

SENATE BILL No. 465

By Committee on Agriculture and Natural Resources

2-3

AN ACT concerning corporations; relating to agricultural corporations; including limited liability partnerships as an entity required to obtain county approval to establish a dairy or swine production facility; amending K.S.A. 17-5903, 17-5904, 17-5907 and 17-5908 and repealing the existing sections.

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

Section 1. K.S.A. 17-5903 is hereby amended to read as follows: 17-5903. As used in this act:

(a) "Corporation" means a domestic or foreign corporation organized for profit or nonprofit purposes.

(b) "Nonprofit corporation" means a corporation organized not-for-profit ~~and which~~ that qualifies under section 501(c)(3) of the federal internal revenue code of 1986, as amended.

(c) "Limited partnership" ~~has the meaning provided by means the same as defined in K.S.A. 56-1a01~~ 56-1a101, and amendments thereto.

(d) "Limited agricultural partnership" means a limited partnership founded for the purpose of farming and ownership of agricultural land in which:

(1) The partners do not exceed 10 in number;

(2) the partners are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and

(3) at least one of the general partners is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one partner is meeting the requirement of this provision and such partner dies, the requirement of this provision does not apply for the period of time that the partner's estate is being administered in any district court in Kansas.

(e) "Corporate partnership" means a partnership, as defined in K.S.A. 56a-101, and amendments thereto, ~~which~~ that has within the association one or more corporations or one or more limited liability companies.

(f) "Feedlot" means a lot, yard, corral, or other area in which livestock fed for slaughter are confined. ~~The term~~ "Feedlot" includes ~~within its meaning~~ agricultural land in such acreage as is necessary for the

1 operation of the feedlot.

2 (g) "Agricultural land" means land suitable for use in farming.

3 (h) "Farming" means the cultivation of land for the production of
4 agricultural crops, the raising of poultry, the production of eggs, the
5 production of milk, the production of fruit or other horticultural crops,
6 grazing or the production of livestock. "Farming" does not include the
7 production of timber, forest products, nursery products ~~or sod, and farming~~
8 ~~does not include~~ or a contract to provide spraying, harvesting or other farm
9 services.

10 (i) "Fiduciary capacity" means an undertaking to act as executor,
11 administrator, guardian, conservator, trustee for a family trust, authorized
12 trust or testamentary trust or receiver or trustee in bankruptcy.

13 (j) "Family farm corporation" means a corporation:

14 (1) Founded for the purpose of farming and the ownership of
15 agricultural land in which the majority of the voting stock is held by and
16 the majority of the stockholders are persons related to each other, all of
17 whom have a common ancestor within the third degree of relationship, by
18 blood or by adoption, or the spouses or the stepchildren of any such
19 persons, or persons acting in a fiduciary capacity for persons so related;

20 (2) all of its stockholders are natural persons or persons acting in a
21 fiduciary capacity for the benefit of natural persons; and

22 (3) at least one of the stockholders is a person residing on the farm or
23 actively engaged in the labor or management of the farming operation. A
24 stockholder who is an officer of any corporation referred to in this
25 subsection ~~and who is~~ one of the related stockholders holding a majority of
26 the voting stock shall be deemed to be actively engaged in the
27 management of the farming corporation. If only one stockholder is
28 meeting the requirement of this provision and such stockholder dies, the
29 requirement of this provision does not apply for the period of time that the
30 stockholder's estate is being administered in any district court in Kansas.

31 (k) "Authorized farm corporation" means a Kansas corporation, other
32 than a family farm corporation, all of the incorporators of which are
33 Kansas residents, family farm corporations or family farm limited liability
34 agricultural companies or any combination thereof, ~~and which is~~ founded
35 for the purpose of farming and the ownership of agricultural land in which:

36 (1) The stockholders do not exceed 15 in number; ~~and~~

37 (2) the stockholders are all natural persons, family farm corporations,
38 family farm limited liability agricultural companies or persons acting in a
39 fiduciary capacity for the benefit of natural persons, family farm
40 corporations, family farm limited liability agricultural companies or
41 nonprofit corporations; and

42 (3) if all of the stockholders are natural persons, at least one
43 stockholder must be a person residing on the farm or actively engaged in

1 labor or management of the farming operation. If only one stockholder ~~is~~
2 ~~meeting~~ *meets* the requirement of this provision and such stockholder dies,
3 the requirement of this provision does not apply for the period of time that
4 the stockholder's estate is being administered in any district court in
5 Kansas.

6 (l) "Trust" means a fiduciary relationship with respect to property,
7 subjecting the person by whom the property is held to equitable duties to
8 deal with the property for the benefit of another person, ~~which~~ *that* arises
9 as a result of a manifestation of an intention to create it. A trust includes a
10 legal entity holding property as trustee, agent, escrow agent, attorney-in-
11 fact and in any similar capacity.

12 (m) "Family trust" means a trust in which:

13 (1) A majority of the equitable interest in the trust is held by and the
14 majority of the beneficiaries are persons related to each other, all of whom
15 have a common ancestor within the third degree of relationship, by blood
16 or by adoption, or the spouses or stepchildren of any such persons, or
17 persons acting in a fiduciary capacity for persons so related; and

18 (2) all the beneficiaries are natural persons, are persons acting in a
19 fiduciary capacity, other than as trustee for a trust, or are nonprofit
20 corporations.

21 (n) "Authorized trust" means a trust other than a family trust in
22 which:

23 (1) The beneficiaries do not exceed 15 in number;

24 (2) the beneficiaries are all natural persons, ~~are~~ persons acting in a
25 fiduciary capacity; other than as trustee for a trust; or ~~are~~ nonprofit
26 corporations; and

27 (3) the gross income thereof is not exempt from taxation under the
28 laws of either the United States or the state of Kansas.

29 For the purposes of this definition, if one of the beneficiaries dies, and
30 more than one person succeeds, by bequest, to the deceased beneficiary's
31 interest in the trust, all of such persons, collectively, shall be deemed to be
32 one beneficiary, and a husband and wife, and their estates, collectively,
33 shall be deemed to be one beneficiary.

34 (o) "Testamentary trust" means a trust created by devising or
35 bequeathing property in trust in a will as such terms are used in the Kansas
36 probate code.

37 (p) "Poultry confinement facility" means the structures and related
38 equipment used for housing, breeding, laying of eggs or feeding of poultry
39 in a restricted environment. ~~The term~~ *"Poultry confinement facility"*
40 ~~includes within its meaning~~ only such agricultural land as is necessary for
41 proper disposal of liquid and solid wastes and for isolation of the facility to
42 reasonably protect the confined poultry from exposure to disease. As used
43 in this subsection, "poultry" means chickens, turkeys, ducks, geese or other

1 fowl.

2 (q) "Rabbit confinement facility" means the structures and related
3 equipment used for housing, breeding, raising, feeding or processing of
4 rabbits in a restricted environment. ~~The term "Rabbit confinement facility"~~
5 ~~includes within its meaning~~ only such agricultural land as is necessary for
6 proper disposal of liquid and solid wastes and for isolation of the facility to
7 reasonably protect the confined rabbits from exposure to disease.

8 (r) "Swine marketing pool" means an association whose membership
9 includes three or more business entities or individuals formed for the sale
10 of hogs to buyers ~~but shall~~. *"Swine marketing pool"* does not include any
11 trust, corporation, limited partnership, *limited liability partnership* or
12 corporate partnership; or limited liability company other than a family
13 farm corporation, authorized farm corporation, limited liability agricultural
14 company, limited agricultural partnership, family trust, authorized trust or
15 testamentary trust.

16 (s) "Swine production facility" means the land, structures and related
17 equipment used for housing, breeding, farrowing or feeding of swine. ~~The~~
18 ~~term "Swine production facility"~~ includes ~~within its meaning~~ only such
19 agricultural land as is necessary for proper disposal of liquid and solid
20 wastes in environmentally sound amounts for crop production and to avoid
21 nitrate buildup and for isolation of the facility to reasonably protect the
22 confined animals from exposure to disease.

23 (t) "Limited liability company" ~~has the meaning provided by~~ *means*
24 *the same as defined in K.S.A. 17-7663*, and amendments thereto.

25 (u) "Limited liability agricultural company" means a limited liability
26 company founded for the purpose of farming and ownership of agricultural
27 land in which:

28 (1) The members do not exceed 10 in number; ~~and~~

29 (2) the members are all natural persons, family farm corporations,
30 family farm limited liability agriculture companies, persons acting in a
31 fiduciary capacity for the benefit of natural persons, family farm
32 corporations, family farm limited liability agricultural companies or
33 nonprofit corporations, or general partnerships other than corporate
34 partnerships formed under the laws of the state of Kansas; and

35 (3) if all of the members are natural persons, at least one member
36 must be a person residing on the farm or actively engaged in labor or
37 management of the farming operation. If only one member is meeting the
38 requirement of this provision and such member dies, the requirement of
39 this provision does not apply for the period of time that the member's
40 estate is being administered in any district court in Kansas.

41 (v) "Dairy production facility" means the land, structures and related
42 equipment used for housing, breeding, raising, feeding or milking dairy
43 cows. ~~The term "Dairy production facility"~~ includes ~~within its meaning~~

1 only such agricultural land as is necessary for proper disposal of liquid and
2 solid wastes and for isolation of the facility to reasonably protect the
3 confined cows from exposure to disease.

4 (w) "Family farm limited liability agricultural company" means a
5 limited liability company founded for the purpose of farming and
6 ownership of agricultural land in which:

7 (1) The majority of the members are persons related to each other, all
8 of whom have a common ancestor within the third degree of relationship,
9 by blood or by adoption, or the spouses or the stepchildren of any such
10 persons, or persons acting in a fiduciary capacity for persons so related;

11 (2) the members are natural persons or persons acting in a fiduciary
12 capacity for the benefit of natural persons; and

13 (3) at least one of the members is a person residing on the farm or
14 actively engaged in the labor or management of the farming operation. If
15 only one member is meeting the requirement of this provision and such
16 member dies, the requirement of this provision does not apply for the
17 period of time that the member's estate is being administered in any district
18 court in Kansas.

19 (x) "Hydroponics" means the growing of vegetables, flowers, herbs,-
20 or plants used for medicinal purposes, in a growing medium other than
21 soil.

22 (y) "*Limited liability partnership*" means the same as defined in
23 *K.S.A. 56a-101, and amendments thereto*.

24 Sec. 2. K.S.A. 17-5904 is hereby amended to read as follows: 17-
25 5904. (a) No corporation, trust, limited liability company, *limited liability*
26 *partnership*, limited partnership or corporate partnership, other than a
27 family farm corporation, authorized farm corporation, limited liability
28 agricultural company, family farm limited liability agricultural company,
29 limited agricultural partnership, family trust, authorized trust or
30 testamentary trust shall, either directly or indirectly, own, acquire or
31 otherwise obtain or lease any agricultural land in this state. The restrictions
32 provided in this section do not apply to the following:

33 (1) A bona fide encumbrance taken for purposes of security.

34 (2) Agricultural land when acquired as a gift, either by grant or
35 devise, by a bona fide educational, religious or charitable nonprofit
36 corporation.

37 (3) Agricultural land acquired by a corporation or a limited liability
38 company in such acreage as is necessary for the operation of a nonfarming
39 business. Such land may not be used for farming except under lease to one
40 or more natural persons, a family farm corporation, authorized farm
41 corporation, family trust, authorized trust or testamentary trust. The
42 corporation shall not engage, either directly or indirectly, in the farming
43 operation and shall not receive any financial benefit, other than rent, from

1 the farming operation.

2 (4) Agricultural land acquired by a corporation or a limited liability
3 company by process of law in the collection of debts, or pursuant to a
4 contract for deed executed prior to the effective date of this act, or by any
5 procedure for the enforcement of a lien or claim thereon, whether created
6 by mortgage or otherwise, if such corporation divests itself of any such
7 agricultural land within 10 years after such process of law, contract or
8 procedure, except that *the* provisions of K.S.A. 9-1102, and amendments
9 thereto, shall apply to any bank ~~which~~ that acquires agricultural land.

10 (5) A municipal corporation.

11 (6) Agricultural land ~~which is~~ acquired by a trust company or bank in
12 a fiduciary capacity or as a trustee for a nonprofit corporation.

13 (7) Agricultural land owned or leased or held under a lease purchase
14 agreement as described in K.S.A. 12-1741, and amendments thereto, by a
15 corporation, corporate partnership, limited corporate partnership or trust
16 on the effective date of this act if: (A) Any such entity owned or leased
17 such agricultural land prior to July 1, 1965, provided such entity shall not
18 own or lease any greater acreage of agricultural land than it owned or
19 leased prior to the effective date of this act unless it is in compliance with
20 the provisions of this act; (B) any such entity was in compliance with the
21 provisions of K.S.A. 17-5901, prior to its repeal by this act, provided such
22 entity shall not own or lease any greater acreage of agricultural land than it
23 owned or leased prior to the effective date of this act unless it is in
24 compliance with the provisions of this act, and absence of evidence in the
25 records of the county where such land is located of a judicial
26 determination that such entity violated the provisions of K.S.A. 17-5901,
27 prior to its repeal, shall constitute proof that the provisions of this act do
28 not apply to such agricultural land, and that such entity was in compliance
29 with the provisions of K.S.A. 17-5901, prior to its repeal; or (C) any such
30 entity was not in compliance with the provisions of K.S.A. 17-5901, prior
31 to its repeal by this act, but is in compliance with the provisions of this act
32 by July 1, 1991.

33 (8) Agricultural land held or leased by a corporation or a limited
34 liability company for use as a feedlot, a poultry confinement facility or
35 rabbit confinement facility.

36 (9) Agricultural land held or leased by a corporation for the purpose
37 of the production of timber, forest products, nursery products or sod.

38 (10) Agricultural land used for bona fide educational research or
39 scientific or experimental farming.

40 (11) Agricultural land used for the commercial production and
41 conditioning of seed for sale or resale as seed or for the growing of alfalfa
42 by an alfalfa processing entity if such land is located within 30 miles of
43 such entity's plant site.

1 (12) Agricultural land owned or leased by a corporate partnership or
2 limited corporate partnership in which the partners associated therein are
3 either natural persons, family farm corporations, authorized farm
4 corporations, limited liability agricultural companies, family trusts,
5 authorized trusts or testamentary trusts.

6 (13) Any corporation, either domestic or foreign, or any limited
7 liability company, organized for coal mining purposes which engages in
8 farming on any tract of land owned by it which has been strip mined for
9 coal.

10 (14) Agricultural land owned or leased by a limited partnership prior
11 to the effective date of this act.

12 (15) Except as provided by K.S.A. 17-5908, as it existed before the
13 effective date of this act, and K.S.A. 1998 Supp. 17-5909, agricultural land
14 held or leased by a corporation or a limited liability company for use as a
15 swine production facility in any county which, before the effective date of
16 this act, has voted favorably pursuant to K.S.A. 17-5908, as it existed
17 before the effective date of this act, either by county resolution or by the
18 electorate.

19 (16) Agricultural land held or leased by a corporation, trust, limited
20 liability company, *limited liability partnership*, limited partnership or
21 corporate partnership for use as a swine production facility in any county
22 where the voters, after the effective date of this act, have voted pursuant to
23 K.S.A. 17-5908, and amendments thereto, to allow establishment of swine
24 production facilities within the county.

25 (17) Agricultural land held or leased by a corporation, trust, limited
26 liability company, *limited liability partnership*, limited partnership or
27 corporate partnership for use as a dairy production facility in any county
28 which has voted favorably pursuant to K.S.A. 17-5907, and amendments
29 thereto, either by county resolution or by the electorate.

30 (18) Agricultural land held or leased by a corporation or a limited
31 liability company used in a hydroponics setting.

32 (b) Production contracts entered into by a corporation, trust, limited
33 liability company, *limited liability partnership*, limited partnership or
34 corporate partnership and a person engaged in farming for the production
35 of agricultural products shall not be construed to mean the ownership,
36 acquisition, obtainment or lease, either directly or indirectly, of any
37 agricultural land in this state.

38 (c) Any corporation, trust, limited liability company, *limited liability*
39 *partnership*, limited partnership or corporate partnership, other than a
40 family farm corporation, authorized farm corporation, limited liability
41 agricultural company, family farm limited liability agricultural company,
42 limited agricultural partnership, family trust, authorized trust or
43 testamentary trust, violating the provisions of this section shall be subject

1 to a civil penalty of not more than \$50,000 and shall divest itself of any
2 land acquired in violation of this section within one year after judgment is
3 entered in the action. The district courts of this state may prevent and
4 restrain violations of this section through the issuance of an injunction.
5 The attorney general or district or county attorney shall institute suits on
6 behalf of the state to enforce the provisions of this section.

7 (d) Civil penalties sued for and recovered by the attorney general
8 shall be paid into the state general fund. Civil penalties sued for and
9 recovered by the county attorney or district attorney shall be paid into the
10 general fund of the county where the proceedings were instigated.

11 Sec. 3. K.S.A. 17-5907 is hereby amended to read as follows: 17-
12 5907. (a) (1) The board of county commissioners, by resolution, may
13 permit or deny a dairy production facility, as defined in K.S.A. 17-5903,
14 and amendments thereto, to be established within the county by a
15 corporation, trust, limited liability company, *limited liability partnership*,
16 limited partnership or corporate partnership. Such resolution shall be
17 published once each week for two consecutive weeks in the official county
18 newspaper. The resolution shall take effect 60 days after final publication
19 unless a valid petition in opposition to the same is filed.

20 (2) If within 60 days of the final publication of the resolution, a valid
21 protest petition to submit the resolution to the qualified voters of the
22 county is signed by qualified electors of the county equal in number to not
23 less than 5% of the electors of the county who voted for the office of
24 secretary of state at the last preceding general election at which such office
25 was elected and is filed with the county election officer, the county
26 election officer shall submit the question, as established in subsection (c),
27 of whether a dairy production facility shall be allowed to be established in
28 such county at the next state, county or special election.

29 (b) (1) The board of county commissioners, upon a petition filed in
30 accordance with paragraph (b)(2), shall submit to the qualified electors of
31 the county a proposition to permit a dairy production facility, as defined in
32 K.S.A. 17-5903, and amendments thereto, to be established within the
33 county by a corporation, trust, limited liability company, *limited liability*
34 *partnership*, limited partnership or corporate partnership.

35 (2) A petition to submit a proposition to the qualified voters of a
36 county pursuant to this section shall be filed with the county election
37 officer. The petition shall be signed by qualified electors of the county
38 equal in number to not less than 5% of the electors of the county who
39 voted for the office of secretary of state at the last preceding general
40 election at which such office was elected. The following shall appear on
41 the petition:

42 "We request an election to determine whether a corporation, trust,
43 limited liability company, *limited liability partnership*, limited partnership

1 or corporate partnership shall be allowed to, either directly or indirectly,
2 own, acquire or otherwise obtain or lease any agricultural land in
3 _____ county for the purpose of establishing a dairy production
4 facility."

5 (3) Upon the submission of a valid petition calling for an election
6 pursuant to this subsection, the county election officer shall submit the
7 question, as established in subsection (c), of whether a dairy production
8 facility shall be allowed to be established in such county at the next
9 countywide election which occurs more than 60 days after the petition is
10 filed with the county election officer.

11 (c) In any election established pursuant to this section, the following
12 shall appear on the ballot:

13 "Shall a corporation, trust, limited liability company, *limited liability*
14 *partnership*, limited partnership or corporate partnership be allowed to,
15 either directly or indirectly, own, acquire or otherwise obtain or lease any
16 agricultural land in _____ county for the purpose of establishing a
17 dairy production facility?"

18 (d) If a majority of the votes cast and counted are in opposition to
19 allowing dairy production facilities to be established in such county, the
20 county election officer shall transmit a copy of the result to the secretary of
21 state who shall publish in the Kansas register the result of such election
22 and that dairy production facilities are not allowed to be established in
23 such county.

24 (e) If a majority of the votes cast and counted is in favor of the
25 proposition, the county election officer shall transmit a copy of the result
26 to the secretary of state who shall publish in the Kansas register the result
27 of such election and that dairy production facilities are allowed to be
28 established in such county.

29 (f) The election provided for by this section shall be conducted, and
30 the votes counted and canvassed, in the manner provided by law for
31 question submitted elections of the county.

32 Sec. 4. K.S.A. 17-5908 is hereby amended to read as follows: 17-
33 5908. (a) (1) The board of county commissioners, by resolution, may
34 permit or deny a swine production facility, as defined in K.S.A. 17-5903,
35 and amendments thereto, to be established within the county by a
36 corporation, trust, limited liability company, *limited liability partnership*,
37 limited partnership or corporate partnership. Such resolution shall be
38 published once each week for two consecutive weeks in the official county
39 newspaper. The resolution shall take effect 60 days after final publication
40 unless a valid petition in opposition to the same is filed.

41 (2) If within 60 days of the final publication of the resolution, a valid
42 protest petition to submit the resolution to the qualified voters of the
43 county is signed by qualified electors of the county equal in number to not

1 less than 5% of the electors of the county who voted for the office of
2 secretary of state at the last preceding general election at which such office
3 was elected and is filed with the county election officer, the county
4 election officer shall submit the question, as established in subsection (c),
5 of whether a swine production facility shall be allowed to be established in
6 such county at the next state, county or special election.

7 (b) (1) The board of county commissioners, upon a petition filed in
8 accordance with paragraph (b)(2), shall submit to the qualified electors of
9 the county a proposition to permit a swine production facility, as defined in
10 K.S.A. 17-5903, and amendments thereto, to be established within the
11 county corporation, trust, limited liability company, *limited liability*
12 *partnership*, limited partnership or corporate partnership.

13 (2) A petition to submit a proposition to the qualified voters of a
14 county pursuant to this section shall be filed with the county election
15 officer. The petition shall be signed by qualified electors of the county
16 equal in number to not less than 5% of the electors of the county who
17 voted for the office of secretary of state at the last preceding general
18 election at which such office was elected. The following shall appear on
19 the petition:

20 "We request an election to determine whether a corporation, trust,
21 limited liability company, *limited liability partnership*, limited partnership
22 or corporate partnership shall be allowed to, either directly or indirectly,
23 own, acquire or otherwise obtain or lease any agricultural land in _____
24 county for the purpose of establishing a swine production facility."

25 (3) Upon the submission of a valid petition calling for an election
26 pursuant to this subsection, the county election officer shall submit the
27 question, as established in subsection (c), of whether a swine production
28 facility shall be allowed to be established in such county at the next
29 countywide election which occurs more than 60 days after the petition is
30 filed with the county election officer.

31 (c) In any election established pursuant to this section, the following
32 shall appear on the ballot:

33 "Shall a corporation, trust, limited liability company, *limited liability*
34 *partnership*, limited partnership or corporate partnership be allowed to,
35 either directly or indirectly, own, acquire or otherwise obtain or lease any
36 agricultural land in _____ county for the purpose of establishing a
37 swine production facility?"

38 (d) If a majority of the votes cast and counted are in opposition to
39 allowing swine production facilities to be established in such county, the
40 county election officer shall transmit a copy of the result to the secretary of
41 state who shall publish in the Kansas register the result of such election
42 and that swine production facilities are not allowed to be established in
43 such county.

1 (e) If a majority of the votes cast and counted is in favor of the
2 proposition, the county election officer shall transmit a copy of the result
3 to the secretary of state, who shall publish in the Kansas register the result
4 of such election and that swine production facilities are allowed to be
5 established in such county.

6 (f) The election provided for by this section shall be conducted, and
7 the votes counted and canvassed, in the manner provided by law for
8 question submitted elections of the county.

9 Sec. 5. K.S.A. 17-5903, 17-5904, 17-5907 and 17-5908 are hereby
10 repealed.

11 Sec. 6. This act shall take effect and be in force from and after its
12 publication in the statute book.