

SENATE BILL No. 437

AN ACT concerning agriculture; relating to plants and plant products, plant pests and plant dealers; certain agriculture commodities; amending K.S.A. 2-2112, 2-2113, 2-2114, 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 K.S.A. 2001 Supp. 65-688 and repealing the existing sections; also repealing K.S.A. 2-411, 2-412, 2-413, 2-414, 2-415, 2-417, 2-418, 2-422, 2-422a, 2-424, 2-426, 2-427, 2-428, 2-2119 and 2-2121.

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

Section 1. K.S.A. 2-2112 is hereby amended to read as follows: 2-2112. This act shall be known as the “plant pest *and agriculture commodity certification act.*” *The authority to regulate plant pests, live plant dealers, plants and plant products and commodity certification in Kansas is vested exclusively with the secretary of agriculture.*

Sec. 2. K.S.A. 2-2113 is hereby amended to read as follows: 2-2113. As used in ~~the plant pest this act, the following terms shall have the following meanings:~~

(a) “Plant pests” ~~shall include~~ *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 can injure plants or plant products.

(b) ~~“Board” means the state board of agriculture.~~

(~~e~~) “Secretary” means the secretary of the ~~state board~~ *Kansas department of agriculture*, or the authorized representative of the ~~board or its~~ secretary.

(~~d~~) (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; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, grains and all other plant products.

(~~e~~) ~~“Nursery stock” means any wild or cultivated trees, shrubs, grasses, vines, and cuttings, grafts, scions, buds, and other parts of such plants grown or kept for propagation.~~

(~~f~~) ~~“Nursery”~~ (d) “Location” means any grounds or premises on or in which ~~nursery stock is~~ *live plants are* propagated, or grown, or from which ~~nursery stock is~~ *live plants are* removed for sale, or any grounds or premises on or in which ~~nursery stock is~~ *live plants are* being fumigated, treated, packed, stored, or offered for sale.

(~~g~~) ~~“Nurseryman” means any person who owns, leases, manages, or is in charge of a nursery.~~

(~~h~~) ~~“Dealer”~~ (e) “Live plant dealer” means any person ~~not a grower of nursery stock who procures nursery stock for the purpose of sale or distribution independent of any control of the nurseryman, unless excluded by rules and regulations of the secretary, who:~~

(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.*

(~~i~~) ~~“Agent” means any person selling nursery stock under the partial or full control of a nurseryman, or a dealer.~~

(~~j~~) (f) “Person” means a corporation, company, society, association, partnership, governmental agency and any individual or combination of individuals.

(~~k~~) (g) “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.

(~~l~~) (h) “Host” means any plant or plant product upon which a plant pest is dependent for completion of any portion of its life cycle.

(~~m~~) (i) “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.

(j) “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.*

(k) “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.

(l) “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.

(m) “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.

(n) “Regulated area” means an area into which, within which and/or from which plants, plant products and other regulated articles are subjected to phytosanitary regulations or procedures in order to prevent the introduction and/or spread, or both, of quarantine pests or to limit the economic impact of regulated nonquarantine pests.

(o) “Bee” means a honey-producing insect of the genus *Apis* including all life stages of the insect.

(p) “Beekeeping equipment” means all hives, supers, frames or other devices used in the rearing or manipulation of bees or their brood.

(q) “Bee pest” means any infectious, contagious or communicable disease or harmful parasite or insects affecting honey bees or their brood.

Sec. 3. K.S.A. 2-2114 is hereby amended to read as follows: 2-2114. The secretary, either independently, or in cooperation with counties, cities, other political subdivisions of the state, federal agencies, agencies of other states or private entities may enter into contracts and agreements and may carry out *official control* operations or measures to locate, and to suppress, control, eradicate, prevent, or retard the spread of, any plant pests. ~~The secretary is authorized to take any actions necessary and convenient for the state to become a party to and participate as a member of the interstate pest control compact.~~

Sec. 4. K.S.A. 2-2115 is hereby amended to read as follows: 2-2115. To effectuate the purposes of this act, the secretary shall have the right to enter and inspect any property in this state, except private ~~residences~~ *dwellings*; or, to stop and inspect any means of conveyance moving within this state, upon probable cause to believe it contains or carries any plant pest or other article subject to this act.

Sec. 5. K.S.A. 2-2116 is hereby amended to read as follows: 2-2116. Wherever the secretary finds a plant ~~or~~ 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~~, upon giving notice to the owner or an agent of the owner in possession thereof, *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 ~~said such~~ plant pest, or the secretary may order such owner or agent to so treat or otherwise dispose of the ~~said such~~ plant pest.

Sec. 6. K.S.A. 2-2117 is hereby amended to read as follows: 2-2117. The secretary is authorized to quarantine this state or any portion thereof when ~~he or she shall determine~~ *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 ~~he or she~~ *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 ~~shall~~, after 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: ~~Provided~~. The secretary may impose a temporary quarantine for a period not to exceed ~~ninety (90)~~ 90 days during which time a public hearing, as provided ~~herein in this section~~, shall be held if it appears that a quarantine for more than the ~~ninety (90) day~~ 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 ~~may~~, 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 de-

scribed 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, ~~and~~. *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. 7. K.S.A. 2-2118 is hereby amended to read as follows: 2-2118. ~~(a) The secretary shall inspect or cause to be inspected all nurseries in the state at least once each year. If upon inspection of any nursery it appears that such nursery and its premises are apparently free from plant pests, the secretary shall issue to the owner or the person in charge of such nursery a certificate setting forth the facts of such inspection. Before such certificate is issued the nursery person shall pay a certificate fee plus an inspection fee assessed on the basis of a dollar amount for each acre or fraction thereof of nursery stock inspected, which fees shall be fixed by rules and regulations adopted by the secretary, except that the certificate fee shall not exceed \$30 and the inspection fee shall not exceed an amount assessed on the basis of \$5 for each acre or fraction thereof of nursery stock inspected. The nursery certificate fee and the rate of assessment for the inspection fee which are 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.~~

~~(b) Such certificate shall be valid until the first day of September of the year of issuance, except where the inspection is made after the first day of May the certificate shall be valid until the first day of September of the following year, unless sooner revoked.~~

~~(c) Any person who is not a nursery person but who owns or possesses plants or plant products which such person wishes to have inspected or who owns or possesses plants or plant products which such person wishes to ship into another state or country, may request that the secretary inspect such plant or plant products with reference to the presence of any plant pests or with reference to the presence of plant pests likely to prevent the acceptance of such plants or plant products in such other state or country. The secretary may comply with such request as soon as it is conveniently practicable and shall issue a certificate setting forth the facts of the inspection. The secretary shall charge and collect fees for such inspection and certificate which shall be fixed by rules and regulations adopted by the secretary so that the fee is the larger of the amount determined on a rate per hour plus the mileage expenses incurred by the inspector, which shall be at the mileage allowance rate prescribed by rules and regulations adopted under K.S.A. 75-3203a, and amendments thereto, or a dollar amount plus an amount per certificate, except that such fees and amounts shall not exceed fees at the rates of \$30 per hour plus such mileage expenses incurred by the inspector or \$50 plus \$50 per certificate, whichever is the larger amount. 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 \$30 per hour. Mileage incurred shall also be paid by the person requesting the inspection at the rate established by regulation. If certificate is requested an additional fee not to exceed \$50 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 except that on and after July 1, 1996, the certificate fee shall be \$5 for certificates issued for plant and plant products shipped into another state and \$20 for plants and plant products shipped~~

~~into another country 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 ~~nursery stock~~, 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 ~~nursery stock, plants or plant products~~ *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. 8. K.S.A. 2-2120 is hereby amended to read as follows: 2-2120. Every *live plant dealer* ~~shall~~, before selling or offering for sale or delivering any ~~nursery stock~~ *live plants* in this state, *shall* procure from the secretary a ~~nursery live plant dealer's~~ license for each location and vehicle from which the *live plant dealer* offers such ~~nursery stock~~ *live plants* for sale. 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 ~~board~~ *secretary*, except that such fee shall not exceed ~~\$50~~ \$60, *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 ~~board~~ *secretary* adopts rules and regulations fixing a different application fee under this section. The dealer's license shall expire on ~~December~~ *January* 31, following date of issue, *except that all valid certificates of nursery inspection and nursery dealer licenses issued by the secretary that are scheduled to expire in 2002 shall remain valid until January 31, 2003.* ~~The dealer shall sell only nursery stock which has been inspected and certified.~~ *A live plant dealer may sell only live plants which are in compliance with all quarantines and regulated nonquarantine pest freedom standards established by the secretary, or which have come to the dealer live plants accompanied by a valid certificate of inspection of a federal inspector or inspector of another state, stating that such stock was inspected and is apparently free from plant pests 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. 9. K.S.A. 2-2122 is hereby amended to read as follows: 2-2122. If it is found that any ~~nursery certificate or nursery live plant dealer license issued or approved by the secretary is being used in connection with nursery stock which has not been inspected, or which is infested with plant pests, or which is being sold and delivered without treatment~~ *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 K.S.A. 2-2119 this act and amendments thereto being carried out by the nurseryman, or if it is found that any nursery certificate or nursery live plant dealer's license is being used by a person other than the one to whom it was issued, the secretary may require the owner of the certificate or license to appear for a hearing, on a specified date, to be conducted in accordance with the provisions of the Kansas administrative procedure act to show cause why the certificate or license should not be revoked. If, after such hearing, the secretary finds that such certificate or license has been wrongfully used in one or more of the ways specified in this section, or if the owner of such certificate or license fails to appear at such hearing, the secretary may issue an order revoking such certificate or license.*

Sec. 10. K.S.A. 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 ~~nursery stock which has not been inspected in accordance~~ *live plants or other regulated articles which are not in compliance* with the provisions of this act. Any such ~~nursery stock~~ *live plants* intended for resale and any such ~~nursery stock~~ *live plants* transported by public carrier shall have attached to each quantity or package a tag or label on which shall appear a copy of a valid ~~certificate of inspection~~ *document* issued by the proper

official of the state, territory, district or country from which it was shipped, sent, or brought showing that such ~~nursery stock was found free from plant pests. Nursery stock~~ *live plants are in compliance with Kansas quarantines and regulated nonquarantine pest freedom standards. Live plants* brought into the state under ~~an inspection certificate~~ *a document*, as ~~above~~ *required by this section*, may be sold and moved under ~~the certificate or license of a Kansas nurseryman or Kansas nursery dealer, but a valid Kansas live plant dealer license~~, *and this shall not preclude inspection by the secretary at any time within the state. 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 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. 11. K.S.A. 2-2124 is hereby amended to read as follows: 2-2124. It shall be a violation of this act for any person:

(a) 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;

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

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

(d) to sell, transport, *deliver, distribute,* ~~or offer or expose~~ for sale ~~nursery stock which has not been inspected and which is not covered by a valid certificate of inspection~~ *live plants which are not in compliance with the provisions of this act;*

(e) to use an invalid or revoked certificate of inspection, or ~~dealers~~ *live plant dealer* license, in the sale or distribution of ~~nursery stock live plants;~~

(f) ~~to sell, offer or expose for sale, or distribute nursery stock which does not have attached thereto a shipping tag or label bearing a copy of the certificate of inspection as is required by K.S.A. 2-2123;~~

~~(g) to sell, offer or expose for sale or deliver any nursery stock without having a current nursery certificate or license as a nursery dealer;~~

~~(h) to fail to comply with any of the provisions of this act, or the rules and regulations promulgated hereunder; and~~

~~(i) (g) to knowingly move any regulated article into 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.~~

Sec. 12. K.S.A. 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 ~~twenty-five dollars (\$25)~~ \$25 nor more than ~~five hundred dollars (\$500)~~ \$500.

(b) *The secretary may assess a civil penalty against any person who violates or fails to comply with the requirements of this act of not less than \$100 nor more than \$1,000 per offense. In the case of a continuing offense, each day the violation continues may be deemed a 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. 13. K.S.A. 2-2126 is hereby amended to read as follows: 2-2126. The secretary shall promulgate, amend and repeal such rules and regulations as, in the discretion of the secretary, are necessary for the efficient execution of the provisions of ~~the plant pest~~ *this act.*

Sec. 14. K.S.A. 2-2128 is hereby amended to read as follows: 2-2128. 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 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 the state board of agriculture or by a person or persons designated by the secretary.

Sec. 15. K.S.A. 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 ~~nursery dealer or nursery certificate holder~~ *live plant dealer* under article 21 of chapter 2 of the Kansas Statutes Annotated. The additional fee shall be fixed by rule and regulation promulgated by the secretary of agriculture, except that such additional fee shall not exceed \$5 annually on each ~~nursery dealer and nursery certificate holder~~ *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 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 ~~the plant pest~~ *this act*.

Sec. 16. K.S.A. 2001 Supp. 65-688 is hereby amended to read as follows: 65-688. (a) As used in ~~sections 2 through 4 this section and K.S.A. 2001 Supp. 65-689, and amendments thereto:~~

(1) “Retail food store” means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines, *or any plant which is registered by the department of agriculture under article 7 of chapter 65 of the Kansas Statutes Annotated or which is licensed by the department of agriculture under article 6a of chapter 65 of the Kansas Statutes Annotated.*

(2) “Food processing plant” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. *“Food processing plant” shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail, or any plant which is registered by the department of agriculture under article 7 of chapter 65 of the Kansas Statutes Annotated or which is licensed by the department of agriculture under article 6a of chapter 65 of the Kansas Statutes Annotated.*

(3) “Secretary” means the secretary of health and environment.

(b) In order to reimburse the state of Kansas for inspections by the secretary of health and environment of retail food stores and food processing plants, the secretary of health and environment shall adopt rules and regulations establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location. Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to

increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for retail food stores or food processing plants by amending the rules and regulations which fix the fees, as the case may be.

(c) All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food inspection fee fund.

(d) The secretary of health and environment shall adopt rules and regulations necessary to carry out the provisions of this section.

Sec. 17. K.S.A. 2-411, 2-412, 2-413, 2-414, 2-415, 2-417, 2-418, 2-422, 2-422a, 2-424, 2-426, 2-427, 2-428, 2-2112, 2-2113, 2-2114, 2-2115, 2-2116, 2-2117, 2-2118, 2-2119, 2-2120, 2-2121, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 2-2129 and K.S.A. 2001 Supp. 65-688 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

\_\_\_\_\_  
SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*