

HOUSE BILL No. 2404

By Committee on Taxation

3-18

1 AN ACT concerning agricultural corporations; amending K.S.A. 2012
2 Supp. 17-5903 and 19-101a and repealing the existing sections; also
3 repealing K.S.A. 17-5902 and K.S.A. 2012 Supp. 17-5904, 17-5907
4 and 17-5908.

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

7 New Section 1. (a) Any agricultural business entity, as defined in
8 K.S.A. 17-5903, and amendments thereto, may conduct agricultural
9 business and establish agricultural operations anywhere in the state.

10 (b) This section shall be part of and supplemental to article 59 of
11 chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

12 Sec. 2. K.S.A. 2012 Supp. 17-5903 is hereby amended to read as
13 follows: 17-5903. As used in this ~~aet~~ *section*:

14 (a) *"Agricultural business entity" means a corporation, nonprofit*
15 *corporation, limited partnership, limited agricultural partnership,*
16 *corporate partnership, family farm corporation, authorized farm*
17 *corporation, trust, family trust, authorized trust, testamentary trust,*
18 *limited liability company, limited liability agricultural company and*
19 *family farm limited liability agricultural company.*

20 ~~(a)~~ (b) "Corporation" means a domestic or foreign corporation
21 organized for profit or nonprofit purposes.

22 ~~(b)~~ (c) "Nonprofit corporation" means a corporation organized not-
23 for-profit and which qualifies under section 501(c)(3) of the federal
24 internal revenue code of 1986 as amended.

25 ~~(c)~~ (d) "Limited partnership" has the meaning provided by K.S.A. 56-
26 1a01, and amendments thereto.

27 ~~(d)~~ (e) "Limited agricultural partnership" means a limited partnership
28 founded for the purpose of farming and ownership of agricultural land in
29 which:

30 ~~(1) The partners do not exceed 10 in number;~~

31 ~~(2) the partners are all natural persons, persons acting in a fiduciary~~
32 ~~capacity for the benefit of natural persons or nonprofit corporations, or~~
33 ~~general partnerships other than corporate partnerships formed under the~~
34 ~~laws of the state of Kansas; and~~

35 ~~(3) at least one of the general partners is a person residing on the farm~~
36 ~~or actively engaged in the labor or management of the farming operation.~~

1 ~~If only one partner is meeting the requirement of this provision and such~~
2 ~~partner dies, the requirement of this provision does not apply for the period~~
3 ~~of time that the partner's estate is being administered in any district court~~
4 ~~in Kansas.~~

5 ~~(e)~~ (f) "Corporate partnership" means a partnership, as defined in
6 K.S.A. 56a-101, and amendments thereto, which has within the association
7 one or more corporations or one or more limited liability companies.

8 ~~(f)~~ (g) "Feedlot" means a lot, yard, corral; or other area in which
9 livestock fed for slaughter are confined. The term includes within its
10 meaning agricultural land in such acreage as is necessary for the operation
11 of the feedlot.

12 ~~(g)~~ (h) "Agricultural land" means land suitable for use in farming.

13 ~~(h)~~ (i) "Farming" means the cultivation of land for the production of
14 agricultural crops, the raising of poultry, the production of eggs, the
15 production of milk, the production of fruit or other horticultural crops,
16 grazing or the production of livestock. Farming does not include the
17 production of timber, forest products, nursery products or sod, and farming
18 does not include a contract to provide spraying, harvesting or other farm
19 services.

20 ~~(i)~~ (j) "Fiduciary capacity" means an undertaking to act as executor,
21 administrator, guardian, conservator, trustee for a family trust, authorized
22 trust or testamentary trust or receiver or trustee in bankruptcy.

23 ~~(j)~~ (k) "Family farm corporation" means a corporation:

24 (1) Founded for the purpose of farming and the ownership of
25 agricultural land in which the majority of the voting stock is held by and
26 the majority of the stockholders are persons related to each other, all of
27 whom have a common ancestor ~~within the third degree of relationship~~, by
28 blood or by adoption, or the spouses or the stepchildren of any such
29 persons, or persons acting in a fiduciary capacity for persons so related;
30 *and*

31 (2) all of its stockholders are natural persons or persons acting in a
32 fiduciary capacity for the benefit of natural persons; ~~and~~

33 ~~(3) at least one of the stockholders is a person residing on the farm or~~
34 ~~actively engaged in the labor or management of the farming operation. A~~
35 ~~stockholder who is an officer of any corporation referred to in this~~
36 ~~subsection and who is one of the related stockholders holding a majority of~~
37 ~~the voting stock shall be deemed to be actively engaged in the~~
38 ~~management of the farming corporation. If only one stockholder is~~
39 ~~meeting the requirement of this provision and such stockholder dies, the~~
40 ~~requirement of this provision does not apply for the period of time that the~~
41 ~~stockholder's estate is being administered in any district court in Kansas.~~

42 ~~(k)~~ (l) "Authorized farm corporation" means a Kansas corporation,
43 other than a family farm corporation, all of the incorporators of which are

1 ~~Kansas residents, family farm corporations or family farm limited liability~~
 2 ~~agricultural companies or any combination thereof, and which is founded~~
 3 ~~for the purpose of farming and the ownership of agricultural land in which:~~

4 ~~(1) The stockholders do not exceed 15 in number; and~~

5 ~~(2) the stockholders are all natural persons, family farm corporations,~~
 6 ~~family farm limited liability agricultural companies or persons acting in a~~
 7 ~~fiduciary capacity for the benefit of natural persons, family farm~~
 8 ~~corporations, family farm limited liability agricultural companies or~~
 9 ~~nonprofit corporations; and~~

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

16 ~~(4) (m) "Trust" means a fiduciary relationship with respect to property,~~
 17 ~~subjecting the person by whom the property is held to equitable duties to~~
 18 ~~deal with the property for the benefit of another person, which arises as a~~
 19 ~~result of a manifestation of an intention to create it. A trust includes a legal~~
 20 ~~entity holding property as trustee, agent, escrow agent, attorney-in-fact and~~
 21 ~~in any similar capacity.~~

22 ~~(5) (n) "Family trust" means a trust in which:~~

23 ~~(1) A majority of the equitable interest in the trust is held by and the~~
 24 ~~majority of the beneficiaries are persons related to each other, all of whom~~
 25 ~~have a common ancestor within the third degree of relationship, by blood~~
 26 ~~or by adoption, or the spouses or stepchildren of any such persons, or~~
 27 ~~persons acting in a fiduciary capacity for persons so related; and~~

28 ~~(2) all the beneficiaries are natural persons, are persons acting in a~~
 29 ~~fiduciary capacity, other than as trustee for a trust, or are nonprofit~~
 30 ~~corporations.~~

31 ~~(6) (o) "Authorized trust" means a trust other than a family trust in~~
 32 ~~which:~~

33 ~~(1) The beneficiaries do not exceed 15 in number;~~

34 ~~(2) The beneficiaries are all natural persons, are persons acting in a~~
 35 ~~fiduciary capacity, other than as trustee for a trust, or are nonprofit~~
 36 ~~corporations; and~~

37 ~~(3) (2) the gross income thereof is not exempt from taxation under the~~
 38 ~~laws of either the United States or the state of Kansas.~~

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

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

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

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

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

24 (⊕) (t) "Swine production facility" means the land, structures and
25 related equipment used for housing, breeding, farrowing or feeding of
26 swine. The term includes within its meaning only such agricultural land as
27 is necessary for proper disposal of liquid and solid wastes in
28 environmentally sound amounts for crop production and to avoid nitrate
29 buildup and for isolation of the facility to reasonably protect the confined
30 animals from exposure to disease.

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

33 (⊕) (v) "Limited liability agricultural company" means a limited
34 liability company founded for the purpose of farming and ownership of
35 agricultural land in which:

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

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

43 ~~(3) if all of the members are natural persons, at least one member~~

1 ~~must be a person residing on the farm or actively engaged in labor or~~
 2 ~~management of the farming operation. If only one member is meeting the~~
 3 ~~requirement of this provision and such member dies, the requirement of~~
 4 ~~this provision does not apply for the period of time that the member's~~
 5 ~~estate is being administered in any district court in Kansas.~~

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

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

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

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

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

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

31 Sec. 3. K.S.A. 2012 Supp. 19-101a is hereby amended to read as
 32 follows: 19-101a. (a) The board of county commissioners may transact all
 33 county business and perform all powers of local legislation and
 34 administration it deems appropriate, subject only to the following
 35 limitations, restrictions or prohibitions:

36 (1) Counties shall be subject to all acts of the legislature which apply
 37 uniformly to all counties.

38 (2) Counties may not affect the courts located therein.

39 (3) Counties shall be subject to acts of the legislature prescribing
 40 limits of indebtedness.

41 (4) In the exercise of powers of local legislation and administration
 42 authorized under provisions of this section, the home rule power conferred
 43 on cities to determine their local affairs and government shall not be

1 superseded or impaired without the consent of the governing body of each
2 city within a county which may be affected.

3 (5) Counties may not legislate on social welfare administered under
4 state law enacted pursuant to or in conformity with public law No. 271 –
5 74th congress, or amendments thereof.

6 (6) Counties shall be subject to all acts of the legislature concerning
7 elections, election commissioners and officers and their duties as such
8 officers and the election of county officers.

9 (7) Counties shall be subject to the limitations and prohibitions
10 imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments
11 thereto, prescribing limitations upon the levy of retailers' sales taxes by
12 counties.

13 (8) Counties may not exempt from or effect changes in statutes made
14 nonuniform in application solely by reason of authorizing exceptions for
15 counties having adopted a charter for county government.

16 (9) No county may levy ad valorem taxes under the authority of this
17 section upon real property located within any redevelopment project area
18 established under the authority of K.S.A. 12-1772, and amendments
19 thereto, unless the resolution authorizing the same specifically authorized
20 a portion of the proceeds of such levy to be used to pay the principal of
21 and interest upon bonds issued by a city under the authority of K.S.A. 12-
22 1774, and amendments thereto.

23 (10) Counties shall have no power under this section to exempt from
24 any statute authorizing or requiring the levy of taxes and providing
25 substitute and additional provisions on the same subject, unless the
26 resolution authorizing the same specifically provides for a portion of the
27 proceeds of such levy to be used to pay a portion of the principal and
28 interest on bonds issued by cities under the authority of K.S.A. 12-1774,
29 and amendments thereto.

30 (11) Counties may not exempt from or effect changes in the
31 provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

32 (12) Except as otherwise specifically authorized by K.S.A. 12-1,101
33 through 12-1,109, and amendments thereto, counties may not levy and
34 collect taxes on incomes from whatever source derived.

35 (13) Counties may not exempt from or effect changes in K.S.A. 19-
36 430, and amendments thereto.

37 (14) Counties may not exempt from or effect changes in K.S.A. 19-
38 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

39 (15) Counties may not exempt from or effect changes in K.S.A. 19-
40 15,139, 19-15,140 and 19-15,141, and amendments thereto.

41 (16) Counties may not exempt from or effect changes in the
42 provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c
43 and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-

1 1260 through 12-1270 and 12-1276, and amendments thereto.

2 (17) Counties may not exempt from or effect changes in the
3 provisions of K.S.A. 19-211, and amendments thereto.

4 (18) Counties may not exempt from or effect changes in the
5 provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

6 (19) Counties may not regulate the production or drilling of any oil or
7 gas well in any manner which would result in the duplication of regulation
8 by the state corporation commission and the Kansas department of health
9 and environment pursuant to chapter 55 and chapter 65 of the Kansas
10 Statutes Annotated, and amendments thereto, and any rules and regulations
11 adopted pursuant thereto. Counties may not require any license or permit
12 for the drilling or production of oil and gas wells. Counties may not
13 impose any fee or charge for the drilling or production of any oil or gas
14 well.

15 (20) Counties may not exempt from or effect changes in K.S.A. 79-
16 41a04, and amendments thereto.

17 (21) Counties may not exempt from or effect changes in K.S.A. 79-
18 1611, and amendments thereto.

19 (22) Counties may not exempt from or effect changes in K.S.A. 79-
20 1494, and amendments thereto.

21 (23) Counties may not exempt from or effect changes in subsection
22 (b) of K.S.A. 19-202, and amendments thereto.

23 (24) Counties may not exempt from or effect changes in subsection
24 (b) of K.S.A. 19-204, and amendments thereto.

25 (25) Counties may not levy or impose an excise, severance or any
26 other tax in the nature of an excise tax upon the physical severance and
27 production of any mineral or other material from the earth or water.

28 (26) Counties may not exempt from or effect changes in K.S.A. 79-
29 2017 or 79-2101, and amendments thereto.

30 (27) Counties may not exempt from or effect changes in K.S.A. 2-
31 3302, 2-3305, 2-3307, 2-3318, ~~17-5904, 17-5908~~, 17-5903, 47-1219, 65-
32 171d, 65-1,178 through 65-1,199, *and* 65-3001 through 65-3028 *and*
33 *section 1*, and amendments thereto.

34 (28) Counties may not exempt from or effect changes in K.S.A. 2012
35 Supp. 80-121, and amendments thereto.

36 (29) Counties may not exempt from or effect changes in K.S.A. 19-
37 228, and amendments thereto.

38 (30) Counties may not exempt from or effect changes in the wireless
39 enhanced 911 act, in the VoIP enhanced 911 act or in the provisions of
40 K.S.A. 12-5301 through 12-5308, and amendments thereto.

41 (31) Counties may not exempt from or effect changes in K.S.A. 2012
42 Supp. 26-601, and amendments thereto.

43 (32) (A) Counties may not exempt from or effect changes in the

1 Kansas liquor control act except as provided by paragraph (B).

2 (B) Counties may adopt resolutions which are not in conflict with the
3 Kansas liquor control act.

4 (33) (A) Counties may not exempt from or effect changes in the
5 Kansas cereal malt beverage act except as provided by paragraph (B).

6 (B) Counties may adopt resolutions which are not in conflict with the
7 Kansas cereal malt beverage act.

8 (34) Counties may not exempt from or effect changes in the Kansas
9 lottery act.

10 (35) Counties may not exempt from or effect changes in the Kansas
11 expanded lottery act.

12 (36) Counties may neither exempt from nor effect changes to the
13 eminent domain procedure act.

14 (37) Any county granted authority pursuant to the provisions of
15 K.S.A. 19-5001 through 19-5005, and amendments thereto, shall be
16 subject to the limitations and prohibitions imposed under K.S.A. 19-5001
17 through 19-5005, and amendments thereto.

18 (38) Except as otherwise specifically authorized by K.S.A. 19-5001
19 through 19-5005, and amendments thereto, counties may not exercise any
20 authority granted pursuant to K.S.A. 19-5001 through 19-5005, and
21 amendments thereto, including the imposition or levy of any retailers' sales
22 tax.

23 (39) Counties may not exempt from or effect changes in K.S.A. 2012
24 Supp. 19-271, and amendments thereto.

25 (b) Counties shall apply the powers of local legislation granted in
26 subsection (a) by resolution of the board of county commissioners. If no
27 statutory authority exists for such local legislation other than that set forth
28 in subsection (a) and the local legislation proposed under the authority of
29 such subsection is not contrary to any act of the legislature, such local
30 legislation shall become effective upon passage of a resolution of the
31 board and publication in the official county newspaper. If the legislation
32 proposed by the board under authority of subsection (a) is contrary to an
33 act of the legislature which is applicable to the particular county but not
34 uniformly applicable to all counties, such legislation shall become
35 effective by passage of a charter resolution in the manner provided in
36 K.S.A. 19-101b, and amendments thereto.

37 (c) Any resolution adopted by a county which conflicts with the
38 restrictions in subsection (a) is null and void.

39 Sec. 4. K.S.A. 17-5902 and K.S.A. 2012 Supp. 17-5903, 17-5904, 17-
40 5907, 17-5908 and 19-101a are hereby repealed.

41 Sec. 5. This act shall take effect and be in force from and after its
42 publication in the statute book.