

HOUSE BILL No. 2411

By Representative Faber

2-9

9 AN ACT concerning agriculture; relating to pesticide business license
10 requirements; civil penalties; amending K.S.A. 2-2440e and 2-2448
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2-2440e is hereby amended to read as follows: 2-
15 2440e. (a) Any pesticide business licensee who violates any of the provi-
16 sions of K.S.A. 2-2453 or 2-2454, and amendments thereto, in addition
17 to any other penalty provided by law, may incur a civil penalty imposed
18 under subsection (b) in the amount fixed by rules and regulations of the
19 secretary in an amount not less than \$100 nor more than \$5,000 for each
20 violation and, in the case of a continuing violation, every day such violation
21 continues shall be deemed a separate violation. *No civil penalty shall be*
22 *imposed pursuant to this section unless such rules and regulations specify*
23 *the exact amount of civil penalty for each violation based on the criteria*
24 *used by the secretary in determining the amount of such civil penalty.*
25 *Any schedule of civil penalties utilized by the secretary to assess civil*
26 *penalties pursuant to this section shall be promulgated by rule and reg-*
27 *ulation to be effective and enforceable.*

28 (b) A duly authorized agent of the secretary, upon a finding that a
29 pesticide business licensee or any employee or agent thereof or any per-
30 son or entity required to be licensed as a pesticide business licensee who
31 violates any of the provisions of K.S.A. 2-2453 and 2-2454, and amend-
32 ments thereto, may impose a civil penalty as provided in this section upon
33 such licensee.

34 (c) No civil penalty shall be imposed pursuant to this section except
35 upon the written order of the duly authorized agent of the secretary to
36 the pesticide business licensee who committed the violation. Such order
37 shall state the violation, the penalty to be imposed and the right of such
38 pesticide business licensee to appeal to the secretary. Any such licensee,
39 within 20 days after notification, may make written request to the sec-
40 retary for a hearing or informal conference hearing in accordance with
41 the provisions of the Kansas administrative procedure act. The secretary
42 shall affirm, reverse or modify the order and shall specify the reasons
43 therefor.

1 (d) Any person aggrieved by an order of the secretary made under
2 this section may appeal such order to the district court in the manner
3 provided by the act for judicial review and civil enforcement of agency
4 actions.

5 (e) Any civil penalty recovered pursuant to the provisions of this sec-
6 tion shall be remitted to the state treasurer. Upon receipt of each such
7 remittance, the state treasurer shall deposit the entire amount in the state
8 treasury to the credit of the state general fund.

9 (f) This section shall be a part of and supplemental to the Kansas
10 pesticide law.

11 Sec. 2. K.S.A. 2-2448 is hereby amended to read as follows: 2-2448.

12 ~~(a) Except as provided by subsection (b),~~ The secretary shall not issue
13 a pesticide business license until the applicant has furnished proof of
14 financial responsibility by one of the following:

15 ~~(1)~~ (a) A surety bond in an amount not less than ~~\$6,000~~ \$25,000 per
16 year. The bond shall be executed by a corporate surety and shall state the
17 effective date and the expiration date. The surety bond shall be executed
18 on a form approved by the secretary. The applicant shall be named as the
19 principal in the bond. Such bond shall be to the state of Kansas and shall
20 be conditioned upon compliance by the principal and by the principal's
21 officers, agents, representatives and employees, with the provisions of this
22 act and ~~acts amendatory thereof and supplemental amendments~~ thereto.
23 It shall be unlawful for any licensed person to use the words "bond" or
24 "bonded" in advertising or in publicizing such person's operations in con-
25 nection with the application of pesticides unless such bond is a perform-
26 ance bond and that fact and the amount of such bond are specified.

27 ~~(2)~~ (b) A certificate of liability insurance. The certificate of liability
28 insurance shall be executed by an insurance company authorized to do
29 business in Kansas or by a licensed insurance agent operating under au-
30 thority of K.S.A. 40-246b, and amendments thereto, and shall state the
31 effective date and the expiration date of the policy. Such liability insur-
32 ance shall be subject to the insurer's policy provisions filed with and ap-
33 proved by the commissioner of insurance pursuant to K.S.A. 40-216, and
34 amendments thereto, except as authorized by K.S.A. 40-246b, and
35 amendments thereto. The liability insurance policy shall provide: (A) Cov-
36 erage for not less than ~~\$25,000~~ \$50,000 for bodily injury liability for each
37 occurrence; and (B) coverage for not less than ~~\$5,000~~ \$25,000 for prop-
38 erty damage liability for each occurrence. In addition to the coverage
39 specified above, if the applicant for a pesticide business license is an aerial
40 applicator, the liability insurance policy shall provide coverage for any
41 pesticide such applicant will be applying and for comprehensive chemical
42 coverage. Pesticide application equipment, if required to be registered
43 under K.S.A. 2-2456, and amendments thereto, shall be covered. The

1 insurer shall notify the secretary, in writing, of any expiration, reduction
2 or cancellation of liability insurance, furnished as a prerequisite of licen-
3 sure, not later than 10 days before the expiration, reduction or cancella-
4 tion takes effect. Upon expiration, reduction or cancellation of the liability
5 insurance, the secretary shall suspend such pesticide applicator's business
6 license until the insurance requirement is met by the licensee for the
7 current license period. The certificate shall be executed on a form ap-
8 proved by the secretary.

9 ~~(3)~~ (c) A ~~\$6,000~~ \$25,000 letter of credit from a Kansas financial in-
10 stitution, as defined in K.S.A. 16-117, and amendments thereto. The let-
11 ter of credit shall be executed on a form approved by the secretary. The
12 letter of credit shall state the effective date and the expiration date and
13 shall be valid through the term of the applicant's business license. Upon
14 cancellation of the letter of credit, the secretary shall suspend such pes-
15 ticide applicator's business license until the letter of credit requirement
16 is met by the licensee for the current license period.

17 ~~(4)~~ (d) Maintaining a minimum balance of ~~\$6,000~~ \$25,000 in an es-
18 crow account in a Kansas financial institution as defined in K.S.A. 16-117,
19 and amendments thereto. The escrow account shall maintain the mini-
20 mum balance through the term of the applicant's business license. The
21 secretary shall be notified in writing by the financial institution within 10
22 days if the amount in the escrow account falls below the ~~\$6,000~~ minimum
23 balance *required pursuant to this subsection*. Upon notification, the sec-
24 retary shall suspend such pesticide applicator's business license until the
25 escrow account minimum balance is at ~~\$6,000~~ *the amount required pur-*
26 *suant to this subsection*.

27 ~~(b) Before June 1, 1994, the financial responsibility and proof of fi-~~
28 ~~ancial responsibility required pursuant to this section prior to March 1,~~
29 ~~1994, shall continue to apply to any pesticide business holding a valid~~
30 ~~pesticide business license on February 28, 1994, and no different or ad-~~
31 ~~ditional financial responsibility or proof of financial responsibility shall be~~
32 ~~required of such business. On or before June 1, 1994, each pesticide~~
33 ~~business licensed before March 1, 1994, shall furnish to the secretary~~
34 ~~proof of financial responsibility conforming to the requirements of this~~
35 ~~section as amended by this act.~~

36 ~~—(c) The requirements of this section as amended by this act shall~~
37 ~~apply to any applicant applying for an original pesticide business license~~
38 ~~on or after March 1, 1994, and no different or additional financial re-~~
39 ~~sponsibility or proof of financial responsibility shall be required of such~~
40 ~~applicant.~~

41 Sec. 3. K.S.A. 2-2440e and 2-2448 are hereby repealed.

42 Sec. 4. This act shall take effect and be in force from and after its
43 publication in the statute book.