

HOUSE BILL No. 2312

By Committee on Water and Environment

2-8

1 AN ACT concerning agriculture; relating to administrative procedure;
2 division of water resources; fertilizer; amending K.S.A. 2016 Supp. 2-
3 1201b, 2-1201c, 2-1208a, 82a-737 and 82a-1901 and repealing the
4 existing sections; also repealing K.S.A. 2016 Supp. 82a-1902.

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

7 Section 1. K.S.A. 2016 Supp. 2-1201b is hereby amended to read as
8 follows: 2-1201b. (a) It shall be deemed a violation of K.S.A. 2-1201 and
9 2-1201a, and amendments thereto, for any person to: (1) Sell or distribute
10 in this state any custom blended fertilizer when such person does not hold
11 a valid license as required by this act; or (2) fail to comply with the
12 requirements of K.S.A. 2-1201a, and amendments thereto, and, except as
13 otherwise provided, the provisions of K.S.A. 2-1208, and amendments
14 thereto. Failure to comply with the provisions of ~~subsection (1)(a) of~~
15 K.S.A. 2-1208(1)(a), and amendments thereto, shall not be deemed a
16 violation of this section. The penalties as provided in K.S.A. 2-1208, and
17 amendments thereto, shall apply to persons as described in this section
18 who fail to comply with the provisions of K.S.A. 2-1208, and amendments
19 thereto.

20 (b) On and after July 1, 2003, any person or custom blender who
21 violates any provision of article 12 of chapter 2 of Kansas Statutes
22 Annotated, and amendments thereto, or the rules and regulations adopted
23 pursuant thereto, *after notice and opportunity for a hearing in accordance*
24 *with the provisions of the Kansas administrative procedure act*, may incur
25 a civil penalty in an amount not more than \$5,000 per violation. In the case
26 of a continuing violation, every day such violation continues may be
27 deemed a separate violation. Such civil penalty may be assessed in
28 addition to any other penalty provided by law. Any *order issued by the*
29 *secretary assessing a civil penalty* ~~assessed~~ pursuant to this subsection is
30 subject to review in accordance with the Kansas judicial review act. The
31 secretary shall remit any civil penalty collected pursuant to this act to the
32 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
33 amendments thereto. Upon receipt of each such remittance, the state
34 treasurer shall deposit the entire amount in the state treasury to the credit
35 of the state general fund.

36 Sec. 2. K.S.A. 2016 Supp. 2-1201c is hereby amended to read as

1 follows: 2-1201c. (a) Ammonium nitrate dealers shall register with the
2 secretary of agriculture. Registration shall be required for each business
3 location selling ammonium nitrate. Each registration shall expire on
4 December 31 following issuance unless the registration is renewed
5 annually. A registration fee not to exceed \$25 shall accompany the
6 application for registration for any ammonium nitrate dealer that is not
7 registered as a custom blender, if the fee is fixed by the secretary in rules
8 and regulations.

9 (b) Ammonium nitrate storage shall be secured to provide reasonable
10 protection against vandalism, theft and unauthorized access.

11 (c) Ammonium nitrate dealers shall obtain the following regarding
12 any sale of ammonium nitrate:

13 (1) Date of sale;

14 (2) quantity purchased;

15 (3) license number of the purchaser's valid state or federal driver's
16 license or other picture identification card number deemed acceptable by
17 the secretary in rules and regulations;

18 (4) the purchaser's name, current physical address and telephone
19 number;

20 (5) if the ammonium nitrate is received to a person other than the
21 purchaser, the name, current physical address, telephone number and
22 license number of that person's valid state or federal driver's license or
23 other picture identification card number deemed acceptable by the
24 secretary in rules and regulations; and

25 (6) the physical address of the person to whom the ammonium nitrate
26 is delivered if different than the physical address of the purchaser.

27 (d) Ammonium nitrate dealers shall maintain records of all
28 information required to be obtained pursuant to subsection (c) for a
29 minimum of three years. The records shall be subject to inspection upon
30 request by the secretary of agriculture or the secretary's designee.

31 (e) Ammonium nitrate dealers may refuse to sell to any person
32 attempting to purchase ammonium nitrate out of season, in unusual
33 quantities or under suspect purchase patterns.

34 (f) In addition to any other penalties provided by law, each
35 ammonium nitrate dealer registration shall be subject to denial, suspension
36 or revocation ~~pending~~, *after notice and opportunity for a hearing* in
37 accordance with the provisions of the Kansas administrative procedure act,
38 for any violation of this act whether committed by the dealer or by the
39 dealer's officers, agents or employees.

40 (g) The provisions of this section are part of and supplemental to
41 article 12 of chapter 2 of the Kansas Statutes Annotated, and amendments
42 thereto.

43 Sec. 3. K.S.A. 2016 Supp. 2-1208a is hereby amended to read as

1 follows: 2-1208a. ~~(a) If it shall appear to the secretary or an authorized~~
2 ~~representative of the secretary from examination or analysis of an official~~
3 ~~sample of a commercial fertilizer that the commercial fertilizer is falsely~~
4 ~~labeled or fails to comply with the provisions of this act, the secretary shall~~
5 ~~cause notice to be given to the person in possession of the commercial~~
6 ~~fertilizer and the registrant that a hearing in relation thereto will be held at~~
7 ~~a date and place named in such notice. Whereupon the secretary or a~~
8 ~~presiding officer from the office of administrative hearings shall hold a~~
9 ~~hearing in accordance with the provisions of the Kansas administrative~~
10 ~~procedure act.~~

11 (b) ~~If it is established at the hearing to the satisfaction of the secretary~~
12 ~~or a presiding officer from the office of administrative hearings, that any~~
13 ~~commercial fertilizer has been registered in error, or has been sold in~~
14 ~~violation of any of the provisions of this act, or that any provision of this~~
15 ~~act has been violated, the secretary shall have power to cancel the~~
16 ~~registration of such brand or brands of commercial fertilizer, and after~~
17 ~~notice and opportunity for a hearing in accordance with the Kansas~~
18 ~~administrative procedure act. The secretary may report the facts, the~~
19 ~~results of any analysis or other examination and the record of any~~
20 ~~proceedings to the proper prosecuting attorney and furnish that officer~~
21 ~~with an official report of the record of such hearing and a copy of the~~
22 ~~result of any analysis or other examination which may have a bearing on~~
23 ~~the case. Prosecution may be instituted under the provisions of this act in~~
24 ~~the district court of the county where the offense is alleged to have been~~
25 ~~committed, upon complaint of the secretary or an authorized representative~~
26 ~~of the secretary or any citizen of this state, or by any county attorney and~~
27 ~~shall be prosecuted by the county attorney in the name of the state of~~
28 ~~Kansas.~~

29 Sec. 4. K.S.A. 2016 Supp. 82a-737 is hereby amended to read as
30 follows: 82a-737. (a) As used in this section:

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

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

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

36 (1) Any violation of the Kansas water appropriation act (, K.S.A. 82a-
37 701 et seq., and amendments thereto), or any rule and regulation adopted
38 thereunder;

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

42 (3) any violation of a term, condition or limitation imposed by the
43 chief engineer as authorized by law, including, but not limited to: (A)

1 Diversion of water from an unauthorized point of diversion; (B) failure to
2 limit the use of water to the authorized place of use; (C) failure to submit
3 or comply with the terms of conservation plans as required pursuant to
4 K.S.A. 82a-733, and amendments thereto; (D) failure to comply with the
5 maximum annual quantity or rate of diversion authorized; (E) failure to
6 properly install, maintain or assure the accuracy of acceptable water
7 measurement devices; (F) failure to comply with orders related to
8 minimum desirable stream flow, unlawful diversion, impairment of senior
9 water rights or waste of water; or (G) failure to limit the use of water to an
10 authorized type of use.

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

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

21 (e) No civil penalty or suspension or modification of a water right or
22 use of water shall be imposed pursuant to this section except on the written
23 order of the chief engineer or duly authorized agent of the chief engineer.
24 Such order shall state the nature of the violation, the factual basis for the
25 finding, the penalty to be imposed and the appropriate procedure for
26 appeal of the order to the chief engineer or the secretary, as established by
27 K.S.A. 2016 Supp. 82a-1901, and amendments thereto. ~~Upon review, the
28 order shall be affirmed, reversed or modified and the reasons therefor shall
29 be specified.~~

30 (f) Any person aggrieved by an order of the chief engineer, or the
31 chief engineer's duly authorized agent, pursuant to this section may request
32 *a hearing or review* ~~by the secretary~~ as provided by K.S.A. 2016 Supp.
33 82a-1901, and amendments thereto, and, upon exhaustion of
34 administrative remedies, may appeal to the district court in the manner
35 provided by the Kansas judicial review act.

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

38 Sec. 5. K.S.A. 2016 Supp. 82a-1901 is hereby amended to read as
39 follows: 82a-1901. (a) Orders of the chief engineer of the division of water
40 resources of the department of agriculture pursuant to K.S.A. ~~42-703, 42-~~
41 ~~722, 42-722a,~~ 82a-708b; ~~and 82a-711, 82a-718 and amendments thereto,~~
42 ~~and K.S.A. 2016 Supp. 82a-737 and 82a-770, and 82a-1038 and K.S.A.~~
43 ~~2016 Supp. 82a-1041, and amendments thereto, and failure of the chief~~

1 engineer to act pursuant to K.S.A. 82a-714, and amendments thereto, shall
2 be subject, *upon timely request within 15 days of service of the order*
3 *pursuant to K.S.A. 77-531, and amendments thereto, or the chief*
4 *engineer's failure to act timely pursuant to K.S.A. 82a-714, and*
5 *amendments thereto, to review an administrative hearing by a hearing*
6 *officer designated according to subsection (b) and otherwise in accordance*
7 *with the provisions of the Kansas administrative procedure act.*

8 ~~Such review shall be conducted by the secretary of agriculture or a~~
9 ~~presiding officer from the office of administrative hearings within the~~
10 ~~department of administration. The secretary of agriculture shall not have~~
11 ~~the authority otherwise to designate a presiding officer to conduct such~~
12 ~~review unless at the party's request pursuant to K.S.A. 75-37,121, and~~
13 ~~amendments thereto.~~

14 ~~(b) The order of the secretary of agriculture or the administrative law~~
15 ~~judge or presiding officer upon review pursuant to subsection (a) shall be a~~
16 ~~final order under the Kansas administrative procedure act. Such order shall~~
17 ~~not be subject to reconsideration pursuant to K.S.A. 77-529, and~~
18 ~~amendments thereto, and shall be subject to review in accordance with the~~
19 ~~Kansas judicial review act. The chief engineer shall provide an~~
20 ~~opportunity for a hearing to be conducted before the chief engineer or~~
21 ~~before a hearing officer appointed by the chief engineer. Such hearing~~
22 ~~officer shall not be a current employee of the department of agriculture,~~
23 ~~shall be licensed as an attorney in this state and shall be knowledgeable in~~
24 ~~the areas of water policies and administrative procedure. Such hearing~~
25 ~~officer, as directed by the chief engineer, shall either provide~~
26 ~~recommendations to the chief engineer for issuance of an initial order or~~
27 ~~issue an initial order.~~

28 (c) *Orders of the chief engineer of the division of water resources of*
29 *the department of agriculture issued pursuant to K.S.A. 42-703, 42-722,*
30 *42-722a, 82a-708b, 82a-711 and 82a-718, and amendments thereto, and*
31 *K.S.A. 2016 Supp. 82a-737, 82a-770, 82a-1038 and 82a-1041, and*
32 *amendments thereto, regardless of whether the order is deemed an initial*
33 *order pursuant to K.S.A. 77-526, and amendments thereto, and failure of*
34 *the chief engineer to act pursuant to K.S.A. 82a-714, and amendments*
35 *thereto, and any order issued pursuant to subsection (b), shall be subject,*
36 *upon timely request within 30 days of service of the order pursuant to*
37 *K.S.A. 77-531, and amendments thereto, or the chief engineer's failure to*
38 *act timely pursuant to K.S.A. 82a-714, and amendments thereto, to review*
39 *by the secretary of agriculture pursuant to K.S.A. 77-527, and*
40 *amendments thereto, and otherwise in accordance with the provisions of*
41 *the Kansas administrative procedure act.*

42 (d) *Any final order of the department of agriculture issued pursuant*
43 *to this section shall not be subject to reconsideration pursuant to K.S.A.*

1 *77-529, and amendments thereto.*

2 (e) This act shall not affect any administrative proceeding pending
3 before the chief engineer of the division of water resources of the
4 department of agriculture, the secretary of agriculture or any
5 administrative hearing officer on July 1, ~~1999~~ 2017, and such matter shall
6 proceed as though no change in the law had been made with regard to such
7 proceeding.

8 Sec. 6. K.S.A. 2016 Supp. 2-1201b, 2-1201c, 2-1208a, 82a-737, 82a-
9 1901 and 82a-1902 are hereby repealed.

10 Sec. 7. This act shall take effect and be in force from and after its
11 publication in the statute book.