

HOUSE BILL No. 2247

AN ACT concerning the environment; providing for prohibition or restriction of activities on and use of certain contaminated real property relating to waste tires; amending K.S.A. 65-3424, 65-3424a, 65-3424b, 65-3424g, 65-3424k and 65-3426 and repealing the existing sections; also repealing K.S.A. 65-3424m.

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

New Section 1. The intent of this act is to provide a voluntary mechanism to assist existing state programs to address environmental contamination in a cost effective manner that is protective of human health and the environment.

New Sec. 2. As used in this act:

(a) “Department” means the Kansas department of health and environment.

(b) “Environmental use control” means an institutional or administrative control, a restriction, prohibition or control of one or more uses of, or activities on, a specific property, as requested by the property owner at the time of issuance, to ensure future protection of public health and the environment when environmental contamination which exceeds department standards for unrestricted use remains on the property following the appropriate assessment and/or remedial activities as directed by the department pursuant to the secretary’s authority. For the purposes of this act, “environmental contamination” does not mean animal or process waste from a confined feeding facility as defined in K.S.A. 65-171d, and amendments thereto, livestock operations or the application of livestock waste for use as a plant nutrient. Any environmental use control created pursuant to this act runs with the property and is binding on the owner and subsequent owners, lessees and other users of the land.

(c) “Owner” means any owner of record of property, and any person or entity with written authorization from the owner to make decisions regarding the transfer of the subject property or placement of encumbrances on the subject property, other than by the exercise of eminent domain.

(d) “Person” means any individual, trust, firm, joint stock company, public or private corporation, limited liability company or partnership; the federal government or any agency or instrumentality thereof; any state, or any agency, instrumentality or political or taxing subdivision thereof; or any interstate body.

(e) “Protective structure” means an engineered physical structure implemented as part of the remedial action to control or respond to a release or threat of release of environmental contamination. Protective structure includes capping, fencing, berming, diking, drainage structures and other structures that may control migration or other releases of environmental contamination.

(f) “Property” means real property.

(g) “Remedial activity” means any site cleanup, soil or groundwater monitoring associated with a contaminated property, remedial action, corrective action, emergency action, removal action or other action necessary or appropriate to respond to a release or threat of release of environmental contamination.

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

New Sec. 3. (a) The provisions of this act, except the provisions of subsection (b) of section 10, and amendments thereto, shall not apply to solid waste disposal areas which are issued permits pursuant to K.S.A. 65-3407, and amendments thereto, or which receive authorization from the secretary for unpermitted disposal pursuant to K.S.A. 65-3407c, and amendments thereto, provided that the owner of each such solid waste disposal area establishes environmental use controls for the area, subject to approval by the department, by executing and filing a restrictive covenant on the property deed.

(b) The provisions of this act shall not apply to confined feeding facilities as defined in K.S.A. 65-171d, and amendments thereto.

New Sec. 4. (a) An owner of property, with departmental approval, may restrict the use of the owner’s property to mitigate the risk posed to human health and the environment by imposing on the property an appropriate environmental use control.

(b) (1) If the owner elects to voluntarily restrict use of or activities on the owner’s property, the owner or the owner’s authorized representative shall make application to the department for approval of an envi-

ronmental use control. Such application shall be made on forms provided by the department and shall be completed and submitted to the department by the owner or the owner's authorized representative.

(2) Department approval of an application shall be subject to the application's containing the following components: Appropriate restrictions to protect public health and the environment from known contamination which exceeds department standards for unrestricted residential use; access to the subject property; an inspection schedule that is appropriate to monitor conditions at the subject property; and the availability of funds to administer the provisions of this act related to the subject property.

(3) The department may require the applicant to provide financial assurance for category 3 property as described in subsection (c)(3) of section 6, and amendments thereto, based on the potential for long term maintenance cost of protective structures and the potential for release or migration of environmental contamination from the property. The applicant shall provide the financial assurance by one or more methods satisfactory to the department, including, but not limited to, environmental insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer or other demonstration of financial capability. The demonstration of financial capability must be adequate to provide remedies which are protective of human health and the environment should the proposed remedial activity fail.

(4) The application shall include an accurate legal description or survey of the portion of the property where an environmental use control is proposed.

(c) The department shall review the application. If the application is disapproved by the department, the applicant may modify the application in a manner necessary to obtain department approval and resubmit the application for the department's approval. If the application is approved by the department, the department shall provide the applicant a written approval.

(d) An environmental use control pursuant to this act may be approved by the department as part of the remedial activity for the property when residual contamination which exceeds department standards for unrestricted residential use on the subject property.

New Sec. 5. (a) After an environmental use control has been approved by the department, the owner must register the environmental use control with the register of deeds in the county where the property is located or, if property is owned by the United States or a division thereof, a notice of the environmental use control must be filed with the register of deeds in the county where the property is located. When registering the environmental use control or filing the notice, the following must be included:

(1) A notarized original environmental use control agreement between the applicant and the department; and

(2) an adequate legal description or legal survey of the property which identifies the portion of the property which is subject to the environmental use control.

(b) The applicant must provide to the department a notarized copy of the recorded environmental use control agreement with the register of deeds seal for the property.

(c) Recorded environmental use controls established pursuant to this act shall be enforceable as set forth in section 9, and amendments thereto.

New Sec. 6. (a) Funding needs may be satisfied by department appropriations for property where adequate funding is supplied by federal grants, designated fee funds or other funding sources.

(b) Any funding requirements for an application pursuant to this act, will be based on a one time payment for the property, made by the original applicant.

(c) Funding requirements for other properties will be determined individually and be based on the size of the property to which the environmental use control applies, toxicity and mobility of the contaminants to which the environmental use control applies, frequency of site inspections and the anticipated inspection costs, as determined by the department.

(1) Category 1 property includes property with the following char-

acteristics: The property is not greater than five acres in size, the residual contamination is characterized by low toxicity and mobility, there is minimal anticipated maintenance of protective structures and the anticipated inspection frequency is once every five years. Category 1 properties would have a one-time payment by the applicant not to exceed \$2,000 to fund the life of the environmental use control.

(2) Category 2 property includes property with the following characteristics: The property may cover areas larger than five acres in size, the residual contamination is characterized by moderate toxicity and mobility, there is limited anticipated maintenance of protective structures and more complicated and/or costly inspections are anticipated, with an inspection frequency of not more than once per year. Category 2 property would have a one-time payment by the applicant not to exceed \$10,000 to fund the life of the environmental use control.

(3) Category 3 property includes property with some or all of the following characteristics: The property may cover a large acreage, the residual contamination is characterized by higher toxicity or mobility, complicated maintenance or monitoring of protective structures is required and frequent or complicated site inspections are anticipated, which may be more frequent than once per year. The inspection cost of category 3 properties is also dependent on the future uses of the property and the maintenance of protective structures by the property owner. For this reason, long term care agreements between the department and the applicant will be required for category 3 properties. These long term care agreements will include a provision to reimburse the department for costs incurred to perform the long term care at the property.

(d) The secretary shall remit to the state treasurer, in accordance with K.S.A. 75-4215, and amendments thereto, all moneys received from fees and long term care reimbursement agreements pursuant to this section. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the environmental use control fund.

New Sec. 7. (a) An environmental use control may be granted either in perpetuity or for a term of years, as determined by the department. An environmental use control may not be approved for a term of years unless provisions are included that ensures the protection of human health and the environment beyond the expiration of the environmental use control. Upon expiration of the term if contamination remains above department standards, as set forth in the approved environmental use control, the department can require additional action.

(b) An environmental use control runs with the land and is binding on all successors in interest to property until the environmental use control is removed upon the department's approval or upon expiration of the term of the environmental use control.

(c) An environmental use control shall be removed if the property owner demonstrates to the department's satisfaction that the original risk to human health or the environment which created the need for the control is no longer present. An owner must submit a request to the department for approval to remove all or a portion of the environmental use controls from the property. The department shall review the request and provide the owner with the department's decision to approve or deny the request within 120 days after the department's receipt of the request. If the department denies the request, justification shall be provided to the owner with a written explanation of the denial, which may include that the applicant has not provided the documentation to demonstrate that the request is protective of human health and the environment, as determined by the department.

(d) If the department approves an owner's request to remove all or a portion of environmental use controls, the owner shall file the approval with the register of deeds in the county where the property is located.

(e) An environmental use control may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement or other common law principles relating to covenants or by the exercise of eminent domain.

(f) An environmental use control may be modified by mutual written agreement by the property owner and the department.

(g) The department shall not acquire any liability by virtue of ap-

proving an environmental use control or by approving removal of all or a portion of environmental use controls.

New Sec. 8. (a) An environmental use control pursuant to this act may restrict or prohibit the activities at or uses of property. The restrictions imposed shall be those agreed to by the applicant and deemed necessary by the department to protect the public from exposures to contaminants which remain at the property.

(b) An environmental use control pursuant to this act may include or require the following:

(1) Prompt notification to the department of any transfer of the property, such notice to be given by the transferor;

(2) prompt notification to the department of any change in use of the property, such notice to be given by the property owner;

(3) maintenance of protective structures or remedial systems at the property, such as soil caps, soil covers, soil surfaces, berms, drainage structures, vegetation, monitoring wells or other structures or systems;

(4) access to the property by agents of the department as necessary to inspect and monitor remediation activities, monitoring wells, surface streams and protective structures or remedial systems and to ensure implementation and enforcement of the requirements, restrictions and other limitations of the environmental use controls;

(5) any other obligations necessary to reduce or eliminate risks or threats to human health and the environment from the property; or

(6) a one-time payment or long term care agreement to provide funding for environmental use control oversight.

(c) Restrictions, prohibitions and zoning requirements placed on property by a local or state government may be substituted in place of an environmental use control. Such restrictions, prohibitions and zoning requirements may be utilized in addition with any environmental use controls approved by the department. This provision does not grant or expand authority of local government to restrict, prohibit, zone or regulate land.

(d) All interests not limited by the environmental use control shall remain with the owner.

New Sec. 9. (a) Upon receipt of information that approved environmental use controls are not being implemented in accordance with an approved environmental use control agreement or that property subject to an approved environmental control presents a hazard to human health or the environment, the secretary may take such actions as may be necessary to protect human health or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the owner of the subject property to take such steps as are necessary to correct any deficiencies and fully implement the approved environmental use controls.

(2) Issuing an order retracting the approval of the remedial action for the subject property, which included the environmental use control as part of the remedy and require the owner of the property to implement remediation of the property to a cleanup standard which will allow for unrestricted use of the property.

(3) For category 3 property as described in subsection (c)(3) of section 6, and amendments thereto, commencing an action enjoining acts or practices set forth in the approved environmental use controls or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin such actions which result in approved environmental use controls not being implemented or not being fully or properly implemented or which present substantial and imminent threat or hazard to human health or the environment.

(b) Any order of the secretary pursuant to subsection (a)(1) or (a)(2) is subject to hearing and review in accordance with section 14, and amendments thereto.

(c) An environmental use control may not be separated from the property and survives foreclosure of a mortgage, lien or other encumbrance, as well as tax sales and the issuance of a tax deed.

New Sec. 10. (a) The department shall provide oversight of the environmental use control for property to ensure that the property is being used only for the purposes permitted by the terms of the environmental

use control agreement and is not being used in a manner that is prohibited or restricted by the terms of the agreement.

(b) The department shall develop and maintain an environmental use control tracking system on all approved environmental use controls. The tracking system data shall be made available to the public in a manner which allows review by either city or county and shall include the following:

- (1) Name of the property;
- (2) address of the property, including the city and county;
- (3) legal description of the property;
- (4) cause and type of the environmental contamination;
- (5) description of the environmental use control; and
- (6) duration of the environmental use control.

New Sec. 11. (a) There is established in the state treasury the environmental use control fund. Moneys from the following sources shall be deposited in the state treasury and credited to the fund:

- (1) Moneys collected from the environmental use control one-time payments and long term care agreement reimbursements;
- (2) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund; and
- (3) interest attributable to the investment of moneys in the fund.

(b) Moneys in the environmental use control fund shall be expended only for costs of:

- (1) Review of environmental use control applications;
- (2) oversight of remedial projects which include an environmental use control as an element of their remedy, including inspections, monitoring and tracking of the environmental use control;
- (3) activities performed by the department to address immediate or emergency threats to human health or the environment related to properties subject to environmental use controls;
- (4) development, operation and maintenance of the environmental use control tracking system; and
- (5) administration and enforcement of the provisions of this act.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the environmental use control fund interest earnings based on:

- (1) The average daily balance of moneys in the environmental use control fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the environmental use control fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee for purposes set forth in this section.

New Sec. 12. The secretary shall adopt rules and regulations to implement the provisions of this act.

New Sec. 13. The department shall publish annually in the Kansas register a summary of the number of approved environmental use control agreements pursuant to this act.

New Sec. 14. Any person adversely affected by any order or decision of the secretary pursuant to this act, within 15 days after service of the order or decision, may request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

New Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable.

Sec. 16. K.S.A. 65-3424 is hereby amended to read as follows: 65-3424. As used in K.S.A. 65-3424 through 65-3424i, and amendments thereto, unless the context otherwise requires:

(a) Terms have the meaning provided by K.S.A. 65-3402, and amendments thereto.

(b) “Abatement” means the processing or removing to an approved storage site of waste tires which are creating a danger or nuisance.

(c) “Beneficial use” means the use or storage of waste tires in a way that:

(1) Creates an on-site economic benefit to the owner of the tires, *including, but not limited to, bumpers for boat docks or boats, playground equipment, silo covers, traffic control, feed bunks, water tanks, wind-breaks constructed of baled tires or in a manner consistent with rules and regulations of the secretary, erosion control on the face of an earthen dam and stabilization of soil or sand blow-outs caused by wind; and*

(2) *as determined by the secretary, causes no adverse impacts to human health or the environment and complies with all applicable zoning requirements.*

(d) “Contaminated waste tire” means a tire which, as determined in accordance with rules and regulations adopted by the secretary, is recovered in a project to abate a waste tire accumulation and is so coated by or filled with dirt, mud, sludge or other natural substances as to render the tire substantially unsuitable for processing.

~~(e) “Landfill” means a disposal site in which the method of disposing of solid waste is by landfill, dump or pit and which has a solid waste disposal area permit issued under K.S.A. 65-3401 et seq., and amendments thereto. “Illegal waste tire accumulation” means any waste tire pile containing more than 50 waste tires except the following:~~

~~(1) A waste tire accumulation on the premises of a facility which has been issued a permit by the secretary pursuant to K.S.A. 65-3407 or 65-3424b, and amendments thereto, and managed in accordance with the conditions of such permit; or~~

~~(2) a waste tire accumulation which is exempt from the waste tire collection center permit requirement pursuant to K.S.A. 65-3424b, and amendments thereto.~~

(f) “Mobile waste tire processor” means a person who processes waste tires at other than a fixed site.

(g) “Process” means: (1) Cut or otherwise alter whole waste tires so that they are no longer whole; or (2) bale for disposal or beneficial use.

(h) “Store” or “storage” means the placing of waste tires in a manner that does not constitute disposal of the waste tires. Storage includes the beneficial use of waste tires as silo covers and such other beneficial uses as the secretary determines do not create health or environmental risks.

(i) “Tire” means a continuous solid or pneumatic rubber covering used to encircle the wheel of a vehicle or aircraft, or an innertube of such a covering.

(j) “Tire retailer” means a person in the business of selling new or used replacement tires at retail.

(k) “Used tire” means a tire that: (1) Has been removed from a wheel following a period of use or remains on a wheel removed from a vehicle or aircraft following a period of use; and (2) has been determined to have value in accordance with rules and regulations established pursuant to subsection (e)(7) of K.S.A. 65-3424b, and amendments thereto.

(l) “Vehicle” has the meaning provided by K.S.A. 8-1485 and amendments thereto and includes implements of husbandry, as defined by K.S.A. 8-1427 and amendments thereto.

(m) “Waste tire” means a whole tire that: (1) Has been removed from a wheel following a period of use or remains on a wheel removed from a vehicle or aircraft following a period of use; and (2) is no longer suitable for its original intended purpose because of wear, damage or defect.

(n) “Waste tire collection center” means a site where used or waste tires are collected from the public or from customers of a business prior to being offered for recycling or disposal.

(o) “Waste tire processing facility” means a fixed site where equipment is used to process waste tires.

~~(p) “Waste tire site” means a site at which 1,000 or more whole waste tires are accumulated. “Waste tire site” does not include: (1) A site that is an integral part of a permitted waste tire processing facility, (2) an accumulation of tires on the premises of a tire retreading business, for use in the business, (3) an accumulation of tires on the premises of a business that, in the ordinary course of business, removes tires from mo-~~

tor vehicles, ~~(4) an accumulation of tires on the premises of a tire retailer, accumulated in the normal course of the tire retailer's business, or (5) an accumulation of tires which has a beneficial use approved by statute or rules and regulations adopted by the secretary, or by the secretary pursuant to statute or rules and regulations.~~

Sec. 17. K.S.A. 65-3424a is hereby amended to read as follows: 65-3424a. ~~(a) The owner or operator of any waste tire site shall provide the department with information concerning the site's location and size and the approximate number of waste tires that are accumulated at the site.~~

~~(b) No person shall:~~

~~(1) (a) Maintain a waste tire site unless such person holds a valid permit issued for such site pursuant to K.S.A. 65-3424b and amendments thereto an illegal waste tire accumulation;~~

~~(2) dispose of waste tires in the state unless the waste tires are disposed of for processing, or collected for processing, at a solid waste processing facility, a waste tire site which is an integral part of a waste tire processing facility, a waste tire processing facility or a waste tire collection center or are made available to: (A) The department of wildlife and parks for use by the department, or (B) a person engaged in a farming or ranching activity, including the operation of a feedlot as defined by K.S.A. 47-1501, and amendments thereto, as long as the accumulation has a beneficial use to the person accumulating the tires and (i) the secretary determines that the use has no adverse environmental effects and (ii) the accumulation is in accordance with all applicable zoning regulations~~

~~(b) transfer ownership of waste tires to any person unless the recipient: (1) Has been issued a permit by the secretary pursuant to K.S.A. 65-3407, and amendments thereto, or K.S.A. 65-3424b, and amendments thereto; (2) intends to use the waste tires for a beneficial use; or (3) is a tire retailer who collects waste tires from the public or other tire retailers in the ordinary course of business;~~

~~(3)(c) deposit waste tires in a landfill as a method of ultimate disposal, except that the secretary may authorize, by rules and regulations or by permits issued pursuant to K.S.A. 65-3407, and amendments thereto: (A) The final disposal of processed waste tires at permitted municipal solid waste landfills and permitted waste tire monofills; (B) the final disposal of contaminated whole, unprocessed waste tires at permitted municipal solid waste landfills and permitted waste tire monofills; (C) the use of waste tires in their original state as part of or supplemental to a proven and approved leachate collection system at a landfill; or (D) the use of waste tires which have been cut into two or more parts as daily cover material for a landfill; or (E) the final disposal of small numbers of whole, unprocessed waste tires in landfills if such tires are intermingled with other solid waste and retrieval of such tires would be hazardous; or~~

~~(4)(d) receive money in exchange for waste tires unless: (A) The person holds a permit issued by the secretary pursuant to K.S.A. 65-3407 or 65-3424b, and amendments thereto; or (B) the person is a tire retailer who collects waste tires from the public or from other tire retailers in the ordinary course of business.~~

Sec. 18. K.S.A. 65-3424b is hereby amended to read as follows: 65-3424b. (a) The secretary shall establish a system of permits for mobile waste tire processors ~~and~~ waste tire processing facilities, ~~and permits for~~ waste tire transporters and waste tire collection centers. Such permits shall be issued for a period of one year and shall require an application fee established by the secretary in an amount not exceeding \$250 per year.

(b) The secretary shall adopt rules and regulations establishing standards for mobile waste tire processors, waste tire processing facilities ~~and associated waste tire sites~~, waste tire collection centers and waste tire transporters. Such standards shall include a requirement that the permittee file with the secretary a bond or other financial assurance in an amount determined by the secretary to be sufficient to pay any costs which may be incurred by the state to process any waste tires or dispose of any waste tires or processed waste tires if the permittee ceases business or fails to comply with this act.

(c) Any person who contracts or arranges with another person to collect or transport waste tires for storage, processing or disposal shall so contract or arrange only with a person holding a permit from the secre-

tary. Any person contracting or arranging with a person, permitted by the secretary, to collect or transport waste tires for storage, processing or disposal, transfers ownership of those waste tires to the permitted person and the person contracting or arranging with the person holding such permit to collect or transport such tires shall be released from liability therefor. Any person contracting or arranging with any person, ~~permitted by the secretary~~, for the collection, transportation, storage, processing ~~or disposal~~ *or beneficial use* of such tires shall maintain a record of such transaction for a period of not less than ~~five~~ *three* years following the date of the transfer of such tires. *Record-keeping requirements for beneficial use shall not apply when tire retailers allow customers to retain their old tires at the time of sale.*

(d) *The owner or operator of each site that contains a waste tire, used tire or new tire accumulation of any size must control mosquito breeding and other disease vectors.*

(e) No person shall:

~~(1) own or operate a waste tire processing facility or waste tire collection center or act as a mobile waste tire processor or waste tire transporter unless such person holds a valid permit issued therefor pursuant to subsection (a); or~~

~~(2) own or operate a waste tire processing facility or waste tire collection center or act as a mobile waste tire processor or waste tire transporter except in compliance with the standards established by the secretary pursuant to subsection (b);~~

~~(c) The provisions of subsection (d)(1) shall not apply to, except that:~~

(1) A tire retreading business where fewer than ~~1,000~~ *1,500* waste tires are kept on the business premises *may operate a waste tire collection center on the premises;*

(2) a business that, in the ordinary course of business, removes tires from motor vehicles ~~if~~ *where* fewer than 1,500 of these tires are kept on the business premises *may operate a waste tire collection center or a waste tire processing facility or both on the premises;*

(3) a retail tire-selling business ~~which is serving as a waste tire collection center if~~ *where* fewer than 1,500 waste tires are kept on the business premises *may operate a waste tire collection center or a waste tire processing facility or both on the premises;*

(4) the department of wildlife and parks *may perform one or more of the following to facilitate a beneficial use of waste tires: (A) Operate a waste tire collection center on the premises of any state park, state wildlife area, or state fishing lake; (B) operate a waste tire processing facility on the premises of any state park, state wildlife area, or state fishing lake; or (C) act as a waste tire transporter to transport waste tires to any state park, state wildlife area, or state fishing lake;*

(5) a person engaged in a farming or ranching activity, including the operation of a feedlot as defined by K.S.A. 47-1501, and amendments thereto, ~~as long as the accumulation has a beneficial use~~ *may perform one or more of the following to facilitate a beneficial use of waste tires: (A) Operate an on-site waste tire collection center; (B) operate an on-site waste tire processing facility; or (C) act as a waste tire transporter to transport waste tires to the farm, ranch or the feedlot;*

~~(6) a waste tire collection center where fewer than 1,500 used tires are kept on the premises;~~

(6) *a watershed district may perform one or more of the following to facilitate a beneficial use of waste tires: (A) Operate a waste tire collection center on the premises of a watershed district project or work of improvement; (B) operate a waste tire processing facility on the district's property; or (C) act as a waste tire transporter to transport waste tires to the district's property;*

(7) ~~a waste tire collection center where~~ *a person may operate a waste tire collection center if: (A) Fewer than 1,500 used tires are kept on the premises; or (B) 1,500 or more used tires are kept on the premises, if the owner demonstrates through sales and inventory records that such tires have value, as established in accordance with standards adopted by rules and regulations of the secretary;*

(8) local units of government ~~operating~~ *managing waste tires at solid waste processing facilities and or solid waste disposal areas permitted by the secretary under the authority of K.S.A. 65-3407, and amendments thereto may perform one or more of the following in accordance with the*

conditions of the solid waste permit: (A) Operate a waste tire collection center on the premises of the permitted facility; (B) operate a waste tire processing facility on the premises of the permitted facility; (C) act as a waste tire transporter to transport waste tires to the permitted facility; or (D) act as a mobile waste tire processor;

(9) a person ~~transporting~~ may act as a waste tire transporter to transport: (A) Waste tires mixed with other municipal solid waste; (B) fewer than five waste tires for lawful disposal; (C) waste tires generated by the business, farming activities of the person or the person's employer; ~~or~~ (D) waste tires for a beneficial use approved by statute ~~or~~, rules and regulations, ~~or adopted~~ by the secretary (E) waste tires from an illegal waste tire accumulation to a person who has been issued a permit by the secretary pursuant to K.S.A. 65-3407 or 65-3424b, and amendments thereto, provided approval has been obtained from the secretary; or (F) five to 50 waste tires for lawful disposal, provided the transportation act is a one time occurrence to abate a legal accumulation of waste tires; or

(10) ~~a business engaged in processing, for resource recovery purposes, only waste tires generated by the business a tire retailer that in the ordinary course of business also serves as a tire wholesaler to other tire retailers may act as a waste tire transporter to transport waste tires from those retailers back to a central location owned or operated by the wholesaler for consolidation and final disposal or recycling.~~

(f) All fees collected by the secretary pursuant to this section shall be remitted 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 waste tire management fund.

Sec. 19. K.S.A. 65-3424g is hereby amended to read as follows: 65-3424g. (a) There is hereby established in the state treasury the waste tire management fund.

(b) Money from the following sources shall be credited to the waste tire management fund:

(1) Revenue collected from the excise tax by K.S.A. 65-3424d and amendments thereto;

(2) permit application and renewal fees provided for by K.S.A. 65-3424b and amendments thereto;

(3) interest provided for by subsection (e);

(4) additional sources of funding such as reimbursements and appropriations intended to be used for the purposes of the fund;

(5) any recoveries from abatement and enforcement actions provided for by K.S.A. 65-3424k and amendments thereto; and

(6) any other moneys provided by law.

(c) Moneys in the waste tire management fund shall be used only for the purpose of:

(1) Paying compensation and other expenses of employing personnel to carry out the duties of the secretary pursuant to K.S.A. 65-3424 through 65-3424h, and amendments thereto, but not more than \$250,000 ~~or 36%, whichever is less, of the moneys credited to the fund during the preceding fiscal year;~~

(2) ~~action by the department before July 1, 2003, to abate waste tires accumulated prior to July 1, 1990;~~

~~—(3) action by the department to implement interim measures to minimize nuisances or risks to public health or the environment that are or could be created by waste tire accumulations, until the responsible party can fully abate the site or until a state clean-up occurs pursuant to K.S.A. 65-3424k, and amendments thereto;~~

~~(4) (3) action by the department, with the consent of the city or county, to pay for the removal and disposal or on-site stabilization of waste tires which have been illegally accumulated after July 1, 1990, or, with respect to the conditions of a permit issued by the department pursuant to K.S.A. 65-3407 or 65-3424b, and amendments thereto, or illegally managed, when the responsible party is unknown or unwilling or unable to perform the necessary corrective action, provided moneys in the fund shall only be used to pay up to 75% of the costs of the required abatement action and the city or county shall pay the remaining 25% of such costs, and;~~

~~(5) (4) the costs of using contractors to provide: (A) Public education~~

regarding proper management of waste tires; (B) technical training of persons on the requirements of solid waste laws and rules and regulations relating to waste tires; and (C) services described in subsection (i) of K.S.A. 65-3424k, and amendments thereto; and

(5) *grants to public or private entities for up to 75% of the cost to start-up or enhance projects to recycle waste tires or recover energy through waste tire combustion. In the fiscal year beginning July 1, 2003, waste tire grants may not exceed \$200,000. In subsequent fiscal years, waste tire grants may not exceed the amount of unspent excise tax revenue from the preceding year calculated by subtracting all program expenses and indirect transfers for department overhead from excise tax revenue. All grant applications received for waste tire recycling grants shall be reviewed by the solid waste grants advisory committee established pursuant to K.S.A. 65-3426, and amendments thereto. Waste tire recycling grants shall be subject to the requirements set forth in subsection (g) of K.S.A. 65-3415, and amendments thereto, related to the misuse of grant funds with the exception that any grant funds recovered by the secretary shall be deposited to the waste tire management fund. Waste tire management funds shall be used only for waste tire recycling grants. Waste tire grants shall not be awarded, nor shall waste tire funds be disbursed to a grant recipient, if the department determines that the grant applicant or recipient is operating in substantial violation of applicable environmental laws or regulations administered by the department.*

(d) All expenditures from the waste tire management fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

(e) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the waste tire management fund interest earnings based on: (1) The average daily balance of moneys in the waste tire management fund for the preceding month; and (2) the net earnings rate for the pooled money investment portfolio for the preceding month.

Sec. 20. K.S.A. 65-3424k is hereby amended to read as follows: 65-3424k. (a) ~~Before July 1, 2003,~~ The secretary may undertake appropriate abatement action and may enter into contracts for the abatement of *illegal waste tires accumulated before July 1, 1990, accumulations or illegally managed waste tires* utilizing funds from the waste tire management fund.

(b) Any authorized representative of the secretary may enter, at reasonable times and upon written notice, onto any property or premises where an accumulation of waste tires is located to conduct: (1) An inspection and site assessment to determine whether the accumulation creates a nuisance or risk to public health and safety or to the environment; or (2) interim measures to minimize risk to public health and safety or to the environment.

(c) Whenever the secretary has reason to believe that an accumulation of waste tires creates a nuisance or risk to public health and safety or to the environment or is in violation of rules and regulations adopted by the secretary or conditions of a permit issued by the secretary, the secretary may require the person or persons responsible for the accumulation to carry out abatement activities. Such abatement activities shall be performed in accordance with a plan approved by the secretary. The secretary shall give notice, by letter, to the property owner and responsible parties that the waste tires constitute a nuisance or risk to public health or the environment, and that the waste tire accumulation must be abated within a specified period. The secretary may undertake abatement action utilizing funds from the waste tire management fund if *the responsible parties fail to take the required action within the time period specified in the notice: (1) The waste tires were accumulated before July 1, 1990, and abated before July 1, 2003; or*

~~(2) the waste tires were accumulated after July 1, 1990, and the responsible parties fail to take the required action within the time period specified in the notice.~~

(d) The department and its representatives are authorized to enter private property to perform abatement activities if the responsible party fails to perform required clean-up work, but no entry shall be made with-

out the property owner's consent except upon notice and hearing in accordance with the Kansas administrative procedure act.

~~(d)~~ (e) All costs incurred by the secretary in *the* abatement of *illegal* waste tires ~~accumulated after July 1, 1990; accumulations or illegally managed waste tires~~ or in performing interim measures, including administrative and legal expenses, are recoverable from a responsible party or parties and may be recovered in a civil action in district court brought by the secretary. ~~If~~ Any abatement costs ~~are~~ recovered under this section; ~~the city or county that shared in the cost of the abatement action shall be reimbursed its costs not to exceed 25% of the amount recovered. The remaining amount recovered shall be remitted 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 waste tire management fund. An action to recover abatement or interim measures costs may be commenced at any stage of an abatement.~~

~~(e)~~ (f) In performing or entering contracts for abatement actions under this section, the secretary shall give preference to actions that recycle waste tires or burn waste tires for energy recovery. Direct abatement expenditures may include landfilling when waste tires are contaminated or when feasible in-state markets cannot be identified.

~~(f)~~ (g) Permits granted by the secretary pursuant to K.S.A. 65-3424b, and amendments thereto, shall not be transferable and may be revoked or suspended whenever the secretary determines that the permit holder is operating in violation of this act or rules and regulations adopted pursuant to the act; is creating or threatens to create a hazard to persons, property or the environment; or is creating or threatens to create a public nuisance. The secretary may also revoke, suspend or refuse to issue a permit when the secretary determines that past or continuing violations of the provisions of K.S.A. 65-3409, and amendments thereto, have been committed by the applicant or permit holder.

~~(g)~~ (h) Neither the state of Kansas nor the waste tire management fund shall be liable to any owner, operator or responsible party for the loss of business, damages or taking of property associated with any abatement or enforcement action taken pursuant to this section.

~~(h)~~ (i) The secretary shall enter into contracts with one or more associations of tire retailers to: (1) Assist in disseminating information to all tire retailers on the requirements of solid waste laws and rules and regulations relating to waste tires; (2) establish a point of contact for persons requesting information on solid waste laws and rules and regulations relating to waste tires; (3) assist in planning and implementing conferences, workshops, and other requested training events for persons involved in the generation, transportation, processing, or disposal of waste tires; and (4) assemble and analyze data on waste tire management by tire retailers in Kansas.

Sec. 21. K.S.A. 65-3426 is hereby amended to read as follows: 65-3426. (a) There is hereby established within the department of health and environment the solid waste grants advisory committee, which shall be composed of ~~seven~~ *eight* members as follows:

(1) ~~Six~~ *Seven* members appointed by the governor, two of whom shall represent the interests of regional solid waste management entities, two of whom shall represent the interests of counties, one of whom shall represent the interests of cities, *one of whom shall represent the interests of waste tire generators or handlers* and one of whom shall represent the interests of the private sector;

(2) the secretary of health and environment or the secretary's designee.

(b) Appointive members of the solid waste grants advisory committee shall serve terms of two years. The secretary of health and environment or the person designated by the secretary shall serve as chairperson of the advisory committee.

(c) Members of the solid waste grants advisory committee shall receive amounts provided by subsection (e) of K.S.A. 75-3223, and amendments thereto, for each day of actual attendance at any meeting of the advisory committee or any subcommittee meeting authorized by the advisory committee.

(d) The secretary of health and environment shall provide technical

support related to the activities of the solid waste grants advisory committee, including but not limited to establishing project selection criteria, performing technology evaluations, assessing technical feasibility and determining consistency with the statewide solid waste management plan, the applicable county or regional solid waste management plan and regional activities.

(e) In accordance with schedules established by the secretary of health and environment, the solid waste grants advisory committee shall meet to review competitive grant applications submitted pursuant to subsection (b) of K.S.A. 65-3415, and amendments thereto. The advisory committee shall establish a project priority list for each fiscal year based upon the availability of funds as estimated by the secretary and shall make recommendations regarding the selection of grantees and the disbursement of moneys.

Sec. 22. K.S.A. 65-3424, 65-3424a, 65-3424b, 65-3424g, 65-3424k, 65-3424m and 65-3426 are hereby repealed.

Sec. 23. 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 HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.