

SESSION OF 2011

**CONFERENCE COMMITTEE REPORT BRIEF ON  
SUBSTITUTE FOR HOUSE BILL NO. 2271**

As Agreed to March 30, 2011

**Brief\***

Sub. for HB 2271 would amend various provisions of the Kansas Plant Pest Act and clarify authority given to the Secretary of Agriculture or the Secretary's designee. Specifically, the bill would:

- Create a separate definition of the term “plant products”;
- Clarify that the Secretary has the authority to enter any property, other than a private dwelling, in order to inspect, monitor, place and inspect monitoring equipment, and obtain samples;
- Change probable cause to reasonable suspicion as the criteria to allow the Secretary to stop and inspect any conveyance when there is a belief the contents contain or carries any plant pest;
- Allow the Secretary to apply to any court of competent jurisdiction for an order to permit access to any property if access is denied;
- Allow the Secretary to treat or dispose of plant pests if the person in possession of the plant pests fails to comply with an order to do so;

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- Permit the assessment of reasonable costs of treatment and disposal of plant pests against live plant dealers when the Secretary incurs these types of costs;
- Allow any diagnostic and identification service fees to be assessed and established by rules and regulations of the Secretary;
- Eliminate vehicles from which live plants are offered for sale from the license requirements;
- Increase the maximum cap on the application fee for a live plant dealer license from \$60 to \$80;
- Exempt live plant dealers who import or export plants into or from the state who have annual gross receipts of \$10,000 or less from license requirements (current law requires a license but no payment of fees for these dealers);
- Clarify that the Secretary may deny an application or refuse to renew, revoke, suspend, or modify the provisions of any license, permit, or certificate issued under the Plant Pest Act (the specific conditions for this type of action would be outlined in the proposed changes to the Act);
- Clarify that live plants being shipped into or within this state have proper documentation;
- Make each day a separate criminal violation of the Act occurs or continues a separate violation;
- Eliminate the provision that establishes a maximum amount (\$15,000) that may be collected in the Plant Pest Emergency Response Fund;
- Permit district courts to issue orders and have jurisdiction over violations of the Act;

- Raise the upper civil penalty limitation for violation of the Act or any rules and regulations from \$1,000 to \$2,000;
- Designate the Entomology Fee Fund as the Plant Protection Fee Fund;
- Eliminate a provision in current law that permits each day a violation of the Plant Pest Act continues to be deemed a separate civil violation in the case of a continuing offense; and
- Clarify and correct a number of technical issues.

### **Conference Committee Action**

The Conference Committee agreed to the Senate amendments to the bill and further agreed to clarify language in the Plant Pest Act that the Secretary of Agriculture has the authority to enter any property in the state, other than a private dwelling, in order to inspect, monitor, place and inspect monitoring equipment, and obtain samples. In addition, the Conference Committee agreed to return to the current maximum cap of \$30 per hour for inspection fees and increase the maximum live plant license fee from \$60 to \$80.

### **Background**

The bill was introduced at the request of a spokesperson from the Kansas Department of Agriculture. At the hearing on the bill, proponents included a spokesperson from the Kansas Department of Agriculture and the Kansas Nursery Landscape Association. Testifying as a partial proponent was a representative of the Kansas Agribusiness Retailers Association and the Kansas Cooperative Council. The spokesperson from the agency indicated that there was a need to clarify and make modifications to the Plant Pest Act and to provide additional authority to the Secretary to address those who have come into Kansas and violated the Act. The

spokesperson for the Kansas Nursery Landscape Association expressed support for the bill's original provision that would have made certain violations a felony, the provision that requires uniform documentation of plant movement, and the new authority given to the Secretary in the case of noncompliance of a plant dealer. The partial proponent expressed concern with the proposal to make certain violations under the Act felonies.

The House Committee adopted a number of amendments that concluded with the adoption of a substitute bill. The House Committee's major amendments to the original bill were as follows:

- Allow any diagnostic and identification fees to be assessed and established by rules and regulations of the Secretary;
- Eliminate all changes to the penalty provisions including the one that had proposed to make certain violations of the Act a felony; and
- Restore language that allows the Secretary to assess an additional fee on plant dealers to be deposited in the Plant Pest Emergency Response Fund.

The House Committee of the Whole amended the bill to clarify that the authority for the Secretary of Agriculture to assess diagnostic and identification fees is permissive rather than mandatory. In addition, the House Committee of the Whole amended the bill to eliminate a provision in current law that makes each day a violation of the Plant Pest Act continues a separate violation in cases where the violation is a continuing offense.

The Senate Committee amended the bill in Section 3 by replacing the terms "owner or an agent of the owner" with "person in possession thereof, or agent of such person" and "owner" with "person." In addition, the Senate Committee

added language that live plant dealers may be assessed any reasonable expenses incurred by the Secretary of Agriculture in treatment or disposal of plant pests. The Senate Committee also increased the maximum cap on per hour inspection fees from \$30 to \$80, based on testimony from the Kansas Department of Agriculture that increased fee revenue would fund a currently vacant inspector position.

The fiscal note on the original bill indicates the Kansas Department of Agriculture believes that passage of the bill would reduce expenditures by \$2,156 because the Department would no longer have to issue free live plant dealer licenses to small dealers and would increase revenue by \$7,358 in the Plant Pest Emergency Response Fee Fund. Currently, the Department cannot collect the \$5 fee for the Fund if the balance exceeds \$15,000.

The Sentencing Commission indicates that any fiscal effect of the original HB 2271 would be negligible as the penalties referenced in the bill would most likely result in probation rather than incarceration. The felony provisions of the bill were removed by the House Committee on Agriculture and Natural Resources.

Agriculture, Plant Pests