

[As Amended by House Committee of the Whole]

Session of 2011

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-
3 2117, 2-2118, 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-
4 2128 and 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,
12 which 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,
17 buds 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
21 live plants are propagated, or grown, or from which live plants are
22 removed for sale, or any grounds or premises on or in which live plants
23 are being fumigated, treated, packed, stored; or offered for sale.

24 ~~(e)~~ (f) "Live plant dealer" means any person, unless excluded by
25 rules and regulations of the secretary adopted hereunder, who engages
26 in 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
31 within the state with the intent to plant such live plants for others and
32 receives compensation for the live plants, for the planting of such live
33 plants or for both live plants and plantings; or

- 1 (4) gives live plants as a premium or for advertising purposes.
- 2 ~~(f)~~ (g) "Person" means a corporation, company, society,
3 association, partnership, governmental agency and any individual or
4 combination of individuals.
- 5 ~~(g)~~ (h) "Permit" means a document issued or authorized by the
6 secretary to provide for the movement of regulated articles to restricted
7 destinations for limited handling, utilization, or processing.
- 8 ~~(h)~~ (i) "Host" means any plant or plant product upon which a plant
9 pest is dependent for completion of any portion of its life cycle.
- 10 ~~(i)~~ (j) "Regulated article" means any host or any article of any
11 character as described in a quarantine or regulation carrying or being
12 capable of carrying the plant pest against which the quarantine or
13 regulation is directed.
- 14 ~~(j)~~ (k) "Live plant" means any living plant, cultivated or wild, or
15 any part thereof that can be planted or propagated unless specifically
16 exempted by the rules or regulations of the secretary.
- 17 ~~(k)~~ (l) "Quarantine pest" means a pest of potential economic
18 importance to the area endangered thereby and not yet present there, or
19 present but not widely distributed and being officially controlled.
- 20 ~~(l)~~ (m) "Regulated nonquarantine pest" means a nonquarantine
21 pest whose presence in plants for planting affects the intended use of
22 those plants with an economically unacceptable impact and which is
23 therefore regulated.
- 24 ~~(m)~~ (n) "Official control" means the active enforcement of
25 mandatory ~~phytosanitary~~ *phytosanitary* regulations and the application
26 of mandatory ~~phytosanitary~~ *phytosanitary* procedures with the
27 objective of eradication or containment of quarantine pests or for the
28 management of regulated nonquarantine pest.
- 29 ~~(n)~~ (o) "Regulated area" means an area into which, within which
30 ~~and/or~~ or from which plants, plant products and other regulated articles
31 are subjected to ~~phytosanitary~~ *phytosanitary* regulations or procedures
32 in order to prevent the introduction ~~and/or~~ or spread, ~~or both,~~ of
33 quarantine pests or to limit the economic impact of regulated
34 nonquarantine pests.
- 35 ~~(o)~~ (p) "Bee" means a honey-producing insect of the genus *Apis*
36 including all life stages of the insect.
- 37 ~~(p)~~ (q) "Beekeeping equipment" means all hives, supers, frames or
38 other devices used in the rearing or manipulation of bees or their brood.
- 39 ~~(q)~~ "Bee pest" means any infectious, contagious or communicable

1 ~~disease or harmful parasite or insects affecting honey bees or their~~
2 ~~brood.~~

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

6 (a) Enter and inspect, *monitor and place and inspect monitoring*
7 *equipment in, and obtain samples from* any property in this state,
8 except private dwellings, *at any reasonable time*; or;

9 (b) ~~to~~ stop and inspect any means of conveyance moving within
10 this state, upon ~~probable cause~~ *reasonable suspicion* to believe it
11 contains or carries any plant pest or other article subject to this act.

12 (c) *If access to any property sought under the provisions of this*
13 *section for the purposes authorized is denied, the secretary may apply*
14 *to any court of competent jurisdiction for an order providing for such*
15 *access. The court shall, upon proper application, issue an order*
16 *providing for access to such property.*

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

22 (a) Upon giving notice to the owner or an agent of the owner in
23 possession thereof, ~~may~~ seize, quarantine, treat; or otherwise dispose of
24 such plant pest in such manner as the secretary deems necessary to
25 suppress, control, eradicate, ~~or~~ prevent or retard the spread of such
26 plant pest; or

27 (b) ~~the secretary may~~ order such owner or agent to so treat or
28 otherwise dispose of ~~the~~ such plant pest. *If such owner fails to comply*
29 *with such order, the secretary may treat or otherwise dispose of such*
30 *plant pest. After notice and opportunity for a hearing in accordance*
31 *with the provisions of the Kansas administrative procedure act, the*
32 *secretary may assess against such owner any expense incurred by the*
33 *secretary in treating or otherwise disposing of such plant pest.*

34 Sec. 4. K.S.A. 2010 Supp. 2-2117 is hereby amended to read as
35 follows: 2-2117. The secretary is authorized to quarantine this state or
36 any portion thereof when the secretary determines that such action is
37 necessary to prevent or retard the spread of a plant pest and to
38 quarantine any other state or portion thereof whenever the secretary
39 determines that a plant pest exists therein and that such action is

1 necessary to prevent or retard its spread into this state. Before
2 promulgating the determination that a quarantine is necessary, the
3 secretary, after *providing* due notice to interested parties, shall hold a
4 public hearing at which any interested party may appear and be heard
5 either in person or by attorney. The secretary may impose a temporary
6 quarantine for a period not to exceed 90 days during which time a
7 public hearing, as provided in this section, shall be held if it appears
8 that a quarantine for more than the 90-day period will be necessary to
9 prevent or retard the spread of the plant pest. The secretary may limit
10 the application of the quarantine to the infested portion of the
11 quarantined area and appropriate environs, to be known as the regulated
12 area, and, without further hearing, may extend the regulated area to
13 include additional portions of the quarantined area. Following the
14 establishment of the quarantine, no person shall move the plant pest
15 against which the quarantine is established or move any regulated
16 article described in the quarantine, within, from, into or through this
17 state contrary to the quarantine promulgated by the secretary. The
18 quarantine may restrict the movement of the plant pest and any
19 regulated articles from the quarantined or regulated area in this state
20 into or through other parts of this state or other states and from the
21 quarantined or regulated area in other states into or through this state.
22 The secretary shall impose such inspection, disinfection, certification or
23 permit and other requirements as the secretary shall deem necessary to
24 effectuate the purposes of this act. The secretary is authorized to
25 establish regulations defining pest freedom standards for live plants,
26 plants and plant products or other regulated articles that pose risk of
27 moving plant pests that may cause economic or environmental harm.

28 Sec. 5. K.S.A. 2010 Supp. 2-2118 is hereby amended to read as
29 follows: 2-2118. Upon request the secretary may provide inspection
30 services for any person who owns or possesses plants or plant products
31 or for certification purposes of regulated articles intended for shipment
32 ~~interstate or internationally~~. Upon payment of the appropriate fee as
33 established by rule and regulation and as inspection personnel are
34 available, the inspection shall be conducted and a report or certificate
35 setting forth the inspection results shall be issued if requested.
36 Inspection fees shall not exceed \$30 per hour. *The secretary shall***[may]**
37 *assess diagnostic and identification fees as established by rules and*
38 *regulations adopted by the secretary*. Mileage incurred shall also be
39 paid by the person requesting the inspection at the rate established by

1 ~~rules and regulation—~~ *regulations*. If certificate is requested an
2 additional fee not to exceed \$50, *as established by rules and*
3 *regulations*, plus any fee amount charged by the United States
4 government for the acquisition of federal certificates shall be assessed.
5 The fees for such inspection and certificate in effect on the day
6 preceding the effective date of this act shall continue in effect until the
7 secretary adopts rules and regulations fixing a different fee therefor
8 under this subsection. In any case where any intended receiving state or
9 country requires or authorizes the certification of plants or plant
10 products, bees or beekeeping equipment or other regulated articles to be
11 based on origin, special handling, treatment or any other procedure in
12 addition to or in lieu of actual visual inspection of such articles, the
13 secretary may provide such certification. The secretary may refuse to
14 perform any inspection if the regulated article to be inspected is found
15 to be in such condition that it cannot be adequately inspected or the
16 environs in which the regulated article is located present a danger to the
17 health and safety of the inspection personnel.

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

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

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

38 (d) ~~The~~ *Such* live plant dealer's license shall expire on January 31,
39 following date of issue, ~~except that all valid certificates of nursery~~

1 ~~inspection and nursery dealer licenses issued by the secretary that are~~
2 ~~scheduled to expire in 2002 shall remain valid until January 31, 2003.~~

3 (e) A live plant dealer may *only engage in the live plant business*
4 *with sell-only* live plants which are:

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

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

13 Sec. 7. K.S.A. 2010 Supp. 2-2122 is hereby amended to read as
14 follows: 2-2122. ~~If it is found that any live plant dealer license issued~~
15 ~~by the secretary is being used in connection with live plants which do~~
16 ~~not meet the quarantines and regulated nonquarantine pest freedom~~
17 ~~standards established by the secretary, or other precautionary measures~~
18 ~~prescribed by the secretary under the provisions of this act and~~
19 ~~amendments thereto, or if it is found that any live plant dealer's license~~
20 ~~is being used by a person other than the one to whom it was issued, the~~
21 ~~secretary may revoke the live plant dealer's license after notice and~~
22 ~~opportunity for a hearing are given in accordance with the provisions of~~
23 ~~the Kansas administrative procedure act to show cause why the license~~
24 ~~should not be revoked.~~

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

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

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

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

1 Sec. 8. K.S.A. 2010 Supp. 2-2123 is hereby amended to read as
2 follows: 2-2123. ~~It shall be unlawful to deliver, transport or ship into or~~
3 ~~within this state live plants or other regulated articles which are not in~~
4 ~~compliance with the provisions of this act.~~
5 (a) ~~Any such live plants intended for resale and any such live plants~~
6 ~~transported by public carrier sold, delivered, transported or shipped~~
7 ~~into or within this state by a live plant dealer shall have attached to~~
8 ~~each quantity or package shall be accompanied by a tag, or label,~~
9 ~~itemized bill of lading, receipt or other document on which shall appear~~
10 ~~the name and address of the consigner or shipper, a description of the~~
11 ~~contents and the place of origin.~~
12 (b) ~~All live plants and regulated articles shipped or moved into this~~
13 ~~state shall be accompanied by a copy of a valid document—~~
14 ~~documentation issued by the proper official of the state, territory,~~
15 ~~district or country from which it was shipped, sent, or brought or~~
16 ~~moved, showing that such live plants or regulated articles are in~~
17 ~~compliance with Kansas quarantines and regulated nonquarantine pest~~
18 ~~freedom standards as established by the secretary.~~
19 (c) Live plants brought into the state under a document, as
20 required by this section, may be sold and moved under a valid Kansas
21 live plant dealer license, and this shall not preclude inspection by the
22 secretary at any time within the state.
23 (d) ~~Electronic or mail order sales of live plants are subject to the~~
24 ~~provisions of this act. All regulated articles shipped or moved into~~
25 ~~Kansas shall be accompanied by valid documentation issued by the~~
26 ~~proper official of the state, territory, district or county [country] from~~
27 ~~which it was shipped or moved showing that the regulated article is in~~
28 ~~compliance with Kansas quarantines or pest freedom standards, or~~
29 ~~both, established for such article.~~
30 Sec. 9. K.S.A. 2010 Supp. 2-2124 is hereby amended to read as
31 follows: 2-2124. (a) It shall be a violation of this act for any person to:
32 (a) (1) ~~To~~ Sell, barter, offer for sale, or move, transport, deliver,
33 ship or offer for shipment into or within this state any plant pests in any
34 living stage without first obtaining approval for such shipment from the
35 secretary;
36 (b) (2) ~~to~~ hinder or prevent the secretary from carrying out his or
37 her duties under this act;
38 (c) (3) ~~to~~ fail to carry out the treatment or destruction of any plant
39 pest or regulated article in accordance with official notification from

1 the secretary;

2 ~~(d) (4) to~~ sell, transport, deliver, distribute, offer or expose for sale

3 live plants which are not in compliance with the provisions of this act;

4 ~~(e) (5) to use~~ *engage in business as a live plant dealer and use* an

5 invalid, *suspended* or revoked certificate of inspection, *permit* or live

6 plant dealer license, ~~in the sale or distribution of live plants;~~

7 ~~(f) (6) to~~ fail to comply with any of the provisions of this act, or

8 the rules and regulations ~~promulgated~~ *adopted* hereunder; and

9 ~~(g) (7) to~~ knowingly move any regulated article into *or within* this

10 state from a quarantined area ~~of any other state~~ when such article has

11 not been treated or handled as provided by the requirements of said

12 quarantine at the point of origin of such article.

13 *(b) Each day a violation of this act occurs or continues shall*

14 *constitute a separate violation.*

15 *(c) The district court shall have jurisdiction over violations of this*

16 *act or rules and regulations adopted hereunder. Such court may issue*

17 *temporary restraining orders without first requiring proof that an*

18 *adequate remedy at law does not exist. Any such orders shall be issued*

19 *without bond. Such orders may be issued prior to the initiation of any*

20 *criminal, administrative or civil penalty proceedings.*

21 Sec. 10. K.S.A. 2010 Supp. 2-2125 is hereby amended to read as

22 follows: 2-2125. (a) Any person violating any of the provisions of this

23 act shall be deemed guilty of a misdemeanor and upon conviction shall

24 be punished by a fine of not less than \$25 nor more than \$500.

25 (b) The secretary, *after providing notice and opportunity for a*

26 *hearing, in accordance with the Kansas administrative procedure act,*

27 *may assess a civil penalty against any person who violates or fails to*

28 *comply with the requirements of this act, or any rules or regulations*

29 *adopted hereunder, of not less than \$100 nor more than \$1,000\$2,000*

30 *per offense.violation. In the case of a continuing offense, each day the*

31 *violation continues may be deemed a separate violation. A separate*

32 *civil penalty may be assessed for each separate violation. Such civil*

33 *penalty may be assessed in addition to any other penalty provided by*

34 *law. Such assessment shall be made in accordance with the Kansas*

35 *administrative procedure act.*

36 Sec. 11. K.S.A. 2010 Supp. 2-2126 is hereby amended to read as

37 follows: 2-2126. The secretary shall ~~promulgate~~ *adopt*, amend and

38 repeal such rules and regulations as, in the discretion of the secretary,

39 are necessary for the ~~efficient execution~~ *administration and*

1 *enforcement* of the provisions of this act.

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

14 (b) *The entomology fee fund is hereby redesignated the plant*
15 *protection fee fund.*

16 Sec. 13. K.S.A. 2010 Supp. 2-2129 is hereby amended to read as
17 follows: 2-2129. (a) There is hereby created a plant pest emergency
18 response fund in the state treasury. Such fund shall be funded by a fee
19 assessed in addition to the fees assessed a live plant dealer under article
20 21 of chapter 2 of the Kansas Statutes Annotated, *and amendments*
21 *thereto*. The additional fee shall be fixed by ~~rule and regulation~~
22 ~~promulgated rules and regulations adopted~~ by the secretary of
23 agriculture, except that such additional fee shall not exceed \$5 annually
24 on each live plant dealer license. The secretary is authorized and
25 empowered to collect the fees provided in this section. ~~When the total~~
26 ~~amount of fees deposited in the fund is equal to or exceeds \$15,000, the~~
27 ~~secretary shall not collect any such fees as provided in this section.~~
28 ~~When expenditures made from the fund result in the total amount of the~~
29 ~~fees deposited in the fund to be less than \$15,000, the secretary may~~
30 ~~resume the assessment and collection of such fees as provided in this~~
31 ~~section.~~

32 (b) The secretary is authorized and empowered to make
33 expenditures from the plant pest emergency response fund and that in
34 the discretion of the secretary mitigate pests that have been identified
35 by the secretary as high risk pests having the potential to damage
36 agriculture, horticulture or the environment. Such expenditures may
37 include the costs of enforcement to protect against high risk pests
38 identified by the secretary. All expenditures from such fund shall be
39 made in accordance with appropriation acts upon warrants of the

1 director of accounts and reports issued pursuant to vouchers approved
2 by the secretary ~~or by a designee of the secretary.~~

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

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

8 Sec. 14. K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117, 2-
9 2118, 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 2-
10 2129 are hereby repealed.

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

13