

HOUSE BILL No. 2271

By Committee on Agriculture and Natural Resources

2-10

1 AN ACT concerning agriculture; relating to plant pest inspection and
2 control; amending K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117,
3 2-2118, 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and
4 2-2129 and repealing the existing sections.

5
6 Be it enacted by the Legislature of the State of Kansas:

7 Section 1. K.S.A. 2010 Supp. 2-2113 is hereby amended to read as
8 follows: 2-2113. As used in this act:

9 (a) "Plant pests" include any stage of development of any insect,
10 nematode, arachnid, or any other invertebrate animal, or any bacteria,
11 fungus, virus, weed or any other parasitic plant or microorganism, which
12 can injure plants or plant products.

13 (b) "Secretary" means the secretary of the Kansas department of
14 agriculture, or the authorized representative of the secretary.

15 (c) "Plants and plant products" means trees, shrubs, grasses, vines,
16 forage and cereal plants and all other plants; cuttings, grafts, scions, buds
17 and all other parts of plants;

18 (d) "Plant products" means and fruit, vegetables, roots, bulbs, seeds,
19 wood, lumber, grains and all other plant products.

20 (e) "Location" means any grounds or premises on or in which live plants are
21 propagated or grown from which live plants are removed for sale or any
22 grounds or premises on or in which live plants are being fumigated, treated,
23 packed, stored or offered for sale.

24 (f) "Live plant dealer" means any person unless excluded by
25 rules and regulations of the secretary adopted hereunder who:
26 Live plant dealer means any person unless excluded by
27 rules and regulations of the secretary adopted hereunder who:

28 (1) Grows live plants for sale or distribution;
29 (2) buys or obtains live plants for the purpose of reselling or
30 reshipping within this state;

31 (3) plants, transplants or moves live plants from place to place
32 within the state with the intent to plant such live plants for others and
33 receives compensation for the live plants, for the planting of such live
34 plants or for both live plants and plantings; or

35 (4) gives live plants as a premium or for advertising purposes.

36 (g) "Person" means a corporation, company, society, association,
37 partnership, governmental agency and any individual or co
38

Comment [k1]: Should read "who engages in business in the following manner."

1 combination of individuals  
 2 (g)(h)  
 3 2011 Permit 2011 means a document issued or authorized by the  
 4 secretary to provide for the movement of regulated articles  
 5 to restricted destinations for limited handling, utilization, or  
 6 processing  
 7 (h)(i)  
 8 2011 Host 2011 means any plant or plant product upon which  
 9 a plant pest is dependent for completion of any portion  
 10 of its life cycle  
 11 (i)(j)  
 12 2011 Regulated article 2011 means any host or any article of  
 13 any character as described in a quarantine or regulation  
 14 carrying or being capable of carrying the plant pest against  
 15 which the quarantine or regulation is directed  
 16 (j)(k)  
 17 2011 Live plant 2011 means any living plant cultivated or wild  
 18 or any part thereof that can be planted or propagated unless  
 19 specifically exempted by the rules or regulations of the  
 20 secretary  
 21 (k)(l)  
 22 2011 Quarantine pest 2011 means a pest of potential economic  
 23 importance to the area endangered thereby and not yet present  
 24 there or present but not widely distributed and being  
 25 officially controlled  
 26 (l)(m)  
 27 2011 Regulated nonquarantine pest 2011 means a nonquarantine  
 28 pest whose presence in  
 29 live plants for planting affects the intended use of those  
 30 live plants with an economically unacceptable impact and which  
 31 is therefore regulated  
 32 (m)(n)  
 33 2011 Official control 2011 means the active enforcement of mandatory  
 34 phytosanitary phytosanitary regulations and the application  
 35 of mandatory phytosanitary phytosanitary procedures with the  
 36 objective of eradication or containment of quarantine pest  
 37 s or for the management of regulated nonquarantine pest  
 38 (n)(o)  
 39 2011 Regulated area 2011 means an area into which within which  
 40 and/or from which plants plant products and other regulated  
 41 articles are subjected to phytosanitary phytosanitary regulations  
 42 or procedures in order to prevent the introduction and/or  
 43 spread or both of quarantine pests or to limit the  
 44 economic impact of regulated nonquarantine pests  
 45 (o)(p)  
 46 2011 Bee 2011 means a honeyproducing insect of the genus A

1 pis??including??all??life??stages??of??the??insect

2 ~~(p)~~(q)

3 2011Beekeeping??equipment2011??means??all??hives??supers??frames  
4 ??or??other??devices??used??in??the??rearing??or??manipulation??of??  
5 bees??or??their??brood

6 (q) "~~Bee pest~~" means any infectious, contagious or communicable  
7 disease or harmful parasite or insects affecting honey bees or their brood.

8 Sec. 2. K.S.A. 2010 Supp. 2-2115 is hereby amended to read as  
9 follows: 2-2115. To effectuate the purposes of this act *and any rules or*  
10 *regulations adopted hereunder*, the secretary shall have the right to:

11 (a) Enter and inspect, *monitor and place and inspect monitoring*  
12 *equipment in, and obtain samples from* any property in this state, except  
13 private dwellings, *at any reasonable time*; or, ~~to~~ (b) stop and  
14 inspect any means of conveyance moving within this state, upon ~~probable~~  
15 ~~cause~~ *reasonable suspicion* to believe it contains or carries any plant pest  
16 or other article subject to this act.

17 (c) *If access to any property sought under the provisions of this*  
18 *section for the purposes authorized is denied, the secretary may apply to*  
19 *any court of competent jurisdiction for an order providing for such*  
20 *access. The court shall, upon proper application, issue an order*  
21 *providing for access to such property.*

22 Sec. 3. K.S.A. 2010 Supp. 2-2116 is hereby amended to read as  
23 follows: 2-2116. ~~(a)~~ Wherever the secretary finds a plant, plant product  
24 or other regulated article that is infested by a plant pest or finds that a  
25 plant pest exists on any premises in this state or is in transit in this state,  
26 the secretary *may*:

27 ~~(1)~~ Upon giving notice to the owner or an agent of the owner in  
28 possession thereof, *may* seize, quarantine, treat, or otherwise dispose of  
29 such plant pest in such manner as the secretary deems necessary to  
30 suppress, control, eradicate, or prevent or retard the spread of such plant  
31 pest, or

32 ~~(2)~~ the secretary *may* order such owner or agent to so treat or  
33 otherwise dispose of the *such* plant pest. *If such owner fails to comply*  
34 *with such order, the secretary may treat or otherwise dispose of such*  
35 *plant pest.*

36 ~~(b)~~ *After notice and opportunity for a hearing in accordance with the*  
37 *provisions of the Kansas administrative procedure act, the secretary may*  
38 *assess against such owner any expense incurred by the secretary in*  
39 *treating or otherwise disposing of such plant pest.*

40 Sec. 4. K.S.A. 2010 Supp. 2-2117 is hereby amended to read as  
41 follows: 2-2117. The secretary is authorized to quarantine this state or any  
42 portion thereof when the secretary determines that such action is  
43 necessary to prevent or retard the spread of a plant pest and to quarantine  
44 any other state or portion thereof whenever the secretary determines that  
45 a plant pest exists therein and that such action is necessary to prevent or  
46 retard its spread into this state. Before promulgating the determination

Comment [k2]: Strike

Comment [k3]: Strike and replace with (a).

Comment [k4]: Strike and replace with (b).

Comment [k5]: Strike and replace with "and."

Comment [k6]: Replace with "after"

Comment [k7]: Correct spelling to administrative

Comment [k8]: Strike

1 that a quarantine is necessary, the secretary, after *providing* due notice to  
2 interested parties, shall hold a public hearing at which any interested  
3 party may appear and be heard either in person or by attorney. The  
4 secretary may impose a temporary quarantine for a period not to exceed  
5 90 days during which time a public hearing, as provided in this section,  
6 shall be held if it appears that a quarantine for more than the 90-day  
7 period will be necessary to prevent or retard the spread of the plant pest.  
8 The secretary may limit the application of the quarantine to the infested  
9 portion of the quarantined area and appropriate environs, to be known as  
10 the regulated area, and, without further hearing, may extend the regulated  
11 area to include additional portions of the quarantined area. Following the  
12 establishment of the quarantine, no person shall move the plant pest  
13 against which the quarantine is established or move any regulated article  
14 described in the quarantine, within, from, into or through this state  
15 contrary to the quarantine promulgated by the secretary. The quarantine  
16 may restrict the movement of the plant pest and any regulated articles  
17 from the quarantined or regulated area in this state into or through other  
18 parts of this state or other states and from the quarantined or regulated  
19 area in other states into or through this state. The secretary shall impose  
20 such inspection, disinfection, certification or permit and other  
21 requirements as the secretary shall deem necessary to effectuate the  
22 purposes of this act. The secretary is authorized to establish regulations  
23 defining pest freedom standards for live plants, plants and plant products  
24 or other regulated articles that pose risk of moving plant pests that may  
25 cause economic or environmental harm.

26 Sec. 5. K.S.A. 2010 Supp. 2-2118 is hereby amended to read as  
27 follows: 2-2118. Upon request the secretary may provide inspection  
28 services for any person who owns or possesses plants or plant products or  
29 for certification purposes of regulated articles intended for shipment  
30 ~~interstate or internationally~~. Upon payment of the appropriate fee as  
31 established by rule and regulation and as inspection personnel are  
32 available, the inspection shall be conducted and a report or certificate  
33 setting forth the inspection results shall be issued if requested. Inspection  
34 fees shall not exceed \$30 per hour, *not including* ~~exclusive diagnostic and~~  
35 ~~identification fees, which shall be assessed as established by rules and~~  
36 ~~regulations adopted by the secretary~~. Mileage incurred shall also be paid  
37 by the person requesting the inspection at the rate established by ~~rules~~  
38 ~~and regulation regulations~~. If certificate is requested an additional fee not  
39 to exceed \$50, *as established by rules and regulations*, plus any fee  
40 amount charged by the United States government for the acquisition of  
41 federal certificates shall be assessed. The fees for such inspection and  
42 certificate in effect on the day preceding the effective date of this act shall  
43 continue in effect until the secretary adopts rules and regulations fixing a  
44 different fee therefor under this subsection. In any case where any  
45 intended receiving state or country requires or authorizes the certification  
46 of plants or plant products, bees or beekeeping equipment or other

Comment [k9]: Strike

1 regulated articles to be based on origin, special handling, treatment or any  
2 other procedure in addition to or in lieu of actual visual inspection of such  
3 articles, the secretary may provide such certification. The secretary may  
4 refuse to perform any inspection if the regulated article to be inspected is  
5 found to be in such condition that it cannot be adequately inspected or the  
6 environs in which the regulated article is located present a danger to the  
7 health and safety of the inspection personnel.

8 Sec. 6. K.S.A. 2010 Supp. 2-2120 is hereby amended to read as  
9 follows: 2-2120.

10 (a) Every live plant dealer, before selling or offering for sale or  
11 delivering any live plants in this state, shall procure from the secretary a  
12 live plant dealer's license for each location and vehicle from which the  
13 live plant dealer offers such live plants for sale.

**Comment [k10]:** This needs to be changed to "engages in business as a live plant dealer."

14 (b) Application for such license shall be made on a form furnished  
15 by the secretary, and the fee for each application shall be fixed by rules  
16 and regulations adopted by the secretary, except that such fee shall not  
17 exceed \$60, and shall not apply to live plant dealers whose total annual  
18 retail live plant sales are less than \$10,000. The application fee in effect  
19 on the day preceding the effective date of this act shall continue in effect  
20 until the secretary adopts rules and regulations fixing a different  
21 application fee under this section.

**Comment [RS11]:** Excluding the plant protection fee fund authorized pursuant to K.S.A. 2010 Supp. 2-2129, and amendments thereto

22 (c) A live plant dealer shall not require a license if such live plant  
23 dealer does not import or export plants into or from the state and the  
24 annual gross receipts of such live plant dealer's business is less than  
25 \$10,000.

**Comment [k12]:** Change to "shall not be required to obtain a license"

26 (d) ~~The~~Such live plant dealer's license shall expire on January 31,  
27 following date of issue, ~~except that all valid certificates of nursery~~  
28 ~~inspection and nursery dealer licenses issued by the secretary that are~~  
29 ~~scheduled to expire in 2002 shall remain valid until January 31, 2003.~~

30 (e) A live plant dealer may sell only live plants:

**Comment [k13]:** Replace with "engage in the live plant business with live plants which are"

31 (1) ~~Which are~~ in compliance with all quarantines and regulated  
32 nonquarantine pest freedom standards established by the secretary; or

**Comment [k14]:** Strike

33 (2) ~~live plants~~ accompanied by a valid certificate of inspection of a  
34 federal inspector or inspector of another state, stating that such live plants  
35 comply with all applicable quarantines and regulated nonquarantine pest  
36 freedom standards. ~~Except where restricted by a quarantine, live plants~~  
37 ~~transplanted on one contiguous property are exempt from the provisions~~  
38 ~~of this act.~~

**Comment [k15]:** Strike

39 Sec. 7. K.S.A. 2010 Supp. 2-2122 is hereby amended to read as  
40 follows: 2-2122. If it is found that any live plant dealer license issued by  
41 the secretary is being used in connection with live plants which do not  
42 meet the quarantines and regulated nonquarantine pest freedom standards  
43 established by the secretary, or other precautionary measures prescribed  
44 by the secretary under the provisions of this act and amendments thereto,  
45 or if it is found that any live plant dealer's license is being used by a  
46 person other than the one to whom it was issued, the secretary may

1 ~~revoke the live plant dealer's license after notice and opportunity for a~~  
2 ~~hearing are given in accordance with the provisions of the Kansas~~  
3 ~~administrative procedure act to show cause why the license should not be~~  
4 ~~revoked.~~

5 *The secretary, after providing notice and opportunity for a hearing in*  
6 *accordance with the provisions of the Kansas administrative procedure*  
7 *act, may deny any application for, or refuse to renew, revoke, suspend or*  
8 *modify the provisions of any license, permit or certificate issued pursuant*  
9 *to this act if applicant or holder of such license, permit or certificate has*  
10 *failed to comply with:*

11 (a) ~~Any provision or requirement of this act or any rule or regulation~~  
12 ~~adopted hereunder; or~~

13 (b) ~~any laws, rules or regulations of any other state, or the United~~  
14 ~~States, relating to licensing of live plant dealers, plant pests, plants or~~  
15 ~~plant products or commodity certification; or~~

16 (c) ~~had any license, certificate or permit issued by any other state, or~~  
17 ~~the United States, related to the licensing of live plant dealers, plant~~  
18 ~~pests, plants or plant products revoked, suspended or modified.~~

19 Sec. 8. K.S.A. 2010 Supp. 2-2123 is hereby amended to read as  
20 follows: 2-2123. It shall be unlawful to deliver, transport or ship into or  
21 within this state live plants or other regulated articles which are not in  
22 compliance with the provisions of this act.

23 (a) Any such live plants intended for resale and any such live plants  
24 transported by public carriers ~~old, delivered, transported or shipped into~~  
25 ~~or within this state by a live plant dealer shall have attached to each~~  
26 ~~quantity or package be accompanied by a tag, or label, itemized bill of~~  
27 ~~lading, receipt or other document on which shall appear the name and~~  
28 ~~address of the consigner or shipper, a description of the contents and the~~  
29 ~~place of origin. Live plants brought into the state under a document, as~~  
30 ~~required by this section, may be sold and moved under a valid Kansas~~  
31 ~~live plant dealer license, and this shall not preclude inspection by the~~  
32 ~~secretary at any time within the state.~~

33 (b) ~~All live plants and regulated articles shipped or moved into this~~  
34 ~~state shall be accompanied by a copy of a valid document~~  
35 ~~documentation issued by the proper official of the state, territory, district or country from~~  
36 ~~which it was shipped, or moved sent, or brought showing that such live~~  
37 ~~plants or regulated articles are in compliance with Kansas quarantines~~  
38 ~~and regulated nonquarantine pest freedom standards as established by the~~  
39 ~~secretary.~~

40 ~~Live plants brought into the state under a document, as required by~~  
41 ~~this section, may be sold and moved under a valid Kansas live plant~~  
42 ~~dealer license, and this shall not preclude inspection by the secretary at~~  
43 ~~any time within the state.~~

44 (c) Electronic or mail order sales of live plants are subject to the  
45 provisions of this act. All regulated articles shipped or moved into Kansas  
46 shall be accompanied by valid documentation issued by the proper

**Comment [k16]:** Strike

**Comment [k17]:** "Failed to comply with any provision..."

**Comment [k18]:** "Failed to comply with any laws..."

**Comment [k19]:** Strike "or", replace with a comma

1 official of the state, territory, district or county [country] from which it  
2 was shipped or moved showing that the regulated article is in compliance  
3 with Kansas quarantines or pest freedom standards, or both, established  
4 for such article.

5 Sec. 9. K.S.A. 2010 Supp. 2-2124 is hereby amended to read as  
6 follows: 2-2124. (a) It shall be a violation of this act for any person to:

7 (a)(1)

8 ~~To~~ sell, barter, offer, for sale, or move, transport, deliver, ship  
9 or offer for shipment into or within this state any plant  
10 pests in any living stage without first obtaining approval  
11 for such shipment from the secretary

12 (b)(2)

13 ~~to~~ hinder or prevent the secretary from carrying out his or  
14 her duties under this act

15 (c)(3)

16 ~~to~~ fail to carry out the treatment or destruction of any pl  
17 ant pest or regulated article in accordance with official noti  
18 fication from the secretary

19 (d)(4)

20 ~~to~~ sell, transport, deliver, distribute, offer, or expose for sale  
21 live plants which are not in compliance with the provisions  
22 of this act

23 (e)(5)

24 ~~to~~ use an invalid  
25 suspended or revoked certificate of inspection  
26 permit or live plant dealer license, in the sale or distributi  
27 on of live plants

Comment [k20]: Need to add "to engage in business as a live plant dealer and "before the use"

28 (f)(6)

29 ~~to~~ fail to comply with any of the provisions of this act  
30 or the rules and regulations promulgated ~~adopted~~ hereunder

Comment [k21]: Strike

31 (g)(7)

32 ~~to~~ knowingly move any regulated article into or  
33 within this state from a quarantined area of any other  
34 state when such article has not been treated or handled as  
35 provided by the requirements of said quarantine at the po  
36 int of origin of such article

36 (b) Each day a violation of this act occurs or continues shall  
37 constitute a separate violation.

38 (c) The district court shall have jurisdiction over violations of this  
39 act or rules and regulations adopted hereunder. Such court may issue  
40 orders, including, but not limited to, temporary restraining orders,  
41 without first requiring proof that an adequate remedy at law does not  
42 exist. Any such orders shall be issued without bond. Such orders may be  
43 instituted prior to the initiation of any criminal, administrative or civil  
44 penalty proceedings.

Comment [k22]: Strike

45 Sec. 10. K.S.A. 2010 Supp. 2-2125 is hereby amended to read as  
46 follows: 2-2125. (a) Any person ~~who intentionally~~ violating ~~violates~~ any

Comment [k23]: Replace with issued.

1 of the provisions of ~~subsection (a)(1), (a)(3), (a)(4), (a)(5) or (a)(7) of~~  
 2 ~~K.S.A. 2-2124, and amendments thereto,~~ this act shall be deemed guilty of  
 3 a misdemeanor and upon conviction shall be punished by a fine of not  
 4 less than \$25 nor more than \$500. ~~severity level 7, nonperson felony.~~

5 ~~(b) A person who violates subsection (a)(2) or (a)(6) of K.S.A. 2-~~  
 6 ~~2124, and amendments thereto, shall be guilty of a class A nonperson~~  
 7 ~~misdemeanor.~~

8 (b)(c) The secretary, after providing notice and opportunity for a  
 9 hearing, in accordance with the Kansas administrative procedure act,  
 10 may assess a civil penalty against any person who violates or fails to  
 11 comply with the requirements of this act, or any rules or regulations  
 12 adopted hereunder, of not less than \$100 nor more than \$1,000\$5000 per  
 13 offense. violation. In the case of a continuing offense, each day the  
 14 violation continues may be deemed a separate violation. A separate civil  
 15 penalty may be assessed for each separate violation. Such civil penalty  
 16 may be assessed in addition to any other penalty provided by law. Such  
 17 assessment shall be made in accordance with the Kansas administrative  
 18 procedure act.

19 Sec. 11. K.S.A. 2010 Supp. 2-2126 is hereby amended to read as  
 20 follows: 2-2126. The secretary shall promulgateadopt, amend and repeal  
 21 such rules and regulations as, in the discretion of the secretary, are  
 22 necessary for the efficient executionadministration and enforcement of  
 23 the provisions of this act.

24 Sec. 12. K.S.A. 2010 Supp. 2-2128 is hereby amended to read as  
 25 follows: 2-2128. (a) The secretary shall remit all moneys received by or  
 26 for the secretary under article 21 of chapter 2 of Kansas Statutes  
 27 Annotated, and amendments thereto, to the state treasurer in accordance  
 28 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon  
 29 receipt of each such remittance, the state treasurer shall deposit the entire  
 30 amount in the state treasury to the credit of the entomologyplant  
 31 protection fee fund. All expenditures from such fund shall be made in  
 32 accordance with appropriation acts upon warrants of the director of  
 33 accounts and reports issued pursuant to vouchers approved by the  
 34 secretary of agriculture or by a person or persons designated by the  
 35 secretary.

36 (b) The entomology fee fund is hereby redesignated the plant  
 37 protection fee fund.

38 Sec. 13. K.S.A. 2010 Supp. 2-2129 is hereby amended to read as  
 39 follows: 2-2129. (a) There is hereby created a plant pest emergency  
 40 response fund in the state treasury. Such fund shall be funded by a fee  
 41 assessed in addition to the fees assessed a live plant dealer under article  
 42 21 of chapter 2 of the Kansas Statutes Annotated. The additional fee shall  
 43 be fixed by rule and regulation promulgated by the secretary of  
 44 agriculture, except that such additional fee shall not exceed \$5 annually  
 45 on each live plant dealer license. The secretary is authorized and  
 46 empowered to collect the fees provided in this section. ~~When the total~~

Comment [k24]: Strike



1 amount of fees deposited in the fund is equal to or exceeds \$15,000, the  
2 secretary shall not collect any such fees as provided in this section. When  
3 expenditures made from the fund result in the total amount of the fees  
4 deposited in the fund to be less than \$15,000, the secretary may resume  
5 the assessment and collection of such fees as provided in this section.

6 (b) The secretary is authorized and empowered to make  
7 expenditures from the plant pest emergency response fund and that in the  
8 discretion of the secretary mitigate pests that have been identified by the  
9 secretary as high risk pests having the potential to damage agriculture,  
10 horticulture or the environment. Such expenditures may include the costs  
11 of enforcement to protect against high risk pests identified by the  
12 secretary. All expenditures from such fund shall be made in accordance  
13 with appropriation acts upon warrants of the director of accounts and  
14 reports issued pursuant to vouchers approved by the secretary or by a  
15 designee of the secretary.

Comment [k25]: Strike

16 (c) The plant pest emergency response fund shall be a fund separate  
17 and distinct from the entomology plant protection fee fund referred to in  
18 K.S.A. 2-2128, and amendments thereto.

19 (d) The provisions of this section shall be part of and supplemental  
20 to this act.

21 Sec. 14. K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117, 2-2118,  
22 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 2-2129 are  
23 hereby repealed.

24 Sec. 15. This act shall take effect and be in force from and after its  
25 publication in the statute book.

26  
27