

*As Amended by Senate Committee*

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[As Amended by House Committee of the Whole]

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

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

34 (4) gives live plants as a premium or for advertising purposes.

1       (+) (g) "Person" means a corporation, company, society, association,  
2 partnership, governmental agency and any individual or combination of  
3 individuals.

4       (+) (h) "Permit" means a document issued or authorized by the  
5 secretary to provide for the movement of regulated articles to restricted  
6 destinations for limited handling, utilization; or processing.

7       (+) (i) "Host" means any plant or plant product upon which a plant  
8 pest is dependent for completion of any portion of its life cycle.

9       (+) (j) "Regulated article" means any host or any article of any  
10 character as described in a quarantine or regulation carrying or being  
11 capable of carrying the plant pest against which the quarantine or  
12 regulation is directed.

13       (+) (k) "Live plant" means any living plant, cultivated or wild, or any  
14 part thereof that can be planted or propagated unless specifically exempted  
15 by the rules or regulations of the secretary.

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

19       (+) (m) "Regulated nonquarantine pest" means a nonquarantine pest  
20 whose presence in plants for planting affects the intended use of those  
21 plants with an economically unacceptable impact and which is therefore  
22 regulated.

23       (+) (n) "Official control" means the active enforcement of mandatory  
24 ~~phystosanitary~~ phytosanitary regulations and the application of mandatory  
25 ~~phystosanitary~~ phytosanitary procedures with the objective of eradication  
26 or containment of quarantine pests or for the management of regulated  
27 nonquarantine pest.

28       (+) (o) "Regulated area" means an area into which, within which  
29 and/or or from which plants, plant products and other regulated articles are  
30 subjected to ~~phystosanitary~~ phytosanitary regulations or procedures in  
31 order to prevent the introduction and/or or spread, or both, of quarantine  
32 pests or to limit the economic impact of regulated nonquarantine pests.

33       (+) (p) "Bee" means a honey-producing insect of the genus Apis  
34 including all life stages of the insect.

35       (+) (q) "Beekeeping equipment" means all hives, supers, frames or  
36 other devices used in the rearing or manipulation of bees or their brood.

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

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

42       (a) Enter and inspect, monitor and place and inspect monitoring  
43 equipment in, and obtain samples from any property in this state, except

1 private dwellings, *at any reasonable time*; or;

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

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

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

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

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

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

29 Sec. 4. K.S.A. 2010 Supp. 2-2117 is hereby amended to read as  
30 follows: 2-2117. The secretary is authorized to quarantine this state or any  
31 portion thereof when the secretary determines that such action is necessary  
32 to prevent or retard the spread of a plant pest and to quarantine any other  
33 state or portion thereof whenever the secretary determines that a plant pest  
34 exists therein and that such action is necessary to prevent or retard its  
35 spread into this state. Before promulgating the determination that a  
36 quarantine is necessary, the secretary, after *providing* due notice to  
37 interested parties, shall hold a public hearing at which any interested party  
38 may appear and be heard either in person or by attorney. The secretary  
39 may impose a temporary quarantine for a period not to exceed 90 days  
40 during which time a public hearing, as provided in this section, shall be  
41 held if it appears that a quarantine for more than the 90-day period will be  
42 necessary to prevent or retard the spread of the plant pest. The secretary  
43 may limit the application of the quarantine to the infested portion of the

1       quarantined area and appropriate environs, to be known as the regulated  
2       area, and, without further hearing, may extend the regulated area to  
3       include additional portions of the quarantined area. Following the  
4       establishment of the quarantine, no person shall move the plant pest  
5       against which the quarantine is established or move any regulated article  
6       described in the quarantine, within, from, into or through this state  
7       contrary to the quarantine promulgated by the secretary. The quarantine  
8       may restrict the movement of the plant pest and any regulated articles from  
9       the quarantined or regulated area in this state into or through other parts of  
10      this state or other states and from the quarantined or regulated area in other  
11      states into or through this state. The secretary shall impose such  
12      inspection, disinfection, certification or permit and other requirements as  
13      the secretary shall deem necessary to effectuate the purposes of this act.  
14      The secretary is authorized to establish regulations defining pest freedom  
15      standards for live plants, plants and plant products or other regulated  
16      articles that pose risk of moving plant pests that may cause economic or  
17      environmental harm.

18     Sec. 5. K.S.A. 2010 Supp. 2-2118 is hereby amended to read as  
19     follows: 2-2118. Upon request the secretary may provide inspection  
20     services for any person who owns or possesses plants or plant products or  
21     for certification purposes of regulated articles intended for shipment  
~~interstate or internationally~~. Upon payment of the appropriate fee as  
22     established by rule and regulation and as inspection personnel are  
23     available, the inspection shall be conducted and a report or certificate  
24     setting forth the inspection results shall be issued if requested. Inspection  
25     fees shall not exceed ~~\$30~~ \$80 per hour. *The secretary shall[may] assess*  
26     *reasonable diagnostic and identification fees as established by rules and*  
27     *regulations adopted by the secretary.* Mileage incurred shall also be paid  
28     by the person requesting the inspection at the rate established by *rules and*  
29     *regulation regulations.* If certificate is requested an additional fee not to  
30     exceed \$50, *as established by rules and regulations*, plus any fee amount  
31     charged by the United States government for the acquisition of federal  
32     certificates shall be assessed. The fees for such inspection and certificate in  
33     effect on the day preceding the effective date of this act shall continue in  
34     effect until the secretary adopts rules and regulations fixing a different fee  
35     therefor under this subsection. In any case where any intended receiving  
36     state or country requires or authorizes the certification of plants or plant  
37     products, bees or beekeeping equipment or other regulated articles to be  
38     based on origin, special handling, treatment or any other procedure in  
39     addition to or in lieu of actual visual inspection of such articles, the  
40     secretary may provide such certification. The secretary may refuse to  
41     perform any inspection if the regulated article to be inspected is found to  
42     be in such condition that it cannot be adequately inspected or the environs

1 in which the regulated article is located present a danger to the health and  
2 safety of the inspection personnel.

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

9 (b) Application for such license shall be made on a form furnished by  
10 the secretary, ~~and~~. The fee for each application shall be fixed by rules and  
11 regulations adopted by the secretary, except that such fee shall not exceed  
12 \$60, ~~excluding the plant pest emergency fee, authorized pursuant to K.S.A.~~  
13 ~~2010 Supp. 2-2129, and amendments thereto. and shall not apply to live~~  
14 ~~plant dealers whose total annual retail live plant sales are less than~~  
15 ~~\$10,000. The application fee in effect on the day preceding the effective~~  
16 ~~date of this act shall continue in effect until the secretary adopts rules and~~  
17 ~~regulations fixing a different application fee under this section.~~

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

22 (d) ~~The Such live plant dealer's license shall expire on January 31,~~  
23 ~~following date of issue, except that all valid certificates of nursery~~  
24 ~~inspection and nursery dealer licenses issued by the secretary that are~~  
25 ~~scheduled to expire in 2002 shall remain valid until January 31, 2003.~~

26 (e) A live plant dealer may *only engage in the live plant business with*  
27 ~~sell only~~ live plants which are:

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

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

36 Sec. 7. K.S.A. 2010 Supp. 2-2122 is hereby amended to read as  
37 follows: 2-2122. If it is found that any live plant dealer license issued by  
38 the secretary is being used in connection with live plants which do not  
39 meet the quarantines and regulated nonquarantine pest freedom standards  
40 established by the secretary, or other precautionary measures prescribed by  
41 the secretary under the provisions of this act and amendments thereto, or if  
42 it is found that any live plant dealer's license is being used by a person  
43 other than the one to whom it was issued, the secretary may revoke the live

1 plant dealer's license after notice and opportunity for a hearing are given in  
2 accordance with the provisions of the Kansas administrative procedure act  
3 to show cause why the license should not be revoked.

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

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

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

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

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

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

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

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

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

1 Kansas quarantines or pest freedom standards, or both, established for  
2 such article.

3 Sec. 9. K.S.A. 2010 Supp. 2-2124 is hereby amended to read as  
4 follows: 2-2124. (a) It shall be a violation of this act for any person *to*:

5 (a) (1) ~~To~~ Sell, barter, offer for sale, or move, transport, deliver, ship  
6 or offer for shipment into or within this state any plant pests in any living  
7 stage without first obtaining approval for such shipment from the  
8 secretary;

9 (b) (2) ~~to~~ hinder or prevent the secretary from carrying out ~~his or her~~  
10 duties under this act;

11 (c) (3) ~~to~~ fail to carry out the treatment or destruction of any plant  
12 pest or regulated article in accordance with official notification from the  
13 secretary;

14 (d) (4) ~~to~~ sell, transport, deliver, distribute, offer or expose for sale  
15 live plants which are not in compliance with the provisions of this act;

16 (e) (5) ~~to use engage in business as a live plant dealer and use an~~  
17 invalid, suspended or revoked certificate of inspection, permit or live plant  
18 dealer license, ~~in the sale or distribution of live plants;~~

19 (f) (6) ~~to~~ fail to comply with any of the provisions of this act, or the  
20 rules and regulations ~~promulgated adopted~~ hereunder; and

21 (g) (7) ~~to knowingly move any regulated article into or within this~~  
22 state from a quarantined area ~~of any other state~~ when such article has not  
23 been treated or handled as provided by the requirements of said quarantine  
24 at the point of origin of such article.

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

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

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

37 (b) *The secretary, after providing notice and opportunity for a*  
38 *hearing, in accordance with the Kansas administrative procedure act, may*  
39 *assess a civil penalty against any person who violates or fails to comply*  
40 *with the requirements of this act, or any rules or regulations adopted*  
41 *hereunder, of not less than \$100 nor more than \$1,000\$2,000 per*  
42 *offense.violation. In the case of a continuing offense, each day the*  
43 *violation continues may be deemed a separate violation. A separate civil*

1 *penalty may be assessed for each separate violation.* Such civil penalty  
2 may be assessed in addition to any other penalty provided by law. ~~Such~~  
3 ~~assessment shall be made in accordance with the Kansas administrative~~  
4 ~~procedure act.~~

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

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

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

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

39 (b) The secretary is authorized and empowered to make expenditures  
40 from the plant pest emergency response fund and that in the discretion of  
41 the secretary mitigate pests that have been identified by the secretary as  
42 high risk pests having the potential to damage agriculture, horticulture or  
43 the environment. Such expenditures may include the costs of enforcement

1 to protect against high risk pests identified by the secretary. All  
2 expenditures from such fund shall be made in accordance with  
3 appropriation acts upon warrants of the director of accounts and reports  
4 issued pursuant to vouchers approved by the secretary ~~or by a designee of~~  
5 ~~the secretary.~~

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

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

11 Sec. 14. K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117, 2-2118,  
12 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 2-2129 are  
13 hereby repealed.

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

16