualified electors of
27 the county a proposition to permit a poultry confinement facility, as
28 defined in K.S.A. 17-5903, and amendments thereto, that produces more
29 than 100,000 broiler poultry or more than 25,000 brooding hens per year,
30 to be established within the county by an individual, corporation, trust,
31 limited liability company, limited partnership, corporate partnership,
32 family farm corporation, authorized farm corporation, limited liability
33 agricultural company, family farm limited liability agricultural company,
34 limited agricultural partnership, family trust, authorized trust or
35 testamentary trust.

36 (2) A petition to submit a proposition to the qualified voters of a
37 county pursuant to this section shall be filed with the county election
38 officer. The petition shall be signed by qualified electors of the county
39 equal in number to not less than 5% of the electors of the county who
40 voted for the office of secretary of state at the last preceding general
41 election at which such office was elected. The following shall appear on
42 the petition:

43 "We request an election to determine whether an individual,

1 corporation, trust, limited liability company, limited partnership, corporate
2 partnership, family farm corporation, authorized farm corporation, limited
3 liability agricultural company, family farm limited liability agricultural
4 company, limited agricultural partnership, family trust, authorized trust or
5 testamentary trust shall be allowed to, either directly or indirectly, own,
6 acquire or otherwise obtain or lease any agricultural land in _____
7 county for the purpose of establishing a poultry confinement facility."

8 (3) Upon the submission of a valid petition calling for an election
9 pursuant to this subsection, the county election officer shall submit the
10 question, as established in subsection (c), of whether a poultry
11 confinement facility shall be allowed to be established in such county at
12 the next countywide election that occurs more than 60 days after the
13 petition is filed with the county election officer.

14 (c) In any election established pursuant to this section, the following
15 shall appear on the ballot:

16 "Shall an individual, corporation, trust, limited liability company,
17 limited partnership, corporate partnership, family farm corporation,
18 authorized farm corporation, limited liability agricultural company, family
19 farm limited liability agricultural company, limited agricultural
20 partnership, family trust, authorized trust or testamentary trust be allowed
21 to, either directly or indirectly, own, acquire, or otherwise obtain or lease
22 any agricultural land in _____ county for the purpose of establishing
23 a poultry confinement facility?"

24 (d) If a majority of the votes cast and counted are in opposition to
25 allowing poultry confinement facilities to be established in such county,
26 the county election officer shall transmit a copy of the result to the
27 secretary of state, who shall publish in the Kansas register the result of
28 such election and that poultry confinement facilities are not allowed to be
29 established in such county.

30 (e) If a majority of the votes cast and counted are in favor of the
31 proposition, the county election officer shall transmit a copy of the result
32 to the secretary of state, who shall publish in the Kansas register the result
33 of such election and that poultry confinement facilities are allowed to be
34 established in such county.

35 (f) The election provided for by this section shall be conducted, and
36 the votes counted and canvassed, in the manner provided by law for
37 question-submitted elections of the county.

38 Sec. 3. K.S.A. 2017 Supp. 17-5903 is hereby amended to read as
39 follows: 17-5903. As used in this act:

40 (a) "Corporation" means a domestic or foreign corporation organized
41 for profit or nonprofit purposes.

42 (b) "Nonprofit corporation" means a corporation organized not-for-
43 profit and ~~which~~that qualifies under section 501(c)(3) of the federal

1 internal revenue code of 1986 as amended.

2 (c) "Limited partnership" has the meaning provided by K.S.A. 56-
3 1a01, and amendments thereto.

4 (d) "Limited agricultural partnership" means a limited partnership
5 founded for the purpose of farming and ownership of agricultural land in
6 which:

7 (1) The partners do not exceed 10 in number;

8 (2) the partners are all natural persons, persons acting in a fiduciary
9 capacity for the benefit of natural persons or nonprofit corporations, or
10 general partnerships other than corporate partnerships formed under the
11 laws of the state of Kansas; and

12 (3) at least one of the general partners is a person residing on the farm
13 or actively engaged in the labor or management of the farming operation.
14 If only one partner is meeting the requirement of this provision and such
15 partner dies, the requirement of this provision does not apply for the period
16 of time that the partner's estate is being administered in any district court
17 in Kansas.

18 (e) "Corporate partnership" means a partnership, as defined in K.S.A.
19 56a-101, and amendments thereto, ~~which~~*that* has within the association
20 one or more corporations or one or more limited liability companies.

21 (f) "Feedlot" means a lot, yard, corral, or other area in which
22 livestock fed for slaughter are confined. The term includes within its
23 meaning agricultural land in such acreage as is necessary for the operation
24 of the feedlot.

25 (g) "Agricultural land" means land suitable for use in farming.

26 (h) "Farming" means the cultivation of land for the production of
27 agricultural crops, the raising of poultry, the production of eggs, the
28 production of milk, the production of fruit or other horticultural crops,
29 grazing or the production of livestock. Farming does not include the
30 production of timber, forest products, nursery products or sod, and farming
31 does not include a contract to provide spraying, harvesting or other farm
32 services.

33 (i) "Fiduciary capacity" means an undertaking to act as executor,
34 administrator, guardian, conservator, trustee for a family trust, authorized
35 trust or testamentary trust or receiver or trustee in bankruptcy.

36 (j) "Family farm corporation" means a corporation:

37 (1) Founded for the purpose of farming and the ownership of
38 agricultural land in which the majority of the voting stock is held by and
39 the majority of the stockholders are persons related to each other, all of
40 whom have a common ancestor within the third degree of relationship, by
41 blood or by adoption, or the spouses or the stepchildren of any such
42 persons, or persons acting in a fiduciary capacity for persons so related;

43 (2) all of its stockholders are natural persons or persons acting in a

1 fiduciary capacity for the benefit of natural persons; and

2 (3) at least one of the stockholders is a person residing on the farm or
3 actively engaged in the labor or management of the farming operation. A
4 stockholder who is an officer of any corporation referred to in this
5 subsection and who is one of the related stockholders holding a majority of
6 the voting stock shall be deemed to be actively engaged in the
7 management of the farming corporation. If only one stockholder is
8 meeting the requirement of this provision and such stockholder dies, the
9 requirement of this provision does not apply for the period of time that the
10 stockholder's estate is being administered in any district court in Kansas.

11 (k) "Authorized farm corporation" means a Kansas corporation, other
12 than a family farm corporation, all of the incorporators of which are
13 Kansas residents, family farm corporations or family farm limited liability
14 agricultural companies or any combination thereof, and ~~which~~ is founded
15 for the purpose of farming and the ownership of agricultural land in which:

16 (1) The stockholders do not exceed 15 in number; and

17 (2) the stockholders are all natural persons, family farm corporations,
18 family farm limited liability agricultural companies or persons acting in a
19 fiduciary capacity for the benefit of natural persons, family farm
20 corporations, family farm limited liability agricultural companies or
21 nonprofit corporations; and

22 (3) if all of the stockholders are natural persons, at least one
23 stockholder must be a person residing on the farm or actively engaged in
24 labor or management of the farming operation. If only one stockholder is
25 meeting the requirement of this provision and such stockholder dies, the
26 requirement of this provision does not apply for the period of time that the
27 stockholder's estate is being administered in any district court in Kansas.

28 (l) "Trust" means a fiduciary relationship with respect to property,
29 subjecting the person by whom the property is held to equitable duties to
30 deal with the property for the benefit of another person, ~~which~~ *that* arises as
31 a result of a manifestation of an intention to create it. A trust includes a
32 legal entity holding property as trustee, agent, escrow agent, attorney-in-
33 fact and in any similar capacity.

34 (m) "Family trust" means a trust in which:

35 (1) A majority of the equitable interest in the trust is held by and the
36 majority of the beneficiaries are persons related to each other, all of whom
37 have a common ancestor within the third degree of relationship, by blood
38 or by adoption, or the spouses or stepchildren of any such persons, or
39 persons acting in a fiduciary capacity for persons so related; and

40 (2) all the beneficiaries are natural persons, are persons acting in a
41 fiduciary capacity, other than as trustee for a trust, or are nonprofit
42 corporations.

43 (n) "Authorized trust" means a trust other than a family trust in

1 which:

2 (1) The beneficiaries do not exceed 15 in number;

3 (2) the beneficiaries are all natural persons, are persons acting in a
4 fiduciary capacity, other than as trustee for a trust, or are nonprofit
5 corporations; and

6 (3) the gross income thereof is not exempt from taxation under the
7 laws of either the United States or the state of Kansas.

8 For the purposes of this definition, if one of the beneficiaries dies, and
9 more than one person succeeds, by bequest, to the deceased beneficiary's
10 interest in the trust, all of such persons, collectively, shall be deemed to be
11 one beneficiary, and a husband and wife, and their estates, collectively,
12 shall be deemed to be one beneficiary.

13 (o) "Testamentary trust" means a trust created by devising or
14 bequeathing property in trust in a will as such terms are used in the Kansas
15 probate code.

16 (p) "Poultry confinement facility" means the structures and related
17 equipment used for housing, breeding, laying of eggs or feeding of poultry
18 in a restricted environment. The term includes within its meaning only
19 such agricultural land as is necessary for proper disposal of liquid and
20 solid wastes and for isolation of the facility to reasonably protect the
21 confined poultry from exposure to disease. *"Poultry confinement facility"*
22 *does not include any facility that produces 100,000 broiler chickens or*
23 *25,000 brooding hens or less per year.* As used in this subsection,
24 "poultry" means chickens, turkeys, ducks, geese or other fowl.

25 (q) "Rabbit confinement facility" means the structures and related
26 equipment used for housing, breeding, raising, feeding or processing of
27 rabbits in a restricted environment. The term includes within its meaning
28 only such agricultural land as is necessary for proper disposal of liquid and
29 solid wastes and for isolation of the facility to reasonably protect the
30 confined rabbits from exposure to disease.

31 (r) "Swine marketing pool" means an association whose membership
32 includes three or more business entities or individuals formed for the sale
33 of hogs to buyers but shall not include any trust, corporation, limited
34 partnership or corporate partnership, or limited liability company other
35 than a family farm corporation, authorized farm corporation, limited
36 liability agricultural company, limited agricultural partnership, family
37 trust, authorized trust or testamentary trust.

38 (s) "Swine production facility" means the land, structures and related
39 equipment used for housing, breeding, farrowing or feeding of swine. The
40 term includes within its meaning only such agricultural land as is
41 necessary for proper disposal of liquid and solid wastes in environmentally
42 sound amounts for crop production and to avoid nitrate buildup and for
43 isolation of the facility to reasonably protect the confined animals from

1 exposure to disease.

2 (t) "Limited liability company" has the meaning provided by K.S.A.
3 17-7663, and amendments thereto.

4 (u) "Limited liability agricultural company" means a limited liability
5 company founded for the purpose of farming and ownership of agricultural
6 land in which:

7 (1) The members do not exceed 10 in number; and

8 (2) the members are all natural persons, family farm corporations,
9 family farm limited liability agriculture companies, persons acting in a
10 fiduciary capacity for the benefit of natural persons, family farm
11 corporations, family farm limited liability agricultural companies or
12 nonprofit corporations, or general partnerships other than corporate
13 partnerships formed under the laws of the state of Kansas; and

14 (3) if all of the members are natural persons, at least one member
15 must be a person residing on the farm or actively engaged in labor or
16 management of the farming operation. If only one member is meeting the
17 requirement of this provision and such member dies, the requirement of
18 this provision does not apply for the period of time that the member's
19 estate is being administered in any district court in Kansas.

20 (v) "Dairy production facility" means the land, structures and related
21 equipment used for housing, breeding, raising, feeding or milking dairy
22 cows. The term includes within its meaning only such agricultural land as
23 is necessary for proper disposal of liquid and solid wastes and for isolation
24 of the facility to reasonably protect the confined cows from exposure to
25 disease.

26 (w) "Family farm limited liability agricultural company" means a
27 limited liability company founded for the purpose of farming and
28 ownership of agricultural land in which:

29 (1) The majority of the members are persons related to each other, all
30 of whom have a common ancestor within the third degree of relationship,
31 by blood or by adoption, or the spouses or the stepchildren of any such
32 persons, or persons acting in a fiduciary capacity for persons so related;

33 (2) the members are natural persons or persons acting in a fiduciary
34 capacity for the benefit of natural persons; and

35 (3) at least one of the members is a person residing on the farm or
36 actively engaged in the labor or management of the farming operation. If
37 only one member is meeting the requirement of this provision and such
38 member dies, the requirement of this provision does not apply for the
39 period of time that the member's estate is being administered in any district
40 court in Kansas.

41 (x) "Hydroponics" means the growing of vegetables, flowers, herbs,
42 or plants used for medicinal purposes, in a growing medium other than
43 soil.

1 Sec. 4. K.S.A. 2017 Supp. 17-5904 is hereby amended to read as
2 follows: 17-5904. (a) *Subject to the provisions of section 1, and*
3 *amendments thereto*, no corporation, trust, limited liability company,
4 limited partnership or corporate partnership, other than a family farm
5 corporation, authorized farm corporation, limited liability agricultural
6 company, family farm limited liability agricultural company, limited
7 agricultural partnership, family trust, authorized trust or testamentary trust
8 shall, either directly or indirectly, own, acquire or otherwise obtain or lease
9 any agricultural land in this state. The restrictions provided in this section
10 do not apply to the following:

11 (1) A bona fide encumbrance taken for purposes of security.

12 (2) Agricultural land when acquired as a gift, either by grant or
13 devise, by a bona fide educational, religious or charitable nonprofit
14 corporation.

15 (3) Agricultural land acquired by a corporation or a limited liability
16 company in such acreage as is necessary for the operation of a nonfarming
17 business. Such land may not be used for farming except under lease to one
18 or more natural persons, a family farm corporation, authorized farm
19 corporation, family trust, authorized trust or testamentary trust. The
20 corporation shall not engage, either directly or indirectly, in the farming
21 operation and shall not receive any financial benefit, other than rent, from
22 the farming operation.

23 (4) Agricultural land acquired by a corporation or a limited liability
24 company by process of law in the collection of debts, or pursuant to a
25 contract for deed executed prior to the effective date of this act, or by any
26 procedure for the enforcement of a lien or claim thereon, whether created
27 by mortgage or otherwise, if such corporation divests itself of any such
28 agricultural land within 10 years after such process of law, contract or
29 procedure, except that provisions of K.S.A. 9-1102, and amendments
30 thereto, shall apply to any bank ~~which~~ that acquires agricultural land.

31 (5) A municipal corporation.

32 (6) Agricultural land which is acquired by a trust company or bank in
33 a fiduciary capacity or as a trustee for a nonprofit corporation.

34 (7) Agricultural land owned or leased or held under a lease purchase
35 agreement as described in K.S.A. 12-1741, and amendments thereto, by a
36 corporation, corporate partnership, limited corporate partnership or trust
37 on the effective date of this act if: (A) Any such entity owned or leased
38 such agricultural land prior to July 1, 1965, provided such entity shall not
39 own or lease any greater acreage of agricultural land than it owned or
40 leased prior to the effective date of this act unless it is in compliance with
41 the provisions of this act; (B) any such entity was in compliance with the
42 provisions of K.S.A. 17-5901, prior to its repeal by this act, provided such
43 entity shall not own or lease any greater acreage of agricultural land than it

1 owned or leased prior to the effective date of this act unless it is in
2 compliance with the provisions of this act, and absence of evidence in the
3 records of the county where such land is located of a judicial
4 determination that such entity violated the provisions of K.S.A. 17-5901,
5 prior to its repeal, shall constitute proof that the provisions of this act do
6 not apply to such agricultural land, and that such entity was in compliance
7 with the provisions of K.S.A. 17-5901, prior to its repeal; or (C) any such
8 entity was not in compliance with the provisions of K.S.A. 17-5901, prior
9 to its repeal by this act, but is in compliance with the provisions of this act
10 by July 1, 1991.

11 (8) Agricultural land held or leased by a corporation or a limited
12 liability company for use as a feedlot, ~~a poultry confinement facility~~ or
13 rabbit confinement facility.

14 (9) Agricultural land held or leased by a corporation for the purpose
15 of the production of timber, forest products, nursery products or sod.

16 (10) Agricultural land used for bona fide educational research or
17 scientific or experimental farming.

18 (11) Agricultural land used for the commercial production and
19 conditioning of seed for sale or resale as seed or for the growing of alfalfa
20 by an alfalfa processing entity if such land is located within 30 miles of
21 such entity's plant site.

22 (12) Agricultural land owned or leased by a corporate partnership or
23 limited corporate partnership in which the partners associated therein are
24 either natural persons, family farm corporations, authorized farm
25 corporations, limited liability agricultural companies, family trusts,
26 authorized trusts or testamentary trusts.

27 (13) Any corporation, either domestic or foreign, or any limited
28 liability company, organized for coal mining purposes ~~which~~*that* engages
29 in farming on any tract of land owned by it which has been strip mined for
30 coal.

31 (14) Agricultural land owned or leased by a limited partnership prior
32 to the effective date of this act.

33 (15) Except as provided by K.S.A. 17-5908, as it existed before the
34 effective date of this act, and K.S.A. 1998 Supp. 17-5909, agricultural land
35 held or leased by a corporation or a limited liability company for use as a
36 swine production facility in any county ~~which~~*that*, before the effective
37 date of this act, has voted favorably pursuant to K.S.A. 17-5908, as it
38 existed before the effective date of this act, either by county resolution or
39 by the electorate.

40 (16) Agricultural land held or leased by a corporation, trust, limited
41 liability company, limited partnership or corporate partnership for use as a
42 swine production facility in any county where the voters, after the effective
43 date of this act, have voted pursuant to K.S.A. 17-5908, and amendments

1 thereto, to allow establishment of swine production facilities within the
2 county.

3 (17) Agricultural land held or leased by a corporation, trust, limited
4 liability company, limited partnership or corporate partnership for use as a
5 dairy production facility in any county ~~which~~*that* has voted favorably
6 pursuant to K.S.A. 17-5907, and amendments thereto, either by county
7 resolution or by the electorate.

8 (18) *Agricultural land held by an individual, corporation, trust,*
9 *limited liability company, limited partnership, corporate partnership,*
10 *family farm corporation, authorized farm corporation, limited liability*
11 *agricultural company, family farm limited liability agricultural company,*
12 *limited agricultural partnership, family trust, authorized trust or*
13 *testamentary trust for use as a poultry confinement facility if such facility*
14 *is established prior to July 1, 2018, or on and after July 1, 2018, in any*
15 *county that has voted favorably pursuant to section 2, and amendments*
16 *thereto, either by county resolution or by the electorate.*

17 (19) Agricultural land held or leased by a corporation or a limited
18 liability company used in a hydroponics setting.

19 (b) Production contracts entered into by a corporation, trust, limited
20 liability company, limited partnership or corporate partnership and a
21 person engaged in farming for the production of agricultural products shall
22 not be construed to mean the ownership, acquisition, obtainment or lease,
23 either directly or indirectly, of any agricultural land in this state.

24 (c) Any corporation, trust, limited liability company, limited
25 partnership or corporate partnership, other than a family farm corporation,
26 authorized farm corporation, limited liability agricultural company, family
27 farm limited liability agricultural company, limited agricultural
28 partnership, family trust, authorized trust or testamentary trust, violating
29 the provisions of this section shall be subject to a civil penalty of not more
30 than \$50,000 and shall divest itself of any land acquired in violation of this
31 section within one year after judgment is entered in the action. The district
32 courts of this state may prevent and restrain violations of this section
33 through the issuance of an injunction. The attorney general or district or
34 county attorney shall institute suits on behalf of the state to enforce the
35 provisions of this section.

36 (d) Civil penalties sued for and recovered by the attorney general
37 shall be paid into the state general fund. Civil penalties sued for and
38 recovered by the county attorney or district attorney shall be paid into the
39 general fund of the county where the proceedings were instigated.

40 Sec. 5. K.S.A. 2017 Supp. 17-5903 and 17-5904 are hereby repealed.

41 Sec. 6. This act shall take effect and be in force from and after its
42 publication in the statute book.