

As Amended by House Committee

{As Amended by Senate Committee of the Whole}

As Amended by Senate Committee

Session of 2013

SENATE BILL No. 147

By Committee on Agriculture

2-6

1 AN ACT concerning agriculture; relating to fertilizers; anhydrous
2 ammonia; permits; fees; liability insurance requirement; affidavit;
3 anhydrous ammonia fee fund; amending K.S.A. 2-1212 and 2-1217 and
4 K.S.A. 2012 Supp. 2-1220 and repealing the existing sections.

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

7 **New Section 1. K.S.A. 2-1212 through 2-1220, and amendments**
8 **thereto, and sections 1 through 3, and amendments thereto, shall be**
9 **known as the anhydrous ammonia regulation act.**

10 New ~~Section 1.~~ **Sec. 2.** (a) Beginning January 1, 2014, and annually
11 thereafter, each tank applying, holding, storing or transporting anhydrous
12 ammonia in the state shall be required to have a permit to fill issued by the
13 secretary.

14 (1) Anhydrous ammonia tank owners shall submit to the secretary an
15 application, on forms provided by the secretary, for a permit to fill each
16 tank. ~~Such application shall require such owner to provide proof of a~~
17 ~~certificate of liability insurance, as provided in subsection (f).~~

18 (2) A permit to fill shall be valid from January 1 to December 31 of
19 each calendar year. There shall be no charge for such permit, except that
20 the secretary may charge a late fee for any owner of a tank renewing a
21 permit to fill such tank after February 1 of each year.

22 (b) No supplier, distributor or service company shall cause any tank
23 to be filled with anhydrous ammonia within this state unless such tank
24 displays a current permit to fill from the secretary.

25 (c) Any anhydrous ammonia tank placed into service in this state on
26 and after July 1, 2013, shall have appropriate affixed data plates, stamps or
27 markings or the owner shall have manufacturer or testing documents
28 meeting national or industry standards that indicate that such tank is rated
29 to hold contents under a working pressure of 250 pounds per square inch
30 or greater.

31 (d) The secretary shall create a policy to remove current anhydrous
32 ammonia tanks from service that do not meet the standards, as established

1 by the secretary in rules and regulations, or that do not have attached data
2 plates, stamps or marking or for which the owner does not have
3 manufacturer or testing documents meeting national or industry standards
4 that indicates that such tank is rated to hold content under a working
5 pressure of 250 pounds per square inch.

6 (e) All persons or businesses providing, selling or exposing for sale,
7 storing or holding anhydrous ammonia shall ~~carry liability insurance in an~~
8 ~~amount sufficient to provide coverage for reasonably anticipated losses~~
9 ~~and shall submit to any inspections of such business by the provider of~~
10 ~~such coverage *have anhydrous tanks inspected annually by inspectors*~~
11 ~~*approved by the secretary as qualified to perform such inspections.*~~ **carry**
12 **liability insurance in an amount sufficient to provide coverage for**
13 **reasonably anticipated losses and shall submit to any inspections of**
14 **such business by the provider of such coverage.** Inspection reports shall
15 be maintained at the facility or owner's place of business for a period of
16 not less than five years and shall be made available, upon request, to the
17 secretary or duly authorized representatives of the secretary, pursuant to
18 K.S.A. 2-1217, and amendments thereto.

19 (f) Each anhydrous ammonia tank owner shall furnish to the secretary
20 proof of financial responsibility ~~in the form of a certificate of liability~~
21 ~~insurance conforming to the requirements of this section before a permit to~~
22 ~~fill shall be issued by the secretary.~~ Such certificate of liability insurance
23 shall be executed by an insurance company authorized to do business in
24 this state or by a licensed insurance agent operating under the authority of
25 K.S.A. 40-246b, and amendments thereto, on a form provided by the
26 secretary, and shall state the effective date and the expiration date of such
27 liability insurance.

28 (1) ~~Such liability insurance shall be subject to the insurer's policy~~
29 ~~provisions filed with and approved by the commissioner of insurance~~
30 ~~pursuant to K.S.A. 40-216, and amendments thereto, except as authorized~~
31 ~~by K.S.A. 40-246b, and amendments thereto.~~

32 (2) ~~The liability insurance policy shall provide: (A) Coverage for~~
33 ~~bodily injury liability for each occurrence; and (B) coverage for property~~
34 ~~damage liability for each occurrence.~~

35 (3) ~~The insurer shall notify the secretary, in writing, of any expiration,~~
36 ~~reduction or cancellation of liability insurance, furnished as a prerequisite~~
37 ~~of receiving such a permit to fill not later than 10 days before the~~
38 ~~expiration, reduction or cancellation takes effect. Upon expiration,~~
39 ~~reduction or cancellation of such liability insurance, the secretary shall~~
40 ~~suspend such anhydrous ammonia tank permit to fill until the liability~~
41 ~~insurance requirement is met by the permittee for the current permit period~~
42 **in the form of a certificate of liability insurance conforming to the**
43 **requirements of this section before a permit to fill shall be issued by**

1 the secretary. Such certificate of liability insurance shall be executed
2 by an insurance company authorized to do business in this state or by
3 a licensed insurance agent operating under the authority of K.S.A. 40-
4 246b, and amendments thereto, on a form provided by the secretary,
5 and shall state the effective date and the expiration date of such
6 liability insurance.

7 (1) Such liability insurance shall be subject to the insurer's policy
8 provisions filed with and approved by the commissioner of insurance
9 pursuant to K.S.A. 40-216, and amendments thereto, except as
10 authorized by K.S.A. 40-246b, and amendments thereto.

11 (2) The liability insurance policy shall provide: (A) Coverage for
12 bodily injury liability for each occurrence; and (B) coverage for
13 property damage liability for each occurrence.

14 (3) The insurer shall notify the secretary, in writing, of any
15 expiration, reduction or cancellation of liability insurance, furnished
16 as a prerequisite of receiving such a permit to fill not later than 10
17 days before the expiration, reduction or cancellation takes effect.
18 Upon expiration, reduction or cancellation of such liability insurance,
19 the secretary shall suspend such anhydrous ammonia tank permit to
20 fill until the liability insurance requirement is met by the permittee for
21 the current permit period.

22 (g) *The secretary shall develop rules and regulations that recognize*
23 *governmental and other business self-insurance programs and utility*
24 *companies, railroads and transportation companies that comply with*
25 *and are inspected under federal regulations of anhydrous ammonia.*

26 (h) The secretary:

27 (1) Shall annually inspect the anhydrous ammonia tanks of any
28 anhydrous ammonia tank owner whose tanks are not annually
29 inspected by such owner's liability insurance provider and are not
30 inspected under federal regulations pursuant to subsection (g); and

31 (2) may inspect the anhydrous ammonia tanks of any anhydrous
32 ammonia tank owner upon receiving a complaint that such owner is
33 violating the provisions of the anhydrous ammonia regulation act.

34 ~~(g) (h) The secretary may inspect, upon complaint, and may levy civil~~
35 ~~penalties for filling anhydrous ammonia tanks without appropriate permits~~
36 ~~or anhydrous ammonia tanks that, upon complaint, are found not to~~
37 ~~comply with any safety standards adopted by the secretary in rules and~~
38 ~~regulations and for other acts in violation of this section.~~ (i) Any person
39 who violates any provision of this section or article 12 of chapter 2 of the
40 Kansas Statutes Annotated, and amendments thereto, may incur a civil
41 penalty in an amount of not more than \$5,000 for each violation. In the
42 case of a continuing violation, each day such violation continues may be
43 deemed a separate violation. Such civil penalty may be assessed in

1 addition to any other penalty provided by law. Any civil penalty assessed
2 pursuant to this subsection is subject to review in accordance with the
3 Kansas judicial review act. The secretary shall remit any civil penalty
4 collected pursuant to this subsection to the state treasurer in accordance
5 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
6 receipt of each such remittance, the state treasurer shall deposit the entire
7 amount in the state treasury to the credit of the state general fund.

8 ~~(j)~~ **(j) *The provisions of this section shall not apply to motor***
9 ***carriers transporting anhydrous ammonia in a cargo tank subject to the***
10 ***requirements of 49 C.F.R. § 173.315 as in effect on February 1, 2013,***
11 ***with capacities in excess of 3,500 water gallons.***

12 ***"Motor carrier" means any person that holds a certificate of public***
13 ***service or a private carrier permit from the state corporation***
14 ***commission, or is required to register motor carrier equipment pursuant***
15 ***to 49 U.S.C. § 14504a and has a current hazardous materials safety***
16 ***permit issued by the federal motor carrier safety administration of the***
17 ***United States department of transportation as required by 49 C.F.R. §***
18 ***395 subpart E as in effect on February 1, 2013.***

19 ~~(k)~~ **(k) *No motor carrier shall cause any tank to be filled with***
20 ***anhydrous ammonia from such cargo tank within this state unless such***
21 ***tank displays a current permit to fill from the secretary.***

22 ~~(h)~~ ~~(l)~~ **(l) *The section shall be part of and supplemental to article 12***
23 ***of chapter 2 of the Kansas Statutes Annotated, and amendments thereto.***
24 ***the anhydrous ammonia regulation act.***

25 New Sec. ~~2~~ **3.** (a) An anhydrous ammonia fee, fixed by rules and
26 regulations adopted by the secretary, shall be collected upon all
27 commercial anhydrous ammonia sold, offered or exposed for sale or
28 distributed in Kansas, which shall be at a rate per ton of 2,000 pounds,
29 except that such rate shall not exceed \$1.67 per ton of 2,000 pounds.

30 (b) Each seller of commercial anhydrous ammonia shall register with
31 the secretary on a form provided by the secretary and shall pay the fee on
32 such commercial anhydrous ammonia sold, offered or exposed for sale or
33 distributed in the state. Such seller shall keep adequate records showing
34 the tonnage of commercial anhydrous ammonia shipped to or sold, offered
35 or exposed for sale or distributed in the state. The secretary, and duly
36 authorized representatives of the secretary, shall have authority to examine
37 such records and other pertinent records necessary to verify the amount of
38 anhydrous ammonia sold.

39 (c) Each seller of commercial anhydrous ammonia shall file an
40 affidavit semiannually, with the secretary within 30 days after each
41 January 1 and each July 1, showing the tonnage of anhydrous ammonia
42 sold or distributed in the state for the preceding six-month period.

43 (1) If such affidavit is not filed or such anhydrous ammonia fee is not

1 paid within the 30-day period, or if the report of tonnage is false, the
2 secretary may revoke the registrations filed by such person.

3 (2) The secretary may grant a reasonable extension of time for the
4 filing of such affidavit and payment of such fee.

5 (3) If such affidavit is not filed or such fee is not paid within the 30-
6 day period provided in this subsection, or any extension thereof granted by
7 the secretary, a penalty of \$25 per day shall be assessed against the
8 registrant and such fee and such penalty shall constitute a debt and become
9 the basis for a judgment against such person.

10 (d) The secretary shall remit all moneys received by or for the
11 secretary under this section to the state treasurer in accordance with the
12 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
13 each such remittance, the state treasurer shall deposit the entire amount in
14 the state treasury and shall credit such remittance as follows: An amount
15 equal to \$1.40 per ton of 2,000 pounds shall be credited to the state water
16 plan fund created by K.S.A. 82a-951, and amendments thereto, and the
17 remainder shall be credited to the anhydrous ammonia fee fund, which is
18 hereby created in the state treasury. All expenditures from the anhydrous
19 ammonia fee fund shall be made in accordance with appropriation acts
20 upon warrants of the director of accounts and reports issued pursuant to
21 vouchers approved by the secretary or by a person or persons designated
22 by the secretary.

23 (e) The provisions of this section shall not apply to anhydrous
24 ammonia sold, offered or exposed for sale, or distributed in the state as a
25 commercial fertilizer, for which a fee is paid pursuant to K.S.A. 2-1205,
26 and amendments thereto.

27 (f) This section shall be part of and supplemental to article 12 of
28 chapter 2 of the Kansas Statutes Annotated, and amendments thereto.

29 ~~Sec. 3.~~ **4.** K.S.A. 2-1212 is hereby amended to read as follows: 2-
30 1212. The ~~board~~ *secretary* is authorized and directed to ~~make and~~
31 *promulgate rules and regulations*:

32 (a) For the safe handling, storage and transportation of anhydrous
33 ammonia *within this state for any purpose*;

34 (b) for establishment of minimum general safety standards covering
35 the design, construction, location, installation and operation of equipment
36 for the storage, handling and transportation of such product by tank truck,
37 tank trailer, or otherwise, and for the utilization of anhydrous ammonia;
38 ~~and~~

39 (c) to modify and amend such *rules and regulations* to the end that
40 ~~said~~ *such* anhydrous ammonia shall be handled, stored and transported
41 with safety;

42 (d) ~~to effectuate the requirements of article 12 of chapter 2 of the~~
43 ~~Kansas Statutes Annotated, and amendments thereto~~ **provisions of the**

1 **anhydrous ammonia regulation act; and**

2 Said(e) ~~such rules and regulations~~ shall be such as are reasonably
3 necessary for the safety of the public and persons using such material.

4 Sec. ~~4~~ 5. K.S.A. 2-1217 is hereby amended to read as follows: 2-
5 1217. For the purposes of administering ~~this act article 12 of chapter 2 of~~
6 ~~the Kansas Statutes Annotated, and amendments thereto~~ **the provisions of**
7 **the anhydrous ammonia regulation act**, the administrative personnel and
8 employees of the department shall have the right to enter private property
9 and to inspect facilities and equipment. It shall be the duty of employees to
10 notify the owner or operator, of any anhydrous ammonia facility or
11 equipment, (1) Of any defect or deficiency in the construction, installation
12 or operation of any such facility or equipment, and (2) of any defect or
13 deficiency in the safety equipment or in the use thereof. The owner or
14 operator of such facility or equipment may be given a specified reasonable
15 time within which to comply with the rules and regulations. ~~the secretary,~~
16 ~~or an authorized representative of the secretary, may enter any premises~~
17 ~~or vehicle in or on which any anhydrous ammonia may be located or~~
18 ~~used for the purposes of trade, for the purpose of inspecting, testing and~~
19 ~~sealing or rejecting the same. Whoever hinders, obstructs or in any way~~
20 ~~interferes with the secretary or an authorized representative of the~~
21 ~~secretary, while in the performance of the inspection, shall be deemed~~
22 ~~guilty of a class C, nonperson misdemeanor. ~~(the administrative~~~~
23 ~~personnel and employees of the department~~ the secretary or the
24 secretary's designee shall have the right to enter private property where
25 an anhydrous ammonia tank, facility or equipment is located and ~~to~~
26 inspect such tanks, facilities and equipment during normal operating
27 hours.} {It shall be the duty of ~~employees~~ the secretary or the
28 secretary's designee to notify the owner or operator, of any anhydrous
29 ammonia facility or equipment; ~~(1) Of any defect or deficiency in the~~
30 ~~construction, installation, use or operation of any such facility or~~
31 ~~equipment; and (2) of any defect or deficiency in the safety equipment or~~
32 ~~in the use thereof.~~ **The owner or operator of such facility or equipment**
33 **may be given a specified reasonable time within which to comply with**
34 **the rules and regulations.}**

35 Sec. ~~5~~ 6. K.S.A. 2012 Supp. 2-1220 is hereby amended to read as
36 follows: 2-1220. Unless the context otherwise requires, as used in ~~this act~~
37 ~~article 12 of chapter 2 of the Kansas Statutes Annotated, and amendments~~
38 ~~thereto~~ **the anhydrous ammonia regulation act**, the following definitions
39 shall apply: (a) "Person" means any individual, any association of persons
40 or any corporation.

41 (b) "Anhydrous ammonia" and "product" means the compound
42 formed by the combination of the two gaseous elements, nitrogen and
43 hydrogen, in the proportion of one part nitrogen to three parts hydrogen (,

1 by volume), ~~and used or intended for use as an agricultural fertilizer.~~
2 Anhydrous ammonia is ammonia gas in compressed and liquefied form. It
3 does not include aqueous ammonia which is a solution of ammonia gas in
4 water.

5 (c) "Department" means the Kansas department of agriculture.

6 (d) "Secretary" means the secretary of agriculture ~~or the secretary's~~
7 *designee*.

8 ~~Sec. 6.~~ **7.** K.S.A. 2-1212 and 2-1217 and K.S.A. 2012 Supp. 2-1220
9 are hereby repealed.

10 ~~Sec. 7.~~ **8.** This act shall take effect and be in force from and after its
11 publication in the statute book.