

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. (a) Beginning January 1, 2014, and annually
8 thereafter, each tank applying, holding, storing or transporting anhydrous
9 ammonia in the state shall be required to have a permit to fill issued by the
10 secretary.

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

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

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

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

28 (d) The secretary shall create a policy to remove current anhydrous
29 ammonia tanks from service that do not meet the standards, as established
30 by the secretary in rules and regulations, or that do not have attached data
31 plates, stamps or marking or for which the owner does not have
32 manufacturer or testing documents meeting national or industry standards
33 that indicates that such tank is rated to hold content under a working
34 pressure of 250 pounds per square inch.

35 (e) All persons or businesses providing, selling or exposing for sale,
36 storing or holding anhydrous ammonia shall carry liability insurance in an

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Prepared by Mike Heim
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1 amount sufficient to provide coverage for reasonably anticipated losses
 2 and shall submit to any inspections of such business by the provider of
 3 such coverage. Inspection reports shall be maintained at the facility or
 4 owner's place of business for a period of not less than five years and shall
 5 be made available, upon request, to the secretary or duly authorized
 6 representatives of the secretary, pursuant to K.S.A. 2-1217, and
 7 amendments thereto.

8 (f) Each anhydrous ammonia tank owner shall furnish to the secretary
 9 proof of financial responsibility in the form of a certificate of liability
 10 insurance conforming to the requirements of this section before a permit to
 11 fill shall be issued by the secretary. Such certificate of liability insurance
 12 shall be executed by an insurance company authorized to do business in
 13 this state or by a licensed insurance agent operating under the authority of
 14 K.S.A. 40-246b, and amendments thereto, on a form provided by the
 15 secretary, and shall state the effective date and the expiration date of such
 16 liability insurance.

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

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

24 (3) The insurer shall notify the secretary, in writing, of any expiration,
 25 reduction or cancellation of liability insurance, furnished as a prerequisite
 26 of receiving such a permit to fill not later than 10 days before the
 27 expiration, reduction or cancellation takes effect. Upon expiration,
 28 reduction or cancellation of such liability insurance, the secretary shall
 29 suspend such anhydrous ammonia tank permit to fill until the liability
 30 insurance requirement is met by the permittee for the current permit
 31 period.

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

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

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

6 (4) The section shall be part of and supplemental to article 12 of
7 chapter 2 of the Kansas Statutes Annotated, and amendments thereto.

8 New Sec. 2. (a) An anhydrous ammonia fee, fixed by rules and
9 regulations adopted by the secretary, shall be collected upon all
10 commercial anhydrous ammonia sold, offered or exposed for sale or
11 distributed in Kansas, which shall be at a rate per ton of 2,000 pounds,
12 except that such rate shall not exceed \$1.67 per ton of 2,000 pounds.

13 (b) Each seller of commercial anhydrous ammonia shall register with
14 the secretary on a form provided by the secretary and shall pay the fee on
15 such commercial anhydrous ammonia sold, offered or exposed for sale or
16 distributed in the state. Such seller shall keep adequate records showing
17 the tonnage of commercial anhydrous ammonia shipped to or sold, offered
18 or exposed for sale or distributed in the state. The secretary, and duly
19 authorized representatives of the secretary, shall have authority to examine
20 such records and other pertinent records necessary to verify the amount of
21 anhydrous ammonia sold.

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

26 (1) If such affidavit is not filed or such anhydrous ammonia fee is not
27 paid within the 30-day period, or if the report of tonnage is false, the
28 secretary may revoke the registrations filed by such person.

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

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

36 (d) The secretary shall remit all moneys received by or for the
37 secretary under this section to the state treasurer in accordance with the
38 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
39 each such remittance, the state treasurer shall deposit the entire amount in
40 the state treasury and shall credit such remittance as follows: An amount
41 equal to \$1.40 per ton of 2,000 pounds shall be credited to the state water
42 plan fund created by K.S.A. 82a-951, and amendments thereto, and the
43 remainder shall be credited to the anhydrous ammonia fee fund, which is

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

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

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

1 hereby created in the state treasury. All expenditures from the anhydrous
2 ammonia fee fund shall be made in accordance with appropriation acts
3 upon warrants of the director of accounts and reports issued pursuant to
4 vouchers approved by the secretary or by a person or persons designated
5 by the secretary.

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

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

12 Sec. 3. K.S.A. 2-1212 is hereby amended to read as follows: 2-1212.
13 The board secretary is authorized and directed to make and promulgate
14 rules and regulations: (a) For the safe handling, storage and transportation
15 of anhydrous ammonia within this state for any purpose;

16 (b) for establishment of minimum general safety standards covering
17 the design, construction, location, installation and operation of equipment
18 for the storage, handling and transportation of such product by tank truck,
19 tank trailer, or otherwise, and for the utilization of anhydrous ammonia;
20 and

21 (c) to modify and amend such rules and regulations to the end that
22 said such anhydrous ammonia shall be handled, stored and transported
23 with safety;

24 (d) to effectuate the requirements of article 12 of chapter 2 of the
25 Kansas Statutes Annotated, and amendments thereto; and
26 said(e) such rules and regulations shall be such as are reasonably
27 necessary for the safety of the public and persons using such material.

28 Sec. 4. K.S.A. 2-1217 is hereby amended to read as follows: 2-1217.
29 For the purposes of administering this set article 12 of chapter 2 of the
30 Kansas Statutes Annotated, and amendments thereto, the administrative
31 personnel and employees of the department shall have the right to enter
32 private property and to inspect facilities and equipment. It shall be the duty
33 of employees to notify the owner or operator, of any anhydrous ammonia
34 facility or equipment, (1) Of any defect or deficiency in the construction,
35 installation or operation of any such facility or equipment, and (2) of any
36 defect or deficiency in the safety equipment or in the use thereof. The
37 owner or operator of such facility or equipment may be given a specified
38 reasonable time within which to comply with the rules and regulations.

39 Sec. 5. K.S.A. 2012 Supp. 2-1220 is hereby amended to read as
40 follows: 2-1220. Unless the context otherwise requires, as used in this set
41 article 12 of chapter 2 of the Kansas Statutes Annotated, and amendments
42 thereto, the following definitions shall apply: (a) "Person" means any
43 individual, any association of persons or any corporation.

1 (b) "Anhydrous ammonia" and "product" means the compound
2 formed by the combination of the two gaseous elements, nitrogen and
3 hydrogen, in the proportion of one part nitrogen to three parts hydrogen (,
4 by volume), ~~and used or intended for use as an agricultural fertilizer.~~
5 Anhydrous ammonia is ammonia gas in compressed and liquefied form. It
6 does not include aqueous ammonia which is a solution of ammonia gas in
7 water.

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

9 (d) "Secretary" means the secretary of agriculture *or the secretary's*
10 *designee.*

11 Sec. 6. K.S.A. 2-1212 and 2-1217 and K.S.A. 2012 Supp. 2-1220 are
12 hereby repealed.

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