

SENATE BILL No. 438

AN ACT concerning agriculture; relating to powers, duties and responsibilities of secretary of agriculture; fees and penalties; amending K.S.A. 2-1205, 2-2204, 2-2440, 2-2440b, 2-2441a, 2-2443a, 2-2445a, 2-2805, 2-2806, 2-2905, 2-2906, 2-3304, 2-3306, 2-3318 and 82a-727 and K.S.A. 2001 Supp. 65-771, 65-775, 65-778, 65-781, 65-782, 65-789, 82a-708a, 82a-708b, 82a-714, 83-302 and 83-402 and repealing the existing sections.

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

Section 1. K.S.A. 2-1205 is hereby amended to read as follows: 2-1205. An inspection fee shall be collected upon all commercial fertilizers sold, offered or exposed for sale, or distributed in Kansas, which shall be at a rate per ton of 2,000 pounds fixed by rules and regulations adopted by the secretary of agriculture, except that such rate shall not exceed \$1.67 per ton of 2,000 pounds. The secretary of agriculture may adopt rules and regulations establishing the inspection fee rate under this section. Each person registering any commercial fertilizer shall pay the inspection fee on such commercial fertilizer sold, offered or exposed for sale, or distributed in Kansas, ~~and~~ *Each such person* shall keep adequate records showing the tonnage of each commercial fertilizer shipped to or sold, offered or exposed for sale, or distributed in Kansas, ~~and~~. The secretary, and duly authorized representatives of the secretary, shall have authority to examine such records and other pertinent records necessary to verify the statement of tonnage.

Each person registering any commercial fertilizer shall file an affidavit semiannually, with the secretary, within 30 days after each January 1 and each July 1, showing the tonnage of commercial fertilizer sold or distributed in Kansas for the preceding six-month period, ~~and~~ *Each such person* shall pay to the secretary the inspection fee due ~~thereon~~ for such six-month period, except that the registrant shall not be required to pay the inspection fee or report the tonnage of commercial fertilizers or fertilizer materials sold and shipped directly to fertilizer manufacturers or mixers; ~~but~~. The fertilizer manufacturers or mixers shall keep adequate records of the commercial fertilizers sold or distributed in this state, and report to the secretary the tonnage ~~thereof~~ and pay the inspection fee due ~~thereon~~. If the affidavit is not filed and the inspection fee is not paid within the ~~thirty-day~~ 30-day period, or if the report of tonnage is false, the secretary may revoke the registrations filed by such person, ~~and~~. If the affidavit is not filed and the inspection fee is not paid within the ~~thirty-day~~ 30-day period, or any extension thereof granted by the secretary, *a penalty of \$5 per day, or commencing on July 1, 2002, and ending on June 30, 2005, a penalty of \$5 \$10 per day shall be assessed against the registrant and the inspection fee and penalty shall constitute a debt and become the basis for a judgment against such person. The secretary may grant a reasonable extension of time.*

The secretary of the department of agriculture is hereby authorized and empowered to reduce the inspection fee by adopting rules and regulations under this section whenever ~~it shall determine~~ *the secretary determines* that the inspection fee is yielding more than is necessary for the purpose of administering the provisions of this act as listed below and the plant pest act, ~~and~~. The secretary is hereby authorized and empowered to increase the inspection fee by adopting rules and regulations under this section when it finds that such is necessary to produce sufficient revenues for the purposes of administering the provisions of this act, ~~but~~ *except that the inspection fee shall not be increased in excess of the maximum fee prescribed by this section. The secretary shall remit all moneys received by or for the secretary under article 12 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 and shall credit such remittance as follows: (1) An amount equal to \$1.40 per ton shall be credited to the state water plan fund created by K.S.A. 82a-951, and amendments thereto; (2) an amount equal to \$.04 per ton shall be credited to the fertilizer research fund; and (3) commencing July 1, 2002, and ending on June 30, 2005, an amount equal to \$.05 per ton shall be credited to the fertilizer and pesticide compliance and administration fund; and (4) the remainder shall be credited to the fertilizer fee fund. On and after July 1, 2000, through June 30, 2002, an amount not to exceed \$35,000 per year may be used to fund plant pest activities.* All expenditures from the fertilizer fee 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 department of agriculture or by a person or persons designated by the secretary.

Sec. 2. K.S.A. 2-2204 is hereby amended to read as follows: 2-2204.

(a) Every agricultural chemical which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the secretary. All registration of products shall expire on December 31 following the date of issuance, unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated. Products which have the same formula, and are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same agricultural chemical may be registered as a single product and additional names and labels shall be added by supplement statements during the current period of registration. Within the discretion of the secretary, or an authorized representative of the secretary, a change in the labeling or formulas of an agricultural chemical may be made within the current period of registration without requiring a reregistration of the product. Any agricultural chemical imported into this state which is subject to the provisions of any federal act providing for the registration and which has been duly registered under the provisions of such federal act, in the discretion of the secretary, may be exempted from registration under this act when such agricultural chemical is sold or distributed in the unbroken immediate container in which such agricultural chemical was originally shipped.

(b) The registrant shall file with the secretary, a statement including: (1) The name and address of the registrant and the name and address of the person whose name will appear on the label if other than the registrant; (2) the name of the agricultural chemical; (3) a complete copy of the labeling accompanying the agricultural chemical and a statement of all claims made and to be made for it and a statement of directions for use; and (4) if requested by the secretary, or an authorized representative of the secretary, a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the product was registered or last reregistered.

(c) The registrant shall pay an annual fee fixed by rules and regulations adopted by the ~~state board~~ *secretary* of agriculture, except that *such fee shall not exceed \$130, or commencing July 1, 2002, and ending on June 30, 2005, such fee shall not exceed \$130* \$150 for each agricultural chemical registered. Such fee shall be deposited in the state treasury and credited as follows: (1) An amount equal to \$100 for each fee so deposited shall be credited to the state water plan fund created by K.S.A. 82a-951, *and amendments thereto*; and (2) the remainder shall be credited to the agricultural chemical fee fund to be used for carrying out the provisions of this act. The annual fee for each agricultural chemical registered which is in effect on the day preceding the effective date of this act shall continue in effect until the ~~state board~~ *secretary* of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. The ~~state board~~ *secretary* of agriculture is hereby authorized and empowered, whenever it determines that the fee imposed by this subsection and paid into the state treasury as provided by law is yielding more revenue than is required for the purposes to which such fee is devoted by law, to reduce the fee imposed by this subsection for such period as the ~~board~~ *secretary* shall deem justified by adopting rules and regulations under this subsection but not for less than one year. In the event that the ~~board~~ *secretary*, after reducing such fee, finds that sufficient revenues are not being produced by such reduced fee, the ~~board~~ *secretary* is authorized and empowered by adopting rules and regulations under this subsection, to restore in full or in part such fee to an amount which, in the judgment of the ~~board~~ *secretary*, will produce sufficient revenues for the purposes as provided in this section, but not exceeding the maximum amount of the fee imposed by this subsection.

(d) The secretary, or an authorized representative of the secretary,

whenever it is deemed essential in the administration of this act, may require the submission of the complete formula of any agricultural chemical. If it appears to the secretary, or an authorized representative of the secretary, that the composition of the product is such as to warrant the proposed claims for the product and if the product and its labeling and other material required to be submitted comply with the requirements of this act, the secretary shall register the product.

(e) If it does not appear to the secretary, or an authorized representative of the secretary, that the product is such as to warrant the proposed claims for it or if the product and its labeling and other material required to be submitted do not comply with the provisions of this act, the secretary shall notify the registrant of the manner in which the product, labeling, or other material required to be submitted fail to comply with the act so as to afford the registrant an opportunity to make the necessary corrections.

(f) In order to protect the public, the secretary, or a duly authorized representative of the secretary, on the secretary's own motion, may at any time, after written notice to the registrant, cancel the registration of an agricultural chemical. Any person so notified shall be given an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act with regard to the secretary's contemplated action, before any registration is canceled or revoked.

(g) Notwithstanding any other provisions of this act, registration is not required in the case of an agricultural chemical shipped from one plant within this state to another plant within this state operated by the same person.

Sec. 3. K.S.A. 2-2440 is hereby amended to read as follows: 2-2440.

(a) Subject to the provisions of subsection (d), it is unlawful for any pesticide business which has not been issued a pesticide business license to:

(1) Advertise, offer for sale, sell or perform any service for the control of a pest on the property of another or apply a pesticide to the property of another within this state; or

(2) perform any service for the control of a pest or apply any pesticide on or at the premises of another person under any commission, division of receipts or subcontracting arrangement with a licensed pesticide business.

Nothing in this subsection shall be construed to require the licensing of any person applying restricted use pesticides to the property of another as a certified private applicator or under the supervision of a certified private applicator.

(b) Application for a pesticide business license or renewal shall be made in writing to the secretary on a designated form obtained from the secretary's office and shall be accompanied by an application fee per category in which the licensee applies, and an additional fee for each uncertified individual employed by the applicant to apply pesticides. ~~On and after the effective date of this act through June 30, 1999~~ *The application fee per category shall be \$112, or commencing July 1, 2002, and ending June 30, 2005, the application fee per category shall be \$112 \$140 per category in which the licensee applies. On and after July 1, 1999, the application fee per category shall be \$100 per category in which the licensee applies.* An additional fee of \$10, *or commencing July 1, 2002, and ending June 30, 2005, an additional fee of \$10 \$15* shall be paid for each uncertified individual employed by the applicant to apply pesticides. The application fee per category and the additional fee for each uncertified employee in effect on the day preceding the effective date of this act shall continue in effect until the ~~state board~~ *secretary* of agriculture adopts rules and regulations fixing a different fee ~~therefor~~ under this subsection. Any uncertified individual employed for a period of more than 10 days in a 30-day period or for five consecutive days by a licensee to apply pesticides subsequent to such application shall be reported to the secretary within 30 days of such employee's hiring and the fee shall be paid at that time. Each application shall also include the following:

(1) The business name of the person applying for such license or renewal;

(2) if the applicant is an individual, receiver, trustee, representative, agent, firm, partnership, association, corporation or other organized group of persons, whether or not incorporated, the full name of each

owner of the firm or partnership or the names of the officers of the association, corporation or group;

(3) the principal business address of the applicant in the state and elsewhere; and

(4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(c) The secretary may issue a pesticide business license to apply pesticides in categories for which an applicant has applied if the applicant files the bond, insurance, letter of credit or proof of an escrow account as required under K.S.A. 2-2448, and amendments thereto, satisfies the requirements of subsection (b), and pays the required fees. Such license shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(d) The following persons shall be exempted from the licensing requirements of this act:

(1) State or federal personnel using pesticides or pest control services while engaged in pesticide use research;

(2) veterinarians or physicians using pesticides as a part of their professional services; and

(3) any person or such person's employee who applies pesticides on or at premises owned, leased or operated by such person.

(e) Subject to the provisions of subsection (d), it is unlawful for any governmental agency which has not been issued a government agency registration to apply pesticides within this state. Application for government agency registration shall be made in writing to the secretary on a designated form obtained from the secretary's office and shall be accompanied by a fee fixed by rules and regulations adopted by the ~~state board~~ secretary of agriculture, except that *such fee shall not exceed \$35, or commencing July 1, 2002, and ending June 30, 2005, such fee shall not exceed ~~\$35~~ \$50.* The governmental agency registration fee in effect on the day preceding the effective date of this act shall continue in effect until the ~~state board~~ secretary of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. No fee shall be required of any township located within a county which has previously applied for and received government agency registration. Each application for registration shall contain information including, but not limited to:

(1) The name of the government agency;

(2) the mailing address of the applicant;

(3) the name and mailing address of the person who heads such agency and who is authorized to receive correspondence and legal papers. Such person shall be: (A) The mayor or city manager for municipalities; (B) the chairperson of the board of county commissioners for counties; (C) the township trustee for townships; or (D) any person designated by any other governmental agency; and

(4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(f) If the secretary finds the application to be sufficient, the secretary shall issue a government agency registration. The government agency is not required to furnish a surety bond under this act. Such government agency registration shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a registration is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(g) A pesticide business license or government agency registration may be renewed by meeting the same requirements as for a new license or registration. Neither the pesticide business license nor the government agency registration shall be transferable, except that, in the event of the disability, incapacity or death of the owner, manager or legal agent of a pesticide business licensee, a permit may be issued by the secretary to permit the operation of such business until the expiration period of the license in effect at the time of such disability, incapacity or death if the applicant therefor can show that the policies and services of such business will continue substantially as before, with due regard to protection of the public and the environment.

(h) No pesticide business license may be issued to any person until such person is or has in such person's employ one or more individuals

who are certified commercial applicators in each of the categories for which the license application is made.

Sec. 4. K.S.A. 2-2440b is hereby amended to read as follows: 2-2440b. (a) It shall be unlawful for any pesticide business licensee to apply pesticides for the control of wood destroying pests, structural pests, ornamental pests or turf pests unless the applicator of the pesticide is a certified commercial applicator or is a registered pest control technician, except that an uncertified commercial applicator may apply pesticides when either a certified applicator or registered pest control technician is physically present.

(b) Any such employee applying for a pest control technician registration shall file an application on a form prescribed by the secretary. Application for such registration shall be accompanied by an application fee established by rules and regulations adopted by the ~~board~~ *secretary*, except that *such fee shall not exceed \$25, or commencing July 1, 2002, and ending June 30, 2005, such fee shall not exceed \$25 \$40* and shall be reduced ~~(, but not below zero)~~, by an amount equal to the additional fee paid under subsection (b) of K.S.A. 2-2440 and amendments thereto for such uncertified individual.

(c) If the secretary finds the applicant qualified to be a registered pest control technician after meeting the training requirements determined by the secretary in rules and regulations, the secretary shall issue a pest control technician registration which will expire at the end of the calendar year.

(d) This section shall be part of and supplemental to the Kansas pesticide law.

Sec. 5. K.S.A. 2-2441a is hereby amended to read as follows: 2-2441a. No individual except the following shall use any restricted use pesticide without a commercial applicator's certificate issued by the secretary: (a) Individuals applying restricted use pesticides under a private applicator certification;

(b) employees of a pesticide business licensee using only nonaerial methods of applying pesticides and who work only under the supervision of a certified commercial applicator; ~~and~~. The secretary may authorize any certified aerial applicator to apply restricted use pesticides in a category other than one in which such applicator is certified under the supervision of an applicator certified in the category in which the pesticide is being applied during an emergency situation declared by the secretary with the consent of the governor;

(c) veterinarians or physicians using pesticides as a part of their professional services;

(d) qualified laboratory personnel employed by recognized pesticide research facilities, using pesticides or pest control services while engaged in pesticide use research; and

(e) federal employees using pesticides as a part of their employment by a federal agency which has its own certification program which is the full equivalent of the requirements of this state.

Such a commercial applicator's certificate shall be required in addition to any other license or permit required by law for the operation or use of pesticide application equipment. Any person applying for such commercial applicator's certificate shall file an application on a form prescribed by the secretary. Application for a certificate to apply pesticides shall be accompanied by an application fee per category in which the applicant applies which fee is fixed by rules and regulations adopted by the ~~state board~~ *secretary* of agriculture, except that *such fee shall not exceed \$35, or commencing July 1, 2002, and ending June 30, 2005, such fee shall not exceed \$35 \$50* per category in which the applicant applies. The commercial applicator's certificate fee in effect on the day preceding the effective date of this act shall continue in effect until the ~~state board~~ *secretary* of agriculture adopts rules and regulations fixing a different fee therefor under this section. If the secretary finds the applicant qualified to apply pesticides in the categories the applicant has applied for after examinations on the same basis as provided for in K.S.A. 2-2443a and amendments thereto, the secretary shall issue a commercial applicator's certificate limited to the categories for which the applicant is qualified, which certificate shall expire at the end of the second calendar year after

the year of issue. If a certificate is not issued as applied for, the secretary shall inform the applicant in writing of the reasons for such denial.

Sec. 6. K.S.A. 2-2443a is hereby amended to read as follows: 2-2443a. An applicant for a commercial applicator's certificate shall show upon written examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the categories for which the applicant has applied. Upon the recommendation of the secretary, a commercial applicator who holds a current certificate to apply pesticides commercially in any other state or political subdivision of the United States may be exempted from examination for certification in this state upon payment of proper fees, ~~which~~. *Such fees* shall not be less than any comparable fees charged by the commercial applicator's state to Kansas certificate holders, if such state or political subdivision's requirements for certification were the full equivalent of the requirements of this state at the time it was issued and if the proper authorities of the state from which the applicant holds such commercial applicator's certificate, or its equivalent, agree to accept on an equal basis holders of certificates issued by the authorities of this state.

Applicants shall submit with each application an examination fee per category in which the applicant is to be examined which fee is fixed by rules and regulations adopted by the ~~state board~~ secretary of agriculture, except that *such fee shall not exceed \$25, or commencing July 1, 2002, and ending June 30, 2005, such fee shall not exceed \$25* \$35 per category in which the applicant is to be examined. The examination fee in effect on the day preceding the effective date of this act shall continue in effect until the ~~state board~~ secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. Applicants who fail to pass the examination may reapply and take another examination upon paying another examination fee per category in which the applicant is to be reexamined which fee is fixed by rules and regulations adopted by the ~~state board~~ secretary of agriculture, except that *such fee shall not exceed \$25, or commencing July 1, 2002, and ending June 30, 2005, such fee shall not exceed \$25* \$35 per category in which the applicant is to be reexamined. The reexamination fee in effect on the day preceding the effective date of this act shall continue in effect until the ~~state board~~ secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. The examination shall include, but is not limited to, the following:

- (a) The proper use of the equipment.
- (b) The hazards that may be involved in applying the pesticides, including:
  - (1) The effect of drift of the pesticides on adjacent and nearby lands and other non-target organisms;
  - (2) the proper meteorological conditions for the application of pesticides and the precautions to be taken ~~therewith~~ *with such application*;
  - (3) the effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;
  - (4) the effect of the application of pesticides to wildlife in the area, including aquatic life;
  - (5) the identity and classification of pesticides used and the effects of their application in particular circumstances; and
  - (6) the likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects and vegetation.
- (c) Calculating the concentration of pesticides to be used.
- (d) Identification of common pests to be controlled and damages caused by such pests.
- (e) Protective clothing and respiratory equipment for handling and application of pesticides.
- (f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use.
- (g) Applicable state and federal pesticide laws and regulations.
- (h) Any other subject which the secretary deems necessary.

Sec. 7. K.S.A. 2-2445a is hereby amended to read as follows: 2-2445a. In lieu of obtaining a commercial applicator's certificate under the provisions of K.S.A. 2-2441a and amendments thereto, a private appli-

cator's certificate may be applied for by and issued to individuals using restricted use pesticides for the purpose of: (a) Producing any agricultural commodity—~~(1)~~ on property owned or rented by the individual or such individual's employer, or ~~(2)~~ on the property of another for no compensation other than the trading of personal services between producers; or (b) controlling ornamental shrubbery or turf pests on property owned or rented by the individual and such property is used as the individual's residence. Such certificates shall expire on the anniversary of the individual's date of birth occurring in the fifth calendar year following the year of issue. ~~The extension of the certification period from three to five years shall apply to all individuals having a valid private applicator's certificate on June 30, 1981.~~ No certification shall be required hereunder for individuals operating under the supervision of a certified private applicator.

Certified private applicator certificates may be issued to individuals who have paid: *(a)* A fee fixed by rules and regulations adopted by the ~~state board~~ secretary of agriculture, except that *such fee shall not exceed \$10, or commencing July 1, 2002, and ending June 30, 2005, such fee shall not exceed \$10, \$25;* and *(b)* who have acquired practical knowledge of pest problems, proper storage, use, handling and disposal of pesticides and pesticide containers, pertinent information found on the pesticide labels, pesticide use safety and environmental considerations, either through Kansas state university extension service educational training or through individual study of educational materials available at county extension offices or the ~~state board~~ secretary of agriculture. The certified private applicator certificate fee in effect on the day preceding the effective date of this act shall continue in effect until the ~~state board~~ secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. Individuals shall indicate adequate knowledge of the subjects enumerated herein by passing an open-book examination approved by the secretary.

Educational materials and examination blanks shall be made available at county extension offices and at places where extension educational training is conducted. The examinations shall be scored by members of the extension or secretary's staff. If an individual passes the examination by equaling or exceeding a standard authorized by the secretary, a certified private applicator's certificate shall be issued to such individual. Such staff member shall send a copy of the certificate issued, together with the fee, to the secretary.

Upon the recommendation of the secretary, a certified applicator who holds a current certificate to apply pesticides as a certified private applicator in any other state or political subdivision of the United States may be exempted from examination for private applicator certification in this state upon payment of proper fees, ~~which~~. *Such fees* shall not be less than any comparable fees charged by the certified private applicator's state to Kansas certificate holders, if such state or political subdivision's requirements for certification were the full equivalent of the requirements of this state at the time it was issued and if the proper authorities of the state from which the applicant holds such certified private applicator's certificate, or its equivalent, agree to accept on an equal basis holders of certificates issued by the authorities of this state.

Sec. 8. K.S.A. 2-2805 is hereby amended to read as follows: 2-2805. Each soil amendment product shall be registered with the secretary before it is distributed in this state. Application for registration shall be submitted to the secretary, on a form prepared for that purpose, showing the information required on the label, as provided in K.S.A. 2-2804, *and amendments thereto*, except net weight of product. The registration fee shall be fixed by rules and regulations adopted by the ~~state board~~ secretary of agriculture for each product, except that *such fee shall not exceed \$50, or commencing July 1, 2002, and ending June 30, 2005, such fee shall not exceed \$50 \$60* for each product. The soil amendment product registration fee in effect on the day preceding the effective date of this act shall continue in effect until the ~~state board~~ secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. All registrations shall expire on December 31 of the year in which such soil amendment product is registered. The applicant shall submit with the application for registration a copy of the label and a copy of all advertise-

ments, brochures, posters and television and radio announcements to be used in promoting the sale of the soil amendment.

Sec. 9. K.S.A. 2-2806 is hereby amended to read as follows: 2-2806.

(a) The registrant shall pay to the secretary *an inspection fee of \$.20, or commencing July 1, 2002, and ending June 30, 2005, an inspection fee of twenty cents (20¢) \$0.28* per ton on all products registered and sold in this state, except that, in the case of manipulated animal manures, such fee shall only be assessed on the tonnage of ingredients added to the otherwise unmanipulated animal manures. Each registrant shall keep adequate records of ~~his or her~~ *such registrant's* sales, and shall file with the secretary, on a semiannual basis, a signed report of the tonnage distributed by county during the preceding ~~six-month~~ *six-month* periods beginning July first to and including December ~~thirty-first~~ *31st* and January first to and including June ~~thirtieth~~ *30th*. The report and payment of the inspection fee shall be due within ~~thirty~~ *30* days from the date of the close of each period.

(b) If the report is not filed, if the report is false in any respect or if the inspection fee is not paid within the ~~thirty-day~~ *30-day* period, the secretary may revoke the registration. A penalty of ~~\$1, or commencing July 1, 2002, and ending June 30, 2005, a penalty of one dollar (\$1)~~ *\$10* per day is assessed for each day the payment is overdue until paid. The inspection fee and the penalty shall constitute a debt and become the basis for a judgment against the registrant which may be collected by the secretary in any court of competent jurisdiction without prior demand.

(c) The secretary is hereby authorized to reduce the inspection fee provided for in subsection (a) whenever ~~he or she shall determine~~ *the secretary determines* that such inspection fee is yielding more than is necessary for the purpose of administering the provisions of this act. The secretary is authorized and empowered to increase such inspection fee, or restore ~~it~~ *such inspection fee*, in full or in part, when ~~it~~ *such inspection fee* is necessary to produce sufficient revenues for the purposes of administering this act but not in excess of the ~~fee herein before stated~~ *provisions of this section*.

Sec. 10. K.S.A. 2-2905 is hereby amended to read as follows: 2-2905.

Every manufacturer of liming materials to be distributed in this state shall on July 1 of each year, or prior to manufacture or distribution of such liming materials, register each manufacturing facility on a form furnished by the secretary of ~~the state board of~~ *agriculture*, the application to be accompanied by a fee of ~~\$25, or commencing July 1, 2002, and ending June 30, 2005, a fee of twenty-five dollars (\$25)~~ *\$30*. All such licenses shall expire on June 30 of the following year.

Sec. 11. K.S.A. 2-2906 is hereby amended to read as follows: 2-2906.

(a) Within ~~thirty (30)~~ *30* days following expiration of registration, each registrant shall submit, on a form furnished by the secretary of the state board of agriculture, an annual statement setting forth the number of net tons of each agricultural liming material sold by such registrant for use within the state during the previous ~~twelve-month~~ *12-month* period. Such statement shall be accompanied by payment of an inspection fee which shall be at the rate of ~~\$.05, or commencing July 1, 2002, and ending June 30, 2005, the rate of five cents (5¢)~~ *\$.07* per ton.

(b) The secretary is hereby authorized and empowered to reduce the inspection fee provided for in subsection (a) whenever ~~it is determined~~ *the secretary determines* that such fee is yielding more than is necessary for the purpose of administering the provisions of this act. The secretary is authorized and empowered to increase such inspection fee, or restore ~~it~~ *such inspection fee*, in full or in part, when ~~it~~ *such inspection fee* is necessary to produce sufficient revenues for the purposes of administering the provisions of this act, but not in excess of the ~~fee hereinbefore stated~~ *as provided in this section*.

Sec. 12. K.S.A. 2-3304 is hereby amended to read as follows: 2-3304.

(a) Any user of the chemigation process shall register and obtain a chemigation user's permit before using the process.

(b) Registration shall consist of making application on a form supplied by the secretary. Such application shall include, but not be limited to:

(1) The name of the persons to whom a permit is to be issued ~~€, including an owner or operator of land on which chemigation is to be used;~~



- (2) a plan for using anti-pollution devices;
- (3) a plan for handling tail water or accumulations of water;
- (4) the number and locations ~~of~~, *including a legal description*, of well-heads which may be involved in the chemigation process and surface water supply withdrawal points, not to include siphon tubes; and
- (5) payment of fees.

(c) ~~On and after the effective date of this act through June 30, 1999,~~ The application fee for a chemigation user's permit *shall be \$55 plus \$10 for each additional point of diversion, or commencing July 1, 2002, and ending June 30, 2005, shall be \$55 \$75 plus \$10 \$15 for each additional point of diversion.* ~~On and after July 1, 1999, the application fee for a chemigation user's permit shall be \$50 plus \$10 for each additional point of diversion.~~ A chemigation user's permit may be renewed each year upon making an application, payment of the application fee and completing the report form providing information used in chemigation the previous year.

Sec. 13. K.S.A. 2-3306 is hereby amended to read as follows: 2-3306.

(a) Any individual operating chemigation equipment under a chemigation user permit shall be responsible for the safe operation of such chemigation equipment and any such equipment shall be considered to be under the direct supervision of the chemigation user permit holder.

(b) The secretary shall not issue a chemigation user permit to any person unless such person is a certified chemigation equipment operator or has in such person's employment at least one certified chemigation equipment operator. A chemigation equipment operator is an individual who has successfully completed an examination given by the secretary or the secretary's designee. Except as provided in subsection (c), if the chemigation user permit is issued to an individual, that individual must have successfully completed the chemigation equipment operator examination. Such examination shall include, but not be limited to, the following:

- (1) The proper use of anti-pollution devices;
- (2) preparing the chemical solution and filling the chemical supply container;
- (3) calibrating of injection equipment;
- (4) supervision of chemigation equipment to assure its safe operation;
- (5) environmental and human hazards that may be involved in chemigation;
- (6) protective clothing and respiratory equipment;
- (7) general precautions to be followed in disposal of containers and decontamination of the equipment;
- (8) handling of tail water and other accumulations of water containing chemicals;
- (9) information of procedures to be followed should chemicals inadvertently enter the water supply source as a result of the chemigation process;
- (10) label information, especially chemigation instructions;
- (11) applicable state and federal laws and regulations; and
- (12) any other subject which the secretary deems necessary.

(c) The examination provided for in subsection (b) may be waived for any individual who has been certified as a pesticide applicator in the category of chemigation pursuant to the Kansas pesticide law.

(d) The chemigation equipment operator certification shall expire on December 31 of the fourth calendar year after the year of issue. A chemigation equipment operator certification shall be renewed for a succeeding five year period upon payment of the certification fee and passing the examination specified in either subsection (b) or (c).

(e) The fee for certification as a chemigation equipment operator or for renewal of such certification *shall be \$10, or commencing July 1, 2002, and ending June 30, 2005, such certification shall be \$10 \$25.*

Sec. 14. K.S.A. 2-3318 is hereby amended to read as follows: 2-3318.

(a) Regardless of whether irrigation water is added, whenever swine waste is applied to crops or land, the secretary is authorized to investigate, inspect or conduct any manner of examination or review of the application of swine waste. No swine waste shall be applied to crops or land in excess of agronomic application rates.

(b) The secretary shall review and approve all nutrient utilization plans that provide for the application of swine waste to crops or land and

that are submitted by swine confined feeding facilities pursuant to K.S.A. 2001 Supp. 65-1,182 and amendments thereto if the plans demonstrate that swine waste will be applied pursuant to agronomic application rates *and include all required information*. Nutrient utilization plans shall be submitted ~~in the~~ *on a* form required by the secretary. The secretary shall notify the secretary of health and environment when a nutrient utilization plan has been approved and whether the approval is conditioned on any amendments or revisions to the plan.

~~(c) Any soil tests required by the secretary to evaluate whether agronomic application rates are being met must be paid for by the swine confined feeding facility regardless of whether the soil to be tested is from land owned by such facility.~~

~~(d)~~ Failure of the operator of a swine confined feeding facility to implement a nutrient utilization plan approved by the secretary shall be considered a violation of the Kansas chemigation safety law for which the secretary may suspend a permit pursuant to K.S.A. 2-3310 and amendments thereto or may impose a civil penalty pursuant to K.S.A. 2-3317 and amendments thereto, or both.

~~(e)~~ *(d)* This section shall be part of and supplemental to the Kansas chemigation safety law.

Sec. 15. K.S.A. 2001 Supp. 65-771 is hereby amended to read as follows: 65-771. As used in this act:

~~(a)~~ “Adulterated” has the same meaning as ~~ascribed to it~~ *provided* in K.S.A. 65-664, and amendments thereto.

~~(b) “Counter freezer” means a counter type freezing machine used to produce frozen dairy products.~~

~~(c)~~ “Dairy manufacturing plants” means any place where dairy products, grade A milk or milk products are manufactured or prepared for sale or distribution, either at wholesale or retail. This term shall not include a licensed food service establishment which is licensed to manufacture homemade ice cream pursuant to this act.

~~(d)~~ *(c)* “Dairy products” means products which may be made from milk or cream for manufacturing purposes and which are not required to meet grade A standards, including butter, cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk ~~€, whole or skim~~, condensed whole milk, condensed skim milk ~~€, sweetened or plain~~, frozen dairy dessert, and frozen dairy dessert mixes and such other products as may be otherwise designated by rules and regulations.

~~(e)~~ *(d)* “Frozen dairy dessert” means and includes products containing milk or cream and other ingredients which are frozen or semi-frozen prior to consumption, such as ice cream, ice milk or sherbet, including frozen dairy desserts for special dietary purposes.

~~(f)~~ *(e)* “Frozen dairy dessert mix” means the pasteurized unfrozen combination of all ingredients with or without fruits, fruit juices, candy, nut meats, flavor or harmless color which makes a frozen dairy dessert.

~~(g)~~ *(f)* “Goat milk” means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5 % milkfat and not less than 7.5 % milk solids not fat. Goat milk shall be produced according to the sanitary standards of this act.

~~(h)~~ *(g)* “Grade A pasteurized milk” means pasteurized milk which has at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The milk shall meet the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk does not have at least a 90% survey rating.

~~(i)~~ *(h)* “Grade A pasteurized milk products” means all pasteurized milk products which have at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The pasteurized milk products shall meet the requirements for grade A under rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time

period on grade A pasteurized milk products within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk products do not have at least a 90% survey rating.

~~(f)~~ (i) “Grade A raw milk for pasteurization” means milk having at least 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation, the raw milk meeting the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A raw milk for pasteurization within the statewide system of milk inspection and regulatory services, although such milk does not have at least a 90% survey rating.

~~(h)~~ (j) “Imminent health hazard” means any condition which involves milk, milk products, or dairy products, or any practice or procedure in the handling, transportation, storage, processing or manufacturing of a milk, milk product or dairy product which poses a significant threat of danger to the public health which should be corrected immediately to prevent injury or sickness and which should not be permitted to continue while a hearing or other proceeding is being conducted. An imminent health hazard may be declared at any point in a chain of events which ultimately may result in harm or danger to the public health. The occurrence of the final anticipated injury or other disease related condition shall not be a prerequisite for the establishment of the existence of an imminent health hazard.

~~(i)~~ (k) “In package form” means any commodity put up or packaged in any manner in advance of sale so as to constitute a unit quantity of the commodity for either wholesale or retail sale, exclusive of any auxiliary container enclosing such packages which individually conform to the requirements of this act.

~~(m)~~ (l) “Milk” means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8.25% milk solids not fat and not less than 3.25% milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized. Milk shall be interpreted to include goat milk.

~~(n)~~ (m) “Milk distributor” means any person who first sells or offers for sale in Kansas any packaged grade A pasteurized milk, milk product, or dairy product.

~~(o)~~ (n) “Milk hauler/sampler” means any person who collects official samples and may transport raw milk from a farm or raw milk products to or from a milk plant or both, receiving station or transfer station and has in their possession a permit from any state to sample such products.

~~(p)~~ (o) “Milk inspection and regulatory services” means the inspection, sampling, laboratory testing and the administrative procedures relating thereto, necessary to determine that the production, processing, distribution and sale of grade A milk, milk products, and dairy products comply with the requirements of this act and any rules and regulations adopted hereunder.

~~(q)~~ (p) “Milk or cream for manufacturing purposes” means raw milk or raw cream which is not subject to grade A standards and which is produced for processing and manufacturing into dairy products for human consumption. Milk for manufacturing purposes may contain less than 3.25% of butterfat and shall be delivered pure, sweet and clean.

~~(r)~~ (q) “Milk or cream receiving station” means any place where milk or cream may be received, collected, handled, processed, stored or collected and prepared for further transporting.

~~(s)~~ (r) “Milk or cream transfer station” means any place where milk or cream are transferred directly from one milk tank truck to another.

~~(t)~~ (s) “Milk processor” means any person who operates any place, premises or establishment where grade A raw milk for pasteurization or milk or cream for manufacturing purposes is processed, pasteurized, bottled or prepared for distribution.

~~(u)~~ (t) “Milk producer” means any person who owns or operates a dairy farm and who provides, sells or offers for sale grade A raw milk for

pasteurization or milk or cream for manufacturing purposes to a milk plant, receiving station or transfer station.

~~(v)~~ (u) “Milk products” means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, nonfat ~~(skim)~~ milk, reduced fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured reduced fat or lowfat milk, cultured nonfat ~~(skim)~~ milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat milk, acidified nonfat ~~(skim)~~ milk, low-sodium milk, low-sodium reduced fat or lowfat milk, low-sodium nonfat ~~(skim)~~ milk, lactose-reduced milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat ~~(skim)~~ milk, aseptically processed and packaged milk and milk products, milk, reduced fat or lowfat milk or nonfat ~~(skim)~~ milk with added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined herein. Milk products also include those dairy foods made by modifying the federally standardized products listed in this section in accordance with 21 C.F.R. 130.10, requirements for foods named by use of a nutrient content claim and a standardized term. Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein or if they are labeled as Grade A as adopted and described by rules and regulations promulgated under this act. *Except as otherwise provided*, the term milk shall not include dietary products ~~(except as defined herein)~~, infant formula, ice cream or other desserts, butter or cheese.

~~(w)~~ (v) “Misbranded” has the same meaning as ascribed to it in K.S.A. 65-665, and amendments thereto.

~~(x)~~ (w) “On-farm retail sales of milk or milk products” means the sale of milk or milk products on the farm by the producer from the production of the dairy herd to the final consumer, so long as the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm. The advertisement upon any such sign shall state that such milk or milk products are raw and shall be in letters of a uniform size. Each container in which any unpasteurized milk is sold or offered for sale shall be clearly labeled as ungraded raw milk.

~~(y)~~ (x) “Pasteurized” has the same meaning as ascribed to it in 21 C.F.R. 131.3 and 135.3.

~~(z)~~ (y) “Person” means any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.

~~(aa)~~ (z) “Plant fabricating single service articles” means any place which manufactures single service articles which are expected to come in contact with grade A milk or grade A milk products.

~~(bb)~~ (aa) “Secretary” means the secretary of the state department of agriculture, or the secretary’s designee.

~~(cc)~~ (bb) “Single service article or container” means any container having a milk or milk product-contact surface and used in the packaging, handling, storage or servicing of grade A milk and is intended for one usage only.

Sec. 16. K.S.A. 2001 Supp. 65-775 is hereby amended to read as follows: 65-775. (a) The secretary may adopt rules and regulations:

(1) Establishing criteria for the sanitary production, processing, handling, sampling, examination, testing, grading and labeling of all milk, milk products and dairy products sold or produced in the state of Kansas;

(2) providing criteria for the inspection of dairy farms, dairy manufacturing plants, plants fabricating single service articles, milk or cream transfer stations, milk or cream receiving stations, milk haulers; *and* milk distributors; ~~and counter freezers;~~

(3) establishing sanitation standards and equipment and utensil standards for dairy farms, dairy manufacturing plants, plants fabricating single

service articles, transfer stations, receiving stations, milk haulers and milk distributors;

(4) establishing standards of identity for milk, milk products and dairy products. Such standards shall take into consideration corresponding federal standards of identity where such standards exist;

(5) prescribing for any person regulated under this act any book-keeping or reporting requirements deemed necessary by the secretary, including the maintenance of records and making such records available to the secretary;

(6) regarding bacterial and coliform standards or other quality standards for milk, milk products, or dairy products; and

(7) establishing specifications for apparatus and chemicals and procedures for sampling, testing and weighing milk, cream, butter and any other milk products or dairy products. These specifications, directions and other technical requirements shall conform, insofar as practical, to the official methods of analysis of the association of official analytical chemists or any other such similar organization.

(b) Any rules and regulations promulgated under this act shall conform, insofar as practicable, to the pasteurized milk ordinance, and the policies adopted by the interstate milk shippers conference.

Sec. 17. K.S.A. 2001 Supp. 65-778 is hereby amended to read as follows: 65-778. (a) Any person who engages in business as a dairy manufacturing plant shall first apply for and obtain a dairy manufacturing plant license from the secretary and shall pay a license fee of \$120, or commencing July 1, 2002, and ending June 30, 2005, a license fee of ~~\$120~~ \$155.

(b) Any person who engages in business as a distributor of milk, milk products or dairy products shall first apply for and obtain a milk distributor license from the secretary and shall pay a license fee of \$120, or commencing July 1, 2002, and ending June 30, 2005, a license fee of ~~\$120~~ \$155. No milk distributor license shall be required for a licensed dairy manufacturing plant which distributes only those products which it manufactures.

(c) Any person who engages in business as a milk hauler shall first apply for and obtain a milk hauler license from the secretary and shall pay a license fee of \$25 or commencing July 1, 2002, and ending June 30, 2005, a license fee of ~~\$25~~ \$35. As part of the application, the secretary may require the applicant to be tested regarding proper procedures for sampling, testing and weighing milk or cream and state laws and rules and regulations.

~~(d) Any person who engages in the business of freezing a frozen dairy dessert mix for sale at retail shall first apply for and obtain a counter freezer license from the secretary and shall pay a license fee of \$50.~~

~~(e) Any food service establishment which is required to be licensed pursuant to K.S.A. 36-501 et seq., and amendments thereto, and who manufactures homemade ice cream for sale on its premises shall first apply for and obtain a homemade ice cream manufacturing license from the secretary and shall pay a license fee of \$50. Homemade ice cream made pursuant to this section shall be manufactured at the licensed food service establishment and shall be sold only on the premises for immediate consumption by the customers of the licensed food service establishment.~~

~~(f) Any person who operates a milk or cream transfer station or milk or cream receiving station shall first apply for and obtain a milk or cream station license from the secretary and shall pay a license fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a license fee of \$50~~ \$65.

~~(g)~~ (e) Any person who engages in business as a manufacturer of single service dairy containers or manufacturer of single service dairy container closures shall first apply for and obtain a single service manufacturing license from the secretary and shall pay a license fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a license fee of ~~\$50~~ \$65.

~~(h)~~ (f) The dairy manufacturing plant license, milk distributor license, counter freezer license, homemade ice cream manufacturing license, milk or cream station license and single service manufacturing license shall expire on December 31 of the year for which it was issued unless sus-

pended or revoked by the secretary pursuant to this act. The milk hauler license shall expire on June 30 following the date of issuance unless suspended or revoked by the secretary pursuant to this act.

(g) No license issued under this section shall be transferable. No license shall be renewed if any assessments or fees required under this act are delinquent.

(h) Each applicant for a license shall submit an application on a form supplied by the secretary accompanied by the license fee. All licenses shall be conspicuously displayed in the applicant's place of business.

Sec. 18. K.S.A. 2001 Supp. 65-781 is hereby amended to read as follows: 65-781. The following fees for the statewide system of milk inspection and regulatory services are hereby established:

(a) A fee of *\$.01, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$.01~~ \$.015* for each 100 pounds of milk produced by milk producers under Kansas grade A inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, milk processor or milk distributor to whom the milk is sold or delivered. Each cooperative, processor or distributor is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(b) A fee of *\$.01, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$.01~~ \$.015* for each 100 pounds of packaged grade A pasteurized milk or milk products sold in Kansas at retail to the final consumer shall be paid. Each distributor is hereby charged with such fee which shall be remitted to the secretary.

(c) A fee of *\$.01, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$.01~~ \$.015* per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of Kansas which is processed into grade A milk or grade A milk products shall be paid. Each milk processor is hereby charged with such fee which shall be remitted to the secretary.

(d) A milk fee of *\$.01, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$.01~~ \$.015* per 100 pounds of milk or cream for manufacturing purposes produced by milk producers under Kansas manufacturing grade milk inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, dairy manufacturing plant or any other person to whom the milk or cream for manufacturing purposes is sold or delivered. Each cooperative, dairy manufacturing plant or other person is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(e) A fee of *\$.0075, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$.0075~~ \$.01* per 100 pounds of Kansas produced milk or cream for manufacturing purposes or other Kansas produced milk delivered to a dairy manufacturing plant shall be paid on all Kansas milk used in the manufacturing of dairy products. As used in this subsection, the term dairy products shall not include any frozen dairy dessert or frozen dairy dessert mix. Each dairy manufacturing plant shall pay such fee which shall be remitted to the secretary.

(f) In lieu of the fee prescribed in subsection (e), a fee of *\$1, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$1~~ \$1.50* per thousand gallons of frozen dairy dessert or frozen dairy dessert mix shall be paid by the manufacturer thereof. Each manufacturer of frozen dairy dessert or frozen dairy dessert mix is hereby charged with such fee which shall be remitted to the secretary. Frozen dairy dessert mix which is further processed into the corresponding frozen dairy dessert by the manufacturer of the frozen dairy dessert mix shall not be subject to the fee required by this subsection.

(g) A fee of *\$1, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$1~~ \$1.50* per thousand gallons of frozen dairy dessert or frozen dairy dessert mix imported for retail sale in Kansas shall be paid by the milk distributor who imports these products.

(h) If any fee computed pursuant to subsection (a) through (e) is less than \$2.50, then the sum of \$2.50 shall be paid in lieu of the computed fee. If any fee computed pursuant to subsection (f) or (g) is less than \$7.50, a minimum fee of \$7.50 shall be paid in lieu of the computed fee.

(i) All fees established herein shall be paid to the secretary in the following manner:

(1) The fees established in subsections (a) through (e) shall be remitted on or before the 30th day of each month for the calendar month immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the quantities upon which the remittance is based.

(2) The fees established in subsections (f) and (g) shall be remitted on April 30, July 31, October 31 and January 31 for the three calendar months immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the quantity of frozen dairy dessert or frozen dairy dessert mix upon which the remittance is based.

(j) Any person who fails to remit all or any part of the required fee or to submit the required report by the date due may be assessed an additional charge equal to 1% of the amount of delinquent fees for each day after the date due, or \$5, whichever amount is greater.

Sec. 19. K.S.A. 2001 Supp. 65-782 is hereby amended to read as follows: 65-782. (a) The secretary shall remit all moneys received under this act to the state treasurer at least monthly. Upon receipt of such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the dairy fee fund, which is hereby created, unless otherwise stated.

(b) All expenditures from the dairy fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports pursuant to vouchers approved by the secretary.

~~(c) On July 1, 2001, the director of accounts and reports shall transfer all moneys in the dairy division fee fund and the grade A milk fee fund to the dairy fee fund. On July 1, 2001, all liabilities of the dairy division fee fund and the grade A milk fee fund are hereby transferred to and imposed on the dairy fee fund and the dairy division fee fund and the grade A milk fee fund are hereby abolished.~~

Sec. 20. K.S.A. 2001 Supp. 65-789 is hereby amended to read as follows: 65-789. It shall be unlawful for any person to:

(a) Engage in any business or activity which requires a license or permit under this act without having a license or permit;

(b) sell, offer or expose for sale:

(1) Any milk, milk products or dairy products which do not conform to the definition and standards of identity established under this act; *or*

(2) any milk, milk products or dairy products which are adulterated or misbranded; *or*

~~(3) any frozen dairy dessert which does not conform to the bacteria and coliform quality standards established by this act or rules and regulations adopted hereunder.~~

(c) adulterate or misbrand any milk, milk products or dairy products;

(d) sell, offer for sale or have in such person's possession with the intent to sell at retail to the final consumer any milk or milk product which has not been inspected and designated grade A pasteurized in accordance with the provisions of this act and any rules and regulations adopted thereunder, except that on-farm retail sales of milk or milk products shall be exempt from the provisions of this act unless stated otherwise; *or*

(e) violate any provision of this act or any rules or regulations promulgated thereunder.

Sec. 21. K.S.A. 2001 Supp. 82a-708a is hereby amended to read as follows: 82a-708a. (a) Any person may apply for a permit to appropriate water to a beneficial use, notwithstanding that the application pertains to the use of water by another, or upon or in connection with the lands of another. Any rights to the beneficial use of water perfected under such application shall attach to the lands on or in connection with which the water is used and shall remain subject to the control of the owners of the lands as in other cases provided by law.

(b) Except as otherwise provided in subsections (d), (e) and (f), each application for a permit to appropriate water, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of acre feet in accordance with the following:

Acre Feet	Fee
0 to 100 .....	\$100
101 to 320 .....	\$150
More than 320 .....	\$150 + \$10 for each additional 100 acre feet or any part thereof

Commencing July 1, 2002, and ending June 30, 2005, the application fee shall be fixed by this section for the appropriate category of acre feet in accordance with the following:

Acre Feet	Fee
0 to 100 .....	<del>\$100</del> \$200
101 to 320 .....	<del>\$150</del> \$300
More than 320 .....	<del>\$150 + \$10</del> \$300 + \$20 for each additional 100 acre feet or any part thereof

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application, the application fee is subject to refund upon request.

(c) Except as otherwise provided in subsections (d), (e) and (f), each application for a permit to appropriate water for storage, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

Storage-Acre Feet	Fee
0 to 250 .....	\$100
More than 250 .....	\$100 + \$10 for each additional 250 storage-acre feet or any part thereof

Commencing July 1, 2002, and ending June 30, 2005, the application fee shall be fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

Storage-Acre Feet	Fee
0 to 250 .....	<del>\$100</del> \$200
More than 250 .....	<del>\$100 + \$10</del> \$200 + \$20 for each additional 250 storage-acre feet or any part thereof

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application, the application fee is subject to refund upon request.

(d) Each application for a term permit pursuant to K.S.A. 2001 Supp. 82a-736, and amendments thereto, shall be accompanied by an application fee established by rules and regulations of the chief engineer in an amount not to exceed \$400 for the five-year period covered by the permit.

(e) For any application for a permit to appropriate water, except applications for permits for domestic use, which proposes to appropriate by both direct flow and storage, the fee charged shall be the fee under subsection (b) or subsection (c), whichever is larger, but not both fees.

(f) Each application for a permit to appropriate water for water power or dewatering purposes shall be accompanied by an application fee of \$100 plus \$200 for each 100 cubic feet per second, or part thereof, of the diversion rate requested in the application for the proposed project.

(g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

Sec. 22. K.S.A. 2001 Supp. 82a-708b is hereby amended to read as follows: 82a-708b. (a) Any owner of a water right may change the place of use, the point of diversion or the use made of the water, without losing priority of right, provided such owner shall: (1) Apply in writing to the chief engineer for approval of any proposed change; (2) demonstrate to



the chief engineer that any proposed change is reasonable and will not impair existing rights; (3) demonstrate to the chief engineer that any proposed change relates to the same local source of supply as that to which the water right relates; and (4) receive the approval of the chief engineer with respect to any proposed change. The chief engineer shall approve or reject the application for change in accordance with the provisions and procedures prescribed for processing original applications for permission to appropriate water. If the chief engineer disapproves the application for change, the rights, priorities and duties of the applicant shall remain unchanged. Any person aggrieved by an order or decision by the chief engineer relating to an application for change may petition for review thereof in accordance with the provisions of K.S.A. 2001 Supp. 82a-1901 and amendments thereto.

(b) Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

(1) Application to change a point of diversion 300 feet or less.....	\$50
(2) Application to change a point of diversion more than 300 feet ..	100
(3) Application to change the place of use .....	100
(4) Application to change the use made of water .....	150

*Commencing July 1, 2002, and ending June 30, 2005, the application fee shall be set forth in the schedule below:*

(1) Application to change a point of diversion 300 feet or less .....	<del>\$50</del> \$100
(2) Application to change a point of diversion more than 300 feet ..	<del>100</del> 200
(3) Application to change the place of use .....	<del>100</del> 200
(4) Application to change the use made of the water .....	<del>150</del> 300

*The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application, the application fee is subject to refund upon request.* Any application submitted which requests two of the types of changes set forth above shall be accompanied by a fee of \$150, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$150~~ not to exceed \$300. Any application which requests three types of changes shall be accompanied by a fee of \$250, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$250~~ not to exceed \$500.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

Sec. 23. K.S.A. 2001 Supp. 82a-714 is hereby amended to read as follows: 82a-714. (a) Upon the completion of the construction of the works and the actual application of water to the proposed beneficial use within the time allowed, the applicant shall notify the chief engineer to that effect. The chief engineer or the chief engineer's duly authorized representative shall then examine and inspect the appropriation diversion works and, if it is determined that the appropriation diversion works have been completed and the appropriation right perfected in conformity with the approved application and plans, the chief engineer shall issue a certificate of appropriation in duplicate. The original of such certificate shall be sent to the owner and shall be recorded with the register of deeds in the county or counties wherein the point of diversion is located, as are other instruments affecting real estate, and the duplicate shall be made a matter of record in the office of the chief engineer.

(b) Not later than 60 days before the expiration of the time allowed in the permit to complete the construction of the appropriation diversion works or the time allowed in the permit to actually apply water to the proposed beneficial use, the chief engineer shall notify the permit holder by certified mail that any request for extension of such time must be filed with the chief engineer before the expiration of the time allowed in the permit.

(c) Unless the applicant requests an extension or the certificate has

not been issued due to the applicant's failure to comply with reasonable requests for information or to allow the opportunity to examine and inspect the appropriation diversion works, as necessary for certification, the chief engineer shall certify an appropriation:

(1) Before July 1, 2004, if the time allowed in the permit to perfect the water right expired before July 1, 1999; or

(2) not later than five years after the date the applicant notifies the chief engineer of the completion of construction of the works and the actual application of water to the proposed beneficial use within the time allowed, in all other cases.

If the chief engineer fails to issue a certificate within the time provided by this subsection, the applicant may request review, pursuant to K.S.A. 2001 Supp. 82a-1901 and amendments thereto, of the chief engineer's failure to act.

(d) Except for works constructed to appropriate water for domestic use, each notification to the chief engineer under subsection (a) shall be accompanied by a field inspection fee of \$200, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$200~~ \$400. Failure to pay the field inspection fee, after reasonable notice by the chief engineer of such failure, shall result in the permit to appropriate water being revoked, forfeiture of the priority date and revocation of any appropriation right that may exist. ~~All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.~~

(e) A request for an extension of time to: (1) Complete the diversion works; or (2) perfect the water right, shall be accompanied by a fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$50~~ \$100.

(f) A request to reinstate a water right or a permit to appropriate water which has been dismissed shall be filed with the chief engineer within 60 days of the date dismissed and shall be accompanied by a fee of \$100, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$100~~ \$200.

(g) *All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.*

Sec. 24. K.S.A. 82a-727 is hereby amended to read as follows: 82a-727. (a) Subject to existing water rights and the principle of beneficial use, the chief engineer may grant upon application made therefor temporary permits and extensions thereof to appropriate water in any case where the public interest in such water will not be unreasonably or prejudicially affected, except that the chief engineer shall not grant any such permit to appropriate fresh water in any case where other waters are available for the proposed use and the use thereof is technologically and economically feasible. No such temporary permit or any extension thereof shall be granted for a period of time in excess of six months. Each application submitted for a temporary permit or extension thereof shall be accompanied by an application fee of \$100, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$100~~ \$200.

(b) The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section.

(c) Nothing in this section shall be deemed to vest in the holder of any permit granted pursuant to provisions of this section any permanent right to appropriate water except as is provided by such permit.

(d) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

Sec. 25. K.S.A. 2001 Supp. 83-302 is hereby amended to read as follows: 83-302. (a) Each person, other than an authorized representative of the secretary or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, desiring to operate and

perform testing and other services as a company in Kansas shall apply to the secretary for a service company license, on a form to be supplied by the secretary, and shall obtain such license from the secretary before operating and performing testing or other services as a service company. Each service company shall obtain a license for each place of business maintained in Kansas and shall pay a license application fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$50~~ \$100 and thereafter an annual license renewal application fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$50~~ \$100 for each place of business. Each service company license shall expire on June 30 following issuance, shall be void unless renewed prior to the expiration and shall not be transferable.

(b) If any service company maintains any out-of-state places of business which the company operates in serving Kansas patrons, the service company seeking to obtain or renew a license under this section shall list in the application such places of business and the firm names under which the company operates at each such place of business. If any out-of-state place of business is established by a service company after being licensed under this section, the licensee shall supply such information to the secretary before any work is performed in Kansas from such out-of-state location. Each nonresident service company shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any liabilities arising from operations thereunder. Each nonresident service company which maintains no established place of business in Kansas shall obtain a license under this section for each out-of-state place of business and shall list on the application the firm name or names for each place of business from which the service company intends to operate.

(c) Each technical representative shall be licensed annually by the secretary. Each technical representative shall be required to attend continuing education seminars on an annual basis as required by rules and regulations adopted by the secretary and to pass a reasonable examination prescribed by the secretary each year prior to being licensed. The department of agriculture shall be authorized to charge a fee to the attendees of the continuing education seminars sponsored by the agency. The amount charged shall be no more than is necessary to cover the expenses incurred in providing the seminar. Each technical representative's license shall expire on June 30 following the issuance of the license and shall be void unless renewed prior to the expiration.

(d) No service company license may be issued or renewed under this section until the applicant's weights or measures, or both have been tested for accuracy and sealed by the secretary. The secretary is authorized to accept a certification of the accuracy of the applicant's weights or measures issued by the national institute of standards and technology or by a weights and measures laboratory certified by the national institute of standards and technology in lieu of a test by the secretary, if such certificate shows that the weights or measures have been tested within the last 365 days preceding the license application.

(e) The secretary shall remit all moneys received under this section 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 weights and measures fee fund.

Sec. 26. K.S.A. 2001 Supp. 83-402 is hereby amended to read as follows: 83-402. (a) Each person, other than an authorized representative of the secretary or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, desiring to operate and perform testing and other services as a service company in Kansas shall apply to the secretary for a service company license, on a form to be supplied by the secretary, and shall obtain such license from the secretary

before operating and performing testing or other services as a service company. Each service company shall obtain a license for each place of business maintained in Kansas and shall pay a license application fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$50~~ \$100 and thereafter an annual license renewal application fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of ~~\$50~~ \$100 for each place of business. Each service company license shall expire on June 30 following issuance, shall be void unless renewed prior to the expiration and shall not be transferable.

(b) If any service company maintains any out-of-state places of business which the service company operates in serving Kansas patrons, the applicant seeking to obtain or renew a license under this section shall list in the application such places of business and the firm names under which the service company operates at each such place of business. If any out-of-state place of business is established by a service company after being licensed under this section, the licensee shall supply such information to the secretary before any work is performed in Kansas from such out-of-state location. Each nonresident service company shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any liabilities arising from operations thereunder. Each nonresident service company which maintains no established place of business in Kansas shall obtain a license under this section for each out-of-state place of business and shall list on the application the firm name or names for each place of business from which the service company intends to operate.

(c) Each technical representative shall be licensed annually by the secretary. Each technical representative shall be required to attend continuing education seminars on an annual basis as required by rules and regulations adopted by the secretary and to pass a reasonable examination prescribed by the secretary each year prior to being licensed. The state department of agriculture shall be authorized to charge a fee to the attendees of the seminar sponsored by the department. The amount charged shall be no more than is necessary to cover the expenses incurred in providing the seminar. All technical representatives who install, repair, adjust or calibrate a device and certify such devices shall be required to pass the state examination annually. Each technical representative license shall expire on June 30 following issuance of the license and shall be void unless renewed prior to the expiration.

(d) No service company license may be issued or renewed under this section until the applicant's weights and measures have been tested for accuracy and sealed by the secretary. The secretary is authorized to accept a certification of the accuracy of the applicant's weights or measures issued by the national institute of standards and technology, by a weights and measures laboratory certified by the national institute of standards and technology, or by the appropriate certifying agency of another state in lieu of a test by the secretary, if such certificate shows that the weights or measures have been tested within the 12 calendar months next preceding the license application.

(e) The secretary shall remit all moneys received under this section 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 weights and measures fee fund.

New Sec. 27. There is hereby created a fertilizer and pesticide compliance and administration fund. All moneys credited to the fund shall be expended to the fertilizer and pesticide program under the supervision of the secretary of agriculture for the purpose of administration and assuring compliance with the applicable provisions of Kansas law. All expenditures shall be made in accordance with the appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouch-

ers approved by the secretary of agriculture or by a person designated by the secretary.

Sec. 28. K.S.A. 2-1205, 2-2204, 2-2440, 2-2440b, 2-2441a, 2-2443a, 2-2445a, 2-2805, 2-2806, 2-2905, 2-2906, 2-3304, 2-3306, 2-3318 and 82a-727 and K.S.A. 2001 Supp. 65-771, 65-775, 65-778, 65-781, 65-782, 65-789, 82a-708a, 82a-708b, 82a-714, 83-302 and 83-402 are hereby repealed.

Sec. 29. 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 concurred in  
HOUSE amendments \_\_\_\_\_

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

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

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

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

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

APPROVED \_\_\_\_\_

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