



Kansas Motor Carriers Association

Trucking Solutions Since 1936

LEGISLATIVE TESTIMONY BY THE KANSAS MOTOR CARRIERS ASSOCIATION

Comments on Senate Bill No. 147

Presented to the Senate Federal & State Affairs Committee

Senator Ralph Ostmeyer, Chairman

Tuesday, February 19, 2013

MR. CHAIRMAN AND MEMBERS OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear before you this morning representing our 1,000 member companies and specifically those that transport anhydrous ammonia in certified and inspected cargo tanks with a capacity in excess of 3,500 water gallons.

HB 147 places additional cargo tank registration and insurance requirements on motor carriers transporting anhydrous ammonia. Currently motor carriers transporting anhydrous ammonia are required by the Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) to use a specific type of cargo tank known as a MC331. In addition, motor carriers operating this equipment must maintain liability insurance in the amount of \$5,000,000, have a Hazardous Materials Safety Permit issued by FMCSA, maintain a "satisfactory" safety rating from FMCSA, annually perform an external and internal inspection of the cargo tank, and every two years perform a hydrostatic test.

KMCA believes that Senate Bill No. 147 would duplicate requirements for these motor carriers. We have communicated our concerns to the Kansas Department of Agriculture and today we offer an amendment to SB 147 (see attached).

This amendment will remove motor carriers from the tank registration and insurance requirements while maintaining the requirement that anhydrous ammonia being transported shall only be unloaded into a permitted tank.

We asked the Committee to accept our amendment and recommend SB 147 favorably for passage as amended. Thank you for the opportunity to appear before you today. I would be pleased to answer any questions you may have.

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President

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Farmers Oil, Inc.
Chairman of the Board

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Beaver Express Service, LLC
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Inc
Allied Industries Chairman

Tom Whitaker
Executive Director

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

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 filing 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

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 (h) 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 CFR 173.315 as in effect on February 1, 2013, with capacities in excess of 3,500 water gallons.

(1) "motor carrier" means any person that holds a certificate of public service, private carrier permit from the state corporation commission, or is required to be registered 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 CFR 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 with in this state unless such tank displays a current permit to fill from the secretary.
 (h)-(j)

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 act 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 act
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.