

STATE OF KANSAS



ARTICLE 12 GROUNDWATER EXPLORATION AND PROTECTION ACT

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ARTICLE 12

Groundwater Exploration and Protection Act

82a-1201. Title. This act shall be know as the “Kansas groundwater exploration and protection act”.

History: L. 1973, ch. 417, § 1; July 1.

82a-1202. Declaration of purpose. It is the purpose of this act to provide for the exploration and protection of groundwater through the licensing and regulation of water well contractors in Kansas to protect the health and general welfare of the citizens of the state; to protect groundwater resources from waste and potential pollution by requiring proper description of the location, drilling and well construction, and proper plugging of abandoned water wells and test holes; and to provide data on potential water supplies through well logs, well pumping tests and water quality tests which will permit the economic and efficient utilization and management of the water resources of this state.

In order to achieve these objectives, this act requires licensing of water well contractors; provides for the establishment of standards for well construction, reconstruction, treatment and plugging; requires each licensed water well contractor to keep and transmit to the state, upon request, a copy of the log of the well, pump test data if available, and water quality samples, and maintains within the state geological survey of Kansas a record system of well logs and water quality data which will be available to the public.

History: L. 1973, ch. 417, § 2; L. 1979, ch. 334, § 1; July 1.

82a-1203. Definitions. As used in this act, unless the context otherwise requires:

- (a) “Construction of water wells” means all acts necessary to obtaining groundwater by any method for any use including, without limitation, the location of and excavation for the well.
- (b) “Person” means any individual, association, firm, partnership, corporation or governmental entity.
- (c) “Sand point” or “well point” means any driven well which is 25 feet or less in depth and is constructed by manually driving into the ground a drive point fitted to the lower end of tightly connected sections of pipe that are 2 inches or less in diameter.
- (d) “Domestic uses” means the use of water by any person, family unit or household or household purposes, the watering of livestock, poultry, farm and domestic animals used in operating a farm or the irrigation of lands not exceeding a total of two acres in area for the growing of gardens, orchards or lawns.
- (e) “Secretary” means the secretary of health and environment.

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- (f) "Water well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed, when the intended use of such excavation is for the location, diversion, artificial recharge, or acquisition of groundwater.
- (g) "Water well contractor" or "contractor" means any person who constructs, reconstructs or treats a water well. The term shall not include:
 - (1) An individual while in the act of constructing a water well on land which is owned by such individual and is used by such individual for domestic purposes at such individual's place of abode, but only when the well is constructed in compliance with prescribed minimum well standards as provided in this act; or
 - (2) an individual who performs labor or services for a licensed water well contractor at such contractor's direction and under such contractor's supervision.

History: L. 1973, ch. 417, § 3; L. 1974, ch. 352 § 172; L. 1989, ch. 311, § 1; July 1.

82a-1205. Administration and enforcement of Kansas groundwater exploration and protection act; license fees; licenses; inspection; personnel; report.

- (a) The secretary shall be responsible for the administration and enforcement of the provisions of this act and any rules and regulations adopted pursuant thereto.
- (b) The secretary shall fix by rules and regulations reasonable license fees annually for each contractor and for each drill rig operated by or for such contractor. The secretary shall fix by rules and regulations an additional fee for each water well drilled except as provided in paragraphs (1) and (2) of subsection (c) of K.S.A. 82a-1203 and amendments thereto. Such fees shall be in an amount, which, together with any other funds available therefor, will produce an amount, which will properly administer the provisions of this act. Any nonresident may secure a water well contractor's license in Kansas upon approval of an application therefor by the secretary and the payment of a fee equal to the fee charged for a similar nonresident license by the state in which the applicant is a resident, but in no case shall the fee be less than that charged a Kansas resident.
- (c) The secretary shall have the power and authority and may cause to be inspected water wells in all phases of construction, reconstruction, treatment or plugging, and shall have access to such wells at all reasonable times. The secretary shall have general supervision and authority over the construction, reconstruction and treatment of all water wells and the plugging of holes drilled and abandoned in search of a groundwater supply or hydrogeological information.

- (d) The secretary may employ within funds available such engineering, geological, legal, clerical and other personnel as may be necessary for the proper performance of responsibilities under this act. Such employees shall be within the classified service under the Kansas civil service act.
- (e) The secretary is authorized and directed to cause examination to be made of applicants for licensing; to renew such licenses; to adopt rules and regulations necessary to establish continuing education requirements for persons licensed under this act; to issue licenses to qualified water well contractors in this state; to revoke or suspend licenses after their issuance is hereafter determined, after notice to the person affected and an opportunity for hearing; and to reinstate licenses previously revoked when justification therefor is shown.
- (f) The secretary shall prepare, in the form and manner prescribed by law, a report on the administration of this act.

History: L. 1973, ch. 417, § 5; L. 1974, ch. 352, § 173; L. 1979, ch. 334, § 2; L. 1983, ch. 286, § 8; L. 1991, ch. 293, § 1; July 1.

82a-1206. Licensure of water well contractors; application fee; disposition of moneys; water well contractors licensing fund abolished; standards for granting license.

- (a) Each well contractor desiring to engage in the business of constructing, reconstructing or treating water wells in this state shall make initial application for a license to the secretary. Every contractor making such application shall set out such information as may be required upon forms to be adopted and furnished by the secretary. The secretary shall charge an application fee as established by regulation for the filing of such initial application by a contractor, and the secretary shall not act upon any application until such application fee has been paid.
- (b) All application fees and license fees collected hereunder shall be remitted to the state treasurer at least monthly. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the state general fund. On July 1, 1983, the director of accounts and reports shall transfer all moneys in the water well contractors licensing to the state general fund. All liabilities of the water well contractors licensing fund are hereby transferred to and imposed upon the state general fund. The water well contractors licensing fund is hereby abolished.
- (c) A license to construct water wells shall be issued to any applicant if, under the standards set forth in K.S.A. 82a-1207 and amendments thereto, the secretary shall determine such applicant is qualified to conduct water well construction operations. In the granting of such licenses due regard shall be given to the interest of the state of Kansas in

the protection of its underground water resources. Application fees paid hereunder shall be retained by the secretary whether such initial license is issued or denied, but if denied, the license fee shall be refunded.

- (d) Applicants for licenses hereunder who are engaged in business as water well contractors in this state, if incorporated, shall submit evidence of current good standing with the registration requirements for corporations of the secretary of state.

History: L. 1973, ch. 417, § 6; L. 1974, ch. 352, § 174, L. 1979, ch. 334, § 3; L. 1983, ch. 286, § 14; July 1.

82a-1207. Investigation of qualifications; examination. Under such reasonable rules and regulations as the secretary may adopt pertaining to the business of water well contracting and construction of water wells, the secretary shall investigate by examination or otherwise, the qualifications of all applicants for initial licenses as water well contractors to construct, reconstruct or treat wells for production of underground waters in this state. Where an examination is required, such examination may be oral or written or both. The qualifications required of each candidate for such an examination are as follows:

- (a) Familiarity with Kansas water laws, sanitary standards for water well drilling and construction of water wells and rules and regulations relating to water well construction, reconstruction, treatment and plugging as adopted by the secretary;
- (b) Knowledge of groundwater and subsurface geology in its relation to well construction.

The examinations conducted by the secretary shall be held at such times and places as he may determine. Failure of an applicant to pass such examination shall disqualify him from making further application for a period of one (1) month. The secretary shall act within a reasonable time upon all applications for licenses hereunder.

History: L. 1973, ch. 417, § 7; L. 1974, ch. 352, § 175; L. 1979, ch. 334, § 4; July 1.

82a-1209. Terms of license; renewal; fees; revocation, when. The term of all licenses issued under the provisions of this act shall be July 1 of each year through the following June 30.

Any contractor licensed under the provisions of this act may, on or before July 1, each year, renew such license by paying the annual fee as determined by the secretary and complying with continuing education requirements established by the secretary. If the licensee has not met the requirements for renewal of the license on or before July 1, the license shall be revoked by the secretary. Prior to such revocation, however, the secretary shall notify the applicant of the secretary's intention to revoke at least 10 days prior to the time set for action to be taken, by notice to the applicant at the address appearing on such license in the records and files of the secretary and compliance with the provision of the

Kansas administrative procedure act. A license, once revoked, may not be reinstated unless the revocation resulted because of an error of the secretary or other reason not the fault of the licensee. A person whose license has been revoked and who desires to continue to engage in the business of water well construction in this state, must make application as provided for in K.S.A. 82a-1207, and amendments thereto. Such applicant may be required to retake the examination.

History: L. 1973, ch. 417, § 9; L. 1974, ch. 352, § 177; L. 1979, ch. 334, § 5; L. 1984, ch. 313, § 147; L. 1991, ch. 293, § 2; July 1.

82a-1210. Revocation of license, when; complaints against licensee; notice and hearing. Any license issued under this act may be revoked by the secretary.

- (1) when the licensee has practiced fraud or deceit in obtaining a license or otherwise engaging in activities regulated by this act;
- (2) for negligence or incompetence; or
- (3) for violating any requirement of this act.

Any person, in addition to the secretary, may make complaint against any licensee of the specific charges, in accordance with the notice provisions of the Kansas administrative procedure act. Prior to revocation or suspension of a license, the water well contractor shall be afforded the opportunity promptly to bring the well up to standard or to correct the error resulting in the complaint. Compliance must be acceptable to the secretary. The secretary shall not revoke any license pursuant to this section without giving the licensee an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1973, ch. 417, § 10; L. 1974, ch. 352, § 178; L. 1979, ch. 334, sec 6; L. 1984, ch. 313, § 148; July 1, 1985.

82a-1211. Appeal from decisions of secretary. Appeals from decisions of the secretary may be taken in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

History: L. 1973, ch. 417, § 11; L. 1974, ch. 352, § 179; L. 1984, ch. 313, § 149; July 1, 1985.

82a-1212. Log of drilling, boring or digging; contents; filed with state geological survey. Any water well contractor licensed under this act who constructs, reconstructs or plugs a water well shall keep a careful and accurate log of the construction, reconstruction or plugging of such well and shall furnish a record of said well log to the secretary within thirty (30) days after completion of such well in such form as the secretary might require. The log shall show:

- (a) The name and address of the landowner and the legal description of the well;
- (b) The character and depth of the formation passed through or encountered;
- (c) The depth at which water is encountered;
- (d) The static water level of the completed well;
- (e) A copy of the record of pumping test, if any; and
- (f) The construction or reconstruction details of the completed water well including lengths and sizes of casing, length and size of perforations or screens, and length and size of gravel packing; [and]
- (g) The amount, type and placement of plug materials used in plugging a water well.

A water sample shall be furnished to the secretary, upon request, within thirty (30) days after completion of such well unless an extension of time is granted by the secretary, in which case, the sample shall be furnished to the secretary within such extended period of time. The well logs and a copy of the water quality analysis shall be transmitted by the secretary to the state geological survey and kept on file by the survey and be available to the public.

History: L. 1973, ch. 417, § 12; L. 1974, ch. 352, § 180; L. 1979, ch. 334, § 7. July 1.

82a-1213. Abandoned holes; plugging; failure to properly seal. All holes drilled in search of a water supply and abandoned, shall be properly plugged by the drilling contractor in accordance with rules and regulations established by the secretary in order to assure adequate and proper plugging of abandoned wells to prevent pollution of existing groundwater. Any contractor who fails to properly seal any exploratory wells drilled in search of a water supply and abandoned by him or her shall be subject to the penalties set out in this act. All unplugged abandoned water wells shall be plugged or caused to be plugged by the landowner in accordance with rules and regulations established by the secretary in order to assure adequate and proper plugging of abandoned water wells to prevent pollution to existing groundwater supplies, except that no unplugged abandoned water well existing on the effective date of this act which is not polluting or threatening to pollute a groundwater supply shall be required to be plugged.

History: L. 1973, ch. 417, § 13; L. 1974, ch. 352, § 181; L. 1979, ch. 334, § 8; July 1.

82a-1214. Penalty for violations of act; enforcement of act. Any person who shall willfully violate any lawful rule or regulation of the secretary relating to water well contracting, or who shall engage in the business of constructing, reconstructing or treating water wells without first having obtained a license as in this act required, or who shall knowingly violate any provisions of this act, shall be guilty of a class B misdemeanor and subject to the penalties therefore as provided by

law. In addition the secretary of health and environment is hereby authorized to apply to the district court for enforcement of this act or rules and regulations adopted under this act in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

History: L. 1973, ch. 417, § 14; L. 1974, ch. 352, § 182; L. 1979, ch. 335, § 1; L. 1984, ch. 313, § 150; July 1, 1985.

82a-1215. Severability. If any word, phrase, sentence or provision of this act is determined to be invalid, such invalidity shall not affect the other provisions of this act and they shall be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

History: L. 1973, ch. 417, § 15; July 1.

82a-1216. Civil penalties and orders; appeals; disposition of penalties.

- (a) Any person who violates any provision of the Kansas groundwater exploration and protection act, any rules or regulations adopted thereunder or any order issued by the secretary thereunder shall incur in addition to other penalties provided by law, a civil penalty not to exceed \$5,000 for each violation. In the case of a continuing violation every day such violation continues shall be deemed a separate violation.
- (b) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of Kansas groundwater exploration and protection act, or any order issued or rule or regulation adopted thereunder, may:
 - (1) Issue a written order requiring that necessary remedial or preventive action be taken within a reasonable time period;
 - (2) assess a civil penalty for each violation within the limits provided in this section which shall constitute an actual and substantial economic deterrent to the violation for which is assessed; or
 - (3) both issue such order and assess such penalty. The order shall specify the provisions of the act or rules or regulations alleged to be violated and the facts constituting each violation. Such order shall include the right to a hearing. Any such order shall become final unless, within 15 days after service of the order, the person named therein shall request in writing a hearing by the secretary. If a hearing is requested, the secretary shall notify the alleged violator or violators of the date, place and time of the hearing.
- (c) No civil penalty shall be imposed under this section except after notification by issuance and service of the written order and hearing, if a

hearing is requested, in accordance with the provisions of the Kansas administrative procedure act.

- (d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.
- (e) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer, deposited in the state treasury and credited to the state general fund.
- (f) Nothing in this act shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor.

History: L. 1989, ch. 311, § 2; July 1.

82a-1217. Restraining orders and injunctions; proof required.

- (a) Notwithstanding the existence or pursuit of any other remedy, the secretary may maintain, in the manner provided by the act for judicial review and civil enforcement of agency actions, an action in the name of the state of Kansas for injunction or other process against any person to restrain or prevent any violation of the provision of the Kansas groundwater exploration and protection act or of any rules and regulations adopted thereunder.
- (b) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall be sufficient to show that a violation of the provisions of this act or the rules and regulation adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

History: L. 1989, ch. 311, § 3; July 1.

82a-1218. Application of penalties to sand and well point wells, exception.

- (a) The provisions of K.S.A. 82a-1216 and 82a-1217 shall not apply with respect to any sand point or well point which is used for domestic purposes, or the reconstruction, replacement or treatment thereof, and which has not been abandoned, until the secretary adopts minimum standards for the construction, reconstruction, treatment and plugging of sand points or well points, except that a temporary restraining order, preliminary injunction or permanent injunction may be obtained pursuant to K.S.A. 82a-1217 if a health hazard is shown to exist or to be imminent.

History: L. 1989, ch. 311, § 4; July 1.

82a-1219 **Act supplemental to Kansas groundwater exploration and protection act.**
K.S.A. 82a-1216, 82a-1217 and 82a-1218 shall be part of and supplemental to the
Kansas groundwater exploration and protection act.

History: L. 1989, ch. 311, § 5; July 1.