AN ACT concerning agriculture; relating to plant pest inspection and 
control; amending K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117, 
2-2118, 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 
2-2129 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 2-2113 is hereby amended to read as
follows: 2-2113. As used in this act:

(a) "Plant pests" include any stage of development of any insect,
nematode, arachnid, or any other invertebrate animal, or any bacteria,
fungus, virus, weed or any other parasitic plant or microorganism, which

(b) "Secretary" means the secretary of the Kansas department of
agriculture, or the authorized representative of the secretary.

(c) "Plants and plant products" means trees, shrubs, grasses, vines,
forage and cereal plants and all other plants; cuttings, grafts, scions, buds
and all other parts of plants;

(d) "Plant products" means fruit, vegetables, roots, bulbs, seeds,
wood, lumber, grains and all other plant products.

(e) "Location" means any grounds or premises on or in which live
plants are propagated, or grown, or from which live plants are removed for
sale, or any grounds or premises on or in which live plants are being
fumigated, treated, packed, stored; or offered for sale.

(f) "Live plant dealer" means any person, unless excluded by rules
and regulations of the secretary adopted hereunder, who engages in
business in the following manner:

(1) Grows live plants for sale or distribution;

(2) buys or obtains live plants for the purpose of reselling or
reshipping within this state;

(3) plants, transplants or moves live plants from place to place within
the state with the intent to plant such live plants for others and receives
compensation for the live plants, for the planting of such live plants or for
both live plants and plantings; or

(4) gives live plants as a premium or for advertising purposes.
"Person" means a corporation, company, society, association, partnership, governmental agency and any individual or combination of individuals.

"Permit" means a document issued or authorized by the secretary to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.

"Host" means any plant or plant product upon which a plant pest is dependent for completion of any portion of its life cycle.

"Regulated article" means any host or any article of any character as described in a quarantine or regulation carrying or being capable of carrying the plant pest against which the quarantine or regulation is directed.

"Live plant" means any living plant, cultivated or wild, or any part thereof that can be planted or propagated unless specifically exempted by the rules or regulations of the secretary.

"Quarantine pest" means a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

"Regulated nonquarantine pest" means a nonquarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated.

"Official control" means the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated nonquarantine pest.

"Bee" means a honey-producing insect of the genus Apis including all life stages of the insect.

"Beekeeping equipment" means all hives, supers, frames or other devices used in the rearing or manipulation of bees or their brood.

"Bee pest" means any infectious, contagious or communicable disease or harmful parasite or insects affecting honey bees or their brood.

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

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

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

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

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

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

(b) the secretary may order such owner or agent person in possession thereof, or agent of such person to so treat or otherwise dispose of the such plant pest. If such owner person fails to comply with such order, the secretary may treat or otherwise dispose of such plant pest; or

(c) if such person is a live plant dealer, after notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may assess against such owner any live plant dealer any reasonable expense incurred by the secretary in treating or otherwise disposing of such plant pest.

Sec. 4. K.S.A. 2010 Supp. 2-2117 is hereby amended to read as follows: 2-2117. The secretary is authorized to quarantine this state or any portion thereof when the secretary determines that such action is necessary to prevent or retard the spread of a plant pest and to quarantine any other state or portion thereof whenever the secretary determines that a plant pest exists therein and that such action is necessary to prevent or retard its spread into this state. Before promulgating the determination that a quarantine is necessary, the secretary, after providing due notice to interested parties, shall hold a public hearing at which any interested party may appear and be heard either in person or by attorney. The secretary may impose a temporary quarantine for a period not to exceed 90 days during which time a public hearing, as provided in this section, shall be held if it appears that a quarantine for more than the 90-day period will be necessary to prevent or retard the spread of the plant pest. The secretary may limit the application of the quarantine to the infested portion of the
quarantined area and appropriate environs, to be known as the regulated
area, and, without further hearing, may extend the regulated area to
include additional portions of the quarantined area. Following the
establishment of the quarantine, no person shall move the plant pest
against which the quarantine is established or move any regulated article
described in the quarantine, within, from, into or through this state
contrary to the quarantine promulgated by the secretary. The quarantine
may restrict the movement of the plant pest and any regulated articles from
the quarantined or regulated area in this state into or through other parts of
this state or other states and from the quarantined or regulated area in other
states into or through this state. The secretary shall impose such
inspection, disinfection, certification or permit and other requirements as
the secretary shall deem necessary to effectuate the purposes of this act.
The secretary is authorized to establish regulations defining pest freedom
standards for live plants, plants and plant products or other regulated
articles that pose risk of moving plant pests that may cause economic or
environmental harm.

Sec. 5. K.S.A. 2010 Supp. 2-2118 is hereby amended to read as
follows: 2-2118. Upon request the secretary may provide inspection
services for any person who owns or possesses plants or plant products or
for certification purposes of regulated articles intended for shipment
interstate or internationally. Upon payment of the appropriate fee as
established by rule and regulation and as inspection personnel are
available, the inspection shall be conducted and a report or certificate
setting forth the inspection results shall be issued if requested. Inspection
fees shall not exceed $80 per hour. The secretary may assess
reasonable diagnostic and identification fees as established by rules and
regulations adopted by the secretary. Mileage incurred shall also be paid
by the person requesting the inspection at the rate established by rules and
regulations. If certificate is requested an additional fee not to exceed $50, as established by rules and regulations, plus any fee amount
charged by the United States government for the acquisition of federal
certificates shall be assessed. The fees for such inspection and certificate in
effect on the day preceding the effective date of this act shall continue in
effect until the secretary adopts rules and regulations fixing a different fee
therefor under this subsection. In any case where any intended receiving
state or country requires or authorizes the certification of plants or plant
products, bees or beekeeping equipment or other regulated articles to be
based on origin, special handling, treatment or any other procedure in
addition to or in lieu of actual visual inspection of such articles, the
secretary may provide such certification. The secretary may refuse to
perform any inspection if the regulated article to be inspected is found to
be in such condition that it cannot be adequately inspected or the environs
in which the regulated article is located present a danger to the health and
safety of the inspection personnel.

Sec. 6. K.S.A. 2010 Supp. 2-2120 is hereby amended to read as
follows: 2-2120. (a) Every live plant dealer, before selling or offering for
sale or delivering any live plants in this state, shall procure from the
secretary a live plant dealer's license for each location and vehicle from
which the such live plant dealer offers such live plants for sale. engages in
business as a live plant dealer.
(b) Application for such license shall be made on a form furnished by
the secretary, and. The fee for each application shall be fixed by rules and
regulations adopted by the secretary, except that such fee shall not exceed
$60, excluding the plant pest emergency fee, authorized pursuant to K.S.A.
2010 Supp. 2-2129, and amendments thereto. and shall not apply to live
plant dealers whose total annual retail live plant sales are less than
$10,000. The application fee in effect on the day preceding the effective
date of this act shall continue in effect until the secretary adopts rules and
regulations fixing a different application fee under this section.
(c) A live plant dealer shall not be required to obtain a license if such
live plant dealer does not import or export plants into or from the state
and the annual gross receipts of such live plant dealer's business is less
than $10,000.
(d) The Such live plant dealer's license shall expire on January 31,
following date of issue, except that all valid certificates of nursery-
inspection and nursery dealer licenses issued by the secretary that are
(e) A live plant dealer may only engage in the live plant business with
sell only live plants which are:
(1) In compliance with all quarantines and regulated nonquarantine
pest freedom standards established by the secretary; or
(2) live plants accompanied by a valid certificate of inspection of a
federal inspector or inspector of another state; stating that such live plants
comply with all applicable quarantines and regulated nonquarantine pest
freedom standards. Except where restricted by a quarantine, live plants-
transplanted on one contiguous property are exempt from the provisions of
this act.

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

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

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

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

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

Sec. 8. K.S.A. 2010 Supp. 2-2123 is hereby amended to read as
follows: 2-2123. It shall be unlawful to deliver, transport or ship into or
within this state live plants or other regulated articles which are not in
compliance with the provisions of this act.

   (a) Any such live plants intended for resale and any such live plants
       transported by public carrier sold, delivered, transported or shipped into
       or within this state by a live plant dealer shall have attached to each
       quantity or package shall be accompanied by a tag, or label, itemized bill
       of lading, receipt or other document on which shall appear the name and
       address of the consigner or shipper, a description of the contents and the
       place of origin.

   (b) All live plants and regulated articles shipped or moved into this
       state shall be accompanied by a copy of a valid document documentation
       issued by the proper official of the state, territory, district or country from
       which it was shipped, sent, or brought or moved, showing that such live
       plants or regulated articles are in compliance with Kansas quarantines and
       regulated nonquarantine pest freedom standards as established by the
       secretary.

   (c) Live plants brought into the state under a document, as required
       by this section, may be sold and moved under a valid Kansas live plant
       dealer license, and this shall not preclude inspection by the secretary at any
       time within the state.

   (d) Electronic or mail order sales of live plants are subject to the
       provisions of this act. All regulated articles shipped or moved into Kansas
       shall be accompanied by valid documentation issued by the proper official
       of the state, territory, district or county [country] from which it was
       shipped or moved showing that the regulated article is in compliance with
Kansas quarantines or pest freedom standards, or both, established for such article.

Sec. 9. K.S.A. 2010 Supp. 2-2124 is hereby amended to read as follows: 2-2124. (a) It shall be a violation of this act for any person to:
   (1) To sell, barter, offer for sale, or move, transport, deliver, ship or offer for shipment into or within this state any plant pests in any living stage without first obtaining approval for such shipment from the secretary;
   (2) To hinder or prevent the secretary from carrying out his or her duties under this act;
   (3) To fail to carry out the treatment or destruction of any plant pest or regulated article in accordance with official notification from the secretary;
   (4) To sell, transport, deliver, distribute, offer or expose for sale live plants which are not in compliance with the provisions of this act;
   (5) To use engage in business as a live plant dealer and use an invalid, suspended or revoked certificate of inspection, permit or live plant dealer license, in the sale or distribution of live plants;
   (6) To fail to comply with any of the provisions of this act, or the rules and regulations promulgated adopted hereunder; and
   (7) To knowingly move any regulated article into or within this state from a quarantined area of any other state when such article has not been treated or handled as provided by the requirements of said quarantine at the point of origin of such article.

(b) Each day a violation of this act occurs or continues shall constitute a separate violation.

(c) The district court shall have jurisdiction over violations of this act or rules and regulations adopted hereunder. Such court may issue temporary restraining orders without first requiring proof that an adequate remedy at law does not exist. Any such orders shall be issued without bond. Such orders may be issued prior to the initiation of any criminal, administrative or civil penalty proceedings.

Sec. 10. K.S.A. 2010 Supp. 2-2125 is hereby amended to read as follows: 2-2125. (a) Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 nor more than $500.

(b) The secretary, after providing notice and opportunity for a hearing, in accordance with the Kansas administrative procedure act, may assess a civil penalty against any person who violates or fails to comply with the requirements of this act, or any rules or regulations adopted hereunder, of not less than $100 nor more than $1,000 per offense violation. In the case of a continuing offense, each day the violation continues may be deemed a separate violation.
penalty may be assessed for each separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Such assessment shall be made in accordance with the Kansas administrative procedure act.

Sec. 11. K.S.A. 2010 Supp. 2-2126 is hereby amended to read as follows: 2-2126. The secretary shall promulgate adopt, amend and repeal such rules and regulations as, in the discretion of the secretary, are necessary for the efficient execution administration and enforcement of the provisions of this act.

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

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

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

(b) The secretary is authorized and empowered to make expenditures from the plant pest emergency response fund and that in the discretion of the secretary mitigate pests that have been identified by the secretary as high risk pests having the potential to damage agriculture, horticulture or the environment. Such expenditures may include the costs of enforcement
to protect against high risk pests identified by the secretary. All
expenditures from such fund shall be made in accordance with
appropriation acts upon warrants of the director of accounts and reports
issued pursuant to vouchers approved by the secretary or by a designee of
the secretary.

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

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

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

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