

In addition, Sec. 39 amends a section of the county home rule law to prohibit counties from exercising their home-rule powers to exempt themselves from the other provisions of the bill. Sec. 45 amends the Kansas Corporate Farming Law to provide that, in the future, swine production facilities may be established in a county only after approval by the voters. The bill deleted the protest petition provision because the issue would be automatically submitted to the voters. Sec. 44 of the bill added an additional exception to the general prohibitions under the Kansas Corporate Farming Law. This exception allowed corporations and limited liability companies to acquire agricultural land for swine production facilities in those counties where voters have approved their establishment under the county option provision of the Kansas Corporate Farming Law as amended by the bill.

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**17-5902. Annual reports.** (a) All corporations and limited partnerships, as defined in K.S.A. 17-5903 and amendments thereto, which hold agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state, and which are required to make annual reports to the secretary of state shall provide the information required of such corporations and limited partnerships in the annual reports made under K.S.A. 17-7503, 17-7504, 17-7505, 56-1a606 or 56-1a607, and amendments thereto. The information required by this section does not apply to the following: (1) A tract of land of less than 10 acres, (2) contiguous tracts of land which in the aggregate are of less than 10 acres or (3) state assessed railroad operating property.

(b) Any person who shall knowingly submit, or who through the proper and due exercise of care and diligence should have known that any submission of information and statements required of corporations and limited partnerships subject to the provisions of this section are false or materially misleading, or who fails or refuses to submit such information and statements is guilty of a class A misdemeanor.

(c) The secretary of state shall keep a separate index of all corporations and limited partnerships subject to the provisions of this section.

**History:** L. 1973, ch. 99, § 2; L. 1981, ch. 107, § 1; L. 1983, ch. 88, § 71; L. 1986, ch. 96, § 1; May 8.

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**17-5903. Definitions.** As used in this act:

- (a) "Corporation" means a domestic or foreign corporation organized for profit or nonprofit purposes.
- (b) "Nonprofit corporation" means a corporation organized not for profit and which qualifies under section 501(c)(3) of the federal internal revenue code of 1986 as amended.
- (c) "Limited partnership" has the meaning provided by K.S.A. 56-1a01, and amendments thereto.
- (d) "Limited agricultural partnership" means a limited partnership founded for the purpose of farming and ownership of agricultural land in which:
  - (1) The partners do not exceed 10 in number;
  - (2) the partners are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and
  - (3) at least one of the general partners is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one partner is meeting the requirement of this provision and such partner dies, the requirement of this provision does not apply for the period of time that the partner's estate is being administered in any district court in Kansas.
- (e) "Corporate partnership" means a partnership, as defined in K.S.A. 56a-101, and amendments thereto, which has within the association one or more corporations or one or more limited liability companies.
- (f) "Feedlot" means a lot, yard, corral, or other area in which livestock fed for slaughter are confined. The term includes within its meaning agricultural land in such acreage as is necessary for the operation of the feedlot.
- (g) "Agricultural land" means land suitable for use in farming.
- (h) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming does not include the production of timber, forest products, nursery products or sod, and farming does not include a contract to provide spraying, harvesting or other farm services.
- (i) "Fiduciary capacity" means an undertaking to act as executor, administrator, guardian, conservator, trustee for a family trust, authorized trust or testamentary trust or receiver or trustee in bankruptcy.
- (j) "Family farm corporation" means a corporation:
  - (1) Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;
  - (2) all of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and
  - (3) at least one of the stockholders is a person residing on the farm or actively engaged in the labor or management of the farming operation. A stockholder who is an officer of any corporation referred to in this subsection and who is one of the related stockholders holding a majority of the voting stock shall be deemed to be actively engaged in the management of the farming corporation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.
- (k) "Authorized farm corporation" means a Kansas corporation, other than a family farm corporation, all of the incorporators of which are Kansas residents, family farm corporations or family farm limited liability agricultural companies or any combination thereof, and which is founded for the purpose of farming and the ownership of agricultural land in which:
  - (1) The stockholders do not exceed 15 in number; and
  - (2) the stockholders are all natural persons, family farm corporations, family farm limited liability agricultural companies or persons acting in a fiduciary capacity for the benefit of natural persons, family farm corporations, family farm limited liability agricultural companies or nonprofit corporations; and
  - (3) if all of the stockholders are natural persons, at least one stockholder must be a person residing on the farm or actively engaged in labor or management of the farming operation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.
- (l) "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact and in any similar capacity.
- (m) "Family trust" means a trust in which:
  - (1) A majority of the equitable interest in the trust is held by and the majority of the beneficiaries are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related; and
  - (2) all the beneficiaries are natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations.
- (n) "Authorized trust" means a trust other than a family trust in which:
  - (1) The beneficiaries do not exceed 15 in number;
  - (2) the beneficiaries are all natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations; and
  - (3) the gross income thereof is not exempt from taxation under the laws of either the United States or the State of Kansas.

For the purposes of this definition, if one of the beneficiaries dies, and more than one person succeeds, by bequest, to the deceased beneficiary's interest in the trust, all of such persons, collectively, shall be deemed to be one beneficiary, and a husband and wife, and their estates, collectively, shall be deemed to be one beneficiary.

(o) "Testamentary trust" means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Kansas probate code.

(p) "Poultry confinement facility" means the structures and related equipment used for housing, breeding, laying of eggs or feeding of poultry in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined poultry from exposure to disease. As used in this subsection, "poultry" means chickens, turkeys, ducks, geese or other fowl.

(q) "Rabbit confinement facility" means the structures and related equipment used for housing, breeding, raising, feeding or processing of rabbits in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined rabbits from exposure to disease.

(r) "Swine marketing pool" means an association whose membership includes three or more business entities or individuals formed for the sale of hogs to buyers but shall not include any trust, corporation, limited partnership or corporate partnership, or limited liability company other than a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust.

(s) "Swine production facility" means the land, structures and related equipment owned or leased by a corporation or limited liability company and used for housing, breeding, farrowing or feeding of swine. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production and to avoid nitrate buildup and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

(t) "Limited liability company" has the meaning provided by K.S.A. 17-7663, and amendments thereto.

(u) "Limited liability agricultural company" means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

(1) The members do not exceed 10 in number; and

(2) the members are all natural persons, family farm corporations, family farm limited liability agriculture companies, persons acting in a fiduciary capacity for the benefit of natural persons, family farm corporations, family farm limited liability agricultural companies or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and

(3) if all of the members are natural persons, at least one member must be a person residing on the farm or actively engaged in labor or management of the farming operation. If only one member is meeting the requirement of this provision and such member dies, the requirement of this provision does not apply for the period of time that the member's estate is being administered in any district court in Kansas.

(v) "Dairy production facility" means the land, structures and related equipment used for housing, breeding, raising, feeding or milking dairy cows. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined cows from exposure to disease.

(w) "Family farm limited liability agricultural company" means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

(1) The majority of the members are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

(2) the members are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

(3) at least one of the members is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one member is meeting the requirement of this provision and such member dies, the requirement of this provision does not apply for the period of time that the member's estate is being administered in any district court in Kansas.

(x) "Hydroponics" means the growing of vegetables, flowers, herbs, or plants used for medicinal purposes, in a growing medium other than soil.

**History:** L. 1981, ch. 106, § 1; L. 1983, ch. 88, § 72; L. 1986, ch. 96, § 2; L. 1987, ch. 368, § 1; L. 1988, ch. 99, § 53; L. 1991, ch. 76, § 9; L. 1994, ch. 130, § 3; L. 1994, ch. 331, § 1; L. 1996, ch. 225, § 1; L. 1998, ch. 93, § 71; L. 1999, ch. 119, § 83; Jan. 1, 2000.

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**17-5904. Restrictions; exceptions; penalties.** (a) No corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state. The restrictions provided in this section do not apply to the following:

- (1) A bona fide encumbrance taken for purposes of security.
  - (2) Agricultural land when acquired as a gift, either by grant or devise, by a bona fide educational, religious or charitable nonprofit corporation.
  - (3) Agricultural land acquired by a corporation or a limited liability company in such acreage as is necessary for the operation of a nonfarming business. Such land may not be used for farming except under lease to one or more natural persons, a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust. The corporation shall not engage, either directly or indirectly, in the farming operation and shall not receive any financial benefit, other than rent, from the farming operation.
  - (4) Agricultural land acquired by a corporation or a limited liability company by process of law in the collection of debts, or pursuant to a contract for deed executed prior to the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or procedure, except that provisions of K.S.A. 9-1102, and amendments thereto, shall apply to any bank which acquires agricultural land.
  - (5) A municipal corporation.
  - (6) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a nonprofit corporation.
  - (7) Agricultural land owned or leased or held under a lease purchase agreement as described in K.S.A. 12-1741, and amendments thereto, by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if: (A) Any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act; (B) any such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901 prior to its repeal shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal; or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.
  - (8) Agricultural land held or leased by a corporation or a limited liability company for use as a feedlot, a poultry confinement facility or rabbit confinement facility.
  - (9) Agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products or sod.
  - (10) Agricultural land used for bona fide educational research or scientific or experimental farming.
  - (11) Agricultural land used for the commercial production and conditioning of seed for sale or resale as seed or for the growing of alfalfa by an alfalfa processing entity if such land is located within 30 miles of such entity's plant site.
  - (12) Agricultural land owned or leased by a corporate partnership or limited corporate partnership in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, limited liability agricultural companies, family trusts, authorized trusts or testamentary trusts.
  - (13) Any corporation, either domestic or foreign, or any limited liability company, organized for coal mining purposes which engages in farming on any tract of land owned by it which has been strip mined for coal.
  - (14) Agricultural land owned or leased by a limited partnership prior to the effective date of this act.
  - (15) Except as provided by K.S.A. 17-5908, as it existed before the effective date of this act, and K.S.A. 1998 Supp. 17-5909, agricultural land held or leased by a corporation or a limited liability company for use as a swine production facility in any county which, before the effective date of this act, has voted favorably pursuant to K.S.A. 17-5908, as it existed before the effective date of this act, either by county resolution or by the electorate.
  - (16) Agricultural land held or leased by a corporation or limited liability company for use as a swine production facility in any county where the voters, after the effective date of this act, have voted pursuant to K.S.A. 17-5908, and amendments thereto, to allow establishment of swine production facilities within the county.
  - (17) Agricultural land held or leased by a corporation or a limited liability company for use as a dairy production facility in any county which has voted favorably pursuant to K.S.A. 17-5907 and amendments thereto, either by county resolution or by the electorate.
  - (18) Agricultural land held or leased by a corporation or a limited liability company used in a hydroponics setting.
- (b) Production contracts entered into by a corporation, trust, limited liability company, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.
- (c) Any corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be deemed to have violated more than \$50,000 and shall divest itself of any land acquired in violation of this section within one

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The district courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section.

(d) Civil penalties sued for and recovered by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

**History:** L. 1981, ch. 106, § 2; L. 1986, ch. 96, § 3; L. 1987, ch. 368, § 2; L. 1988, ch. 99, § 56; L. 1991, ch. 76, § 10; L. 1994, ch. 130, § 4; L. 1994, ch. 331, § 2; L. 1996, ch. 225, § 2; L. 1998, ch. 143, § 44; May 7.

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**17-5907. Dairy production facilities; establishment in county, procedure.** (a) (1) The board of county commissioners, by resolution, may permit a dairy production facility, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county. Such resolution shall be published once each week for two consecutive weeks in the official county newspaper. The resolution shall take effect 60 days after final publication unless a valid petition in opposition to the same is filed.

(2) If within 60 days of the final publication of the resolution, a valid protest petition to submit the resolution to the qualified voters of the county is signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected and is filed with the county election officer, the county election officer shall submit the question, as established in subsection (c), of whether a dairy production facility shall be allowed to be established in such county at the next countywide election.

(b) (1) The board of county commissioners, upon a petition filed in accordance with paragraph (b)(2), shall submit to the qualified electors of the county a proposition to permit a dairy production facility, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county.

(2) A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the county election officer. The petition shall be signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition:

"We request an election to determine whether a corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust shall be allowed to, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in \_\_\_\_\_ county for the purpose of establishing a dairy production facility."

(3) Upon the submission of a valid petition calling for an election pursuant to this subsection, the county election officer shall submit the question, as established in subsection (c), of whether a dairy production facility shall be allowed to be established in such county at the next countywide election which occurs more than 60 days after the petition is filed with the county election officer.

(c) In any election established pursuant to this section, the following shall appear on the ballot:

"Shall a corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust be allowed to, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in \_\_\_\_\_ county for the purpose of establishing a dairy production facility?"

(d) If a majority of the votes cast and counted are in opposition to allowing dairy production facilities to be established in such county, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that dairy production facilities are not allowed to be established in such county.

(e) If a majority of the votes cast and counted is in favor of the proposition, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that dairy production facilities are allowed to be established in such county.

(f) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

**History:** L. 1994, ch. 249, § 1; April 28.

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**17-5908. Swine production facilities; establishment in county, procedure.** (a) The board of county commissioners, by resolution, may submit to the qualified voters of the county a proposition to allow swine production facilities, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county. Upon adoption of such resolution, the county election officer shall submit the question of whether swine production facilities shall be allowed to be established in such county at the next state or county-wide regular or special election.

(b) (1) The board of county commissioners, upon a petition filed in accordance with paragraph (b)(2), shall submit to the qualified voters of the county a proposition to allow swine production facilities, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county.

(2) A petition to submit a proposition to the qualified voters of a county pursuant to this subsection (b) shall be filed with the county election officer. The petition shall be signed by qualified voters of the county equal in number to not less than 5% of the voters of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition:

"We request an election to determine whether corporate swine production facilities shall be allowed to be established in \_\_\_\_\_ county, pursuant to K.S.A. 17-5904."

(3) Upon the submission of a valid petition calling for an election pursuant to this subsection, the county election officer shall submit the question of whether swine production facilities shall be allowed to be established in such county at the next state or county-wide regular or special election which occurs more than 60 days after the petition is filed with the county election officer.

(c) If a majority of the votes cast and counted are in opposition to allowing swine production facilities to be established in such county, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that swine production facilities are not allowed to be established in such county.

(d) If a majority of the votes cast and counted is in favor of the proposition, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that swine production facilities are allowed to be established in such county.

(e) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county, except that the county election officer shall publish in the official county newspaper a notice of such election once each week for two consecutive weeks, the first publication to be not less than 21 days before the election, and such notice shall state the date and time of the election and the proposition that will appear on the ballot.

**History:** L. 1994, ch. 130, § 1; L. 1998, ch. 143, § 45; May 7.

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