

HOUSE BILL No. 2695

By Committee on Agriculture and Natural Resources

2-14

1 AN ACT concerning water; relating to civil penalties in the water
2 appropriation act; creating the crime of sprinkling irrigation water on
3 highways; amending K.S.A. 68-184 and K.S.A. 2013 Supp. 82a-737
4 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 68-184 is hereby amended to read as follows: 68-
8 184. (a) No person shall allow the sprinkling of water from any irrigation
9 watering system upon any state, county or township road or highway
10 within this state.

11 (b) Any sprinkling of water on roads or highways, as provided in
12 subsection (a), is hereby declared to be a public nuisance, and it shall be
13 the duty of the county attorney or district attorney of each county of this
14 state, upon receiving notice of such nuisance from any person, to initiate
15 injunctive remedies, if necessary, to prevent the occurrence of any such
16 public nuisance class C nonperson misdemeanor.

17 (c) Prior to seeking injunctive relief prosecuting a violation, as
18 hereinbefore provided, the county attorney or district attorney of any
19 county in which there exists such public nuisance violation shall notify or
20 cause to be notified, the owner, occupant or person in charge of land on
21 which the irrigation system causing a public nuisance violation is located
22 that such person is maintaining a nuisance in violation of subsection (a) and
23 that injunctive relief will be sought the violation will be prosecuted if such
24 nuisance violation is not otherwise abated.

25 Sec. 2. K.S.A. 2013 Supp. 82a-737 is hereby amended to read as
26 follows: 82a-737. (a) As used in this section:

27 (1) "Chief engineer" means the chief engineer of the division of water
28 resources of the department of agriculture.

29 (2) "Secretary" means the secretary of agriculture.

30 (b) Any person who commits any of the following may incur a civil
31 penalty as provided by this section:

32 (1) Any violation of the Kansas water appropriation act (K.S.A. 82a-
33 701 et seq., and amendments thereto) or any rule and regulation adopted
34 thereunder;

35 (2) any violation of an order issued pursuant to K.S.A. 82a-1038, and
36 amendments thereto, relating to an intensive groundwater use control area;

1 or

2 (3) any violation of a term, condition or limitation imposed by the
3 chief engineer as authorized by law, including, but not limited to: (A)
4 Diversion of water from an unauthorized point of diversion; (B) failure to
5 limit the use of water to the authorized place of use; (C) failure to submit
6 or comply with the terms of conservation plans as required pursuant to
7 K.S.A. 82a-733, and amendments thereto; (D) failure to comply with the
8 maximum annual quantity or rate of diversion authorized; (E) failure to
9 properly install, maintain or assure the accuracy of acceptable water
10 measurement devices; (F) failure to comply with orders related to
11 minimum desirable stream flow, unlawful diversion, impairment of senior
12 water rights or waste of water; or (G) failure to limit the use of water to an
13 authorized type of use.

14 (c) The amount of the civil penalty provided for by this section shall
15 be not less than \$100 nor more than ~~\$1,000~~\$2,500 per violation. In the
16 case of a continuing violation, each day such violation continues may be
17 deemed a separate violation. Such civil penalty may be assessed in
18 addition to any other penalty provided by law.

19 (d) The chief engineer or the chief engineer's duly authorized agent,
20 upon a finding that a person has committed a violation specified in
21 subsection (b), may order the modification~~or~~, suspension *or revocation* of
22 the person's water right or use of water, in addition to any other penalty
23 provided by law.

24 (e) No civil penalty or suspension or modification of a water right or
25 use of water shall be imposed pursuant to this section except on the written
26 order of the chief engineer or duly authorized agent of the chief engineer.
27 Such order shall state the nature of the violation, the factual basis for the
28 finding, the penalty to be imposed and the appropriate procedure for
29 appeal of the order to the chief engineer or the secretary, as established by
30 K.S.A. 2013 Supp. 82a-1901, and amendments thereto. Upon review, the
31 order shall be affirmed, reversed or modified and the reasons therefor shall
32 be specified.

33 (f) Any person aggrieved by an order of the chief engineer, or the
34 chief engineer's duly authorized agent, pursuant to this section may request
35 review by the secretary as provided by K.S.A. 2013 Supp. 82a-1901, and
36 amendments thereto, and, upon exhaustion of administrative remedies,
37 may appeal to the district court in the manner provided by the Kansas
38 judicial review act.

39 (g) The provisions of this section shall be part of and supplemental to
40 the Kansas water appropriation act.

41 Sec. 3. K.S.A. 68-184 and K.S.A. 2013 Supp. 82a-737 are hereby
42 repealed.

43 Sec. 4. This act shall take effect and be in force from and after its

- 1 publication in the statute book.