

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2607

As Amended by Senate Committee on
Agriculture and Natural Resources

Brief*

HB 2607, as amended, would amend and update the Kansas Pesticide Law (Pesticide Law) and Kansas Chemigation Safety Law (Chemigation Law).

The bill would also make technical amendments throughout the statutes amended by the bill.

Supervision and Training; Rules and Regulations (New Section 1)

The bill would require pesticide business licensees and private applicators to provide appropriate supervision and training for uncertified applicators who apply restricted use pesticides.

The bill would prohibit uncertified applicators from applying any restricted use pesticide unless the application is supervised by a certified applicator who is certified to apply restricted use pesticides for the control of pests in the category or subcategory for which the pesticide application is made.

Uncertified applicators would be required to have received training in each of the subjects listed in KSA 2-2443a, which details the list of subjects covered in the commercial applicator's examination.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Each pesticide business licensee would be required to maintain records that verify each uncertified applicator employed by the business has been properly trained.

The bill would authorize the Secretary of Agriculture (Secretary) to adopt rules and regulations for the following purposes:

- To prescribe requirements for appropriate supervision and training of uncertified applicators by certified applicators; and
- To prescribe record requirements, including, but not limited to, training information that pesticide business licensees are required to maintain. The records would be:
 - Maintained for three years after the training has been given; and
 - Available upon request of the Secretary or the Secretary's designee.

This section of the bill would be part of and supplemental to the Pesticide Law.

Definitions (Section 2)

The bill would define "governmental agency" and "government agency" to mean any officer, department, bureau, division, board, authority, agency, commission, or institution of a local, state, or federal government when acting to enforce or administer any law, regulation, or ordinance, or otherwise acting in its official capacity.

Financial Responsibility (Sections 3, 10, 12, and 15)

The bill would clarify the requirements of proof of financial responsibility for a pesticide business license. Applicants for a license would be required to file a surety

bond or certificate of liability insurance instead of letters of credit or proof of an escrow account.

The bill would also clarify that a government agency is not required to furnish proof of financial responsibility during the registration process.

Government Agency (Section 3)

The bill would require a government agency to register for pesticide applications of sodium cyanide predator control pesticides, and applicators of these pesticides would be required to be certified.

[*Note:* According to the U.S. Environmental Protection Agency (EPA), sodium cyanide is a single-dose poison used on pastures, range, and forest land to control coyote, red fox, grey fox, and wild dog populations that prey upon, or are likely to prey upon, livestock, poultry, or endangered species.]

Registered Pest Control Technicians (Section 4)

The bill would allow uncertified applicators to apply general use pesticides when a certified applicator or registered pest control technician is physically present. The bill would prohibit registered pest control technicians from supervising the use of, or applying, any restricted use pesticide unless supervised by a commercial applicator who is certified to apply restricted use pesticides for pest control in the category or subcategory for which the application is made.

The bill would allow the Secretary to adopt rules and regulations to prescribe requirements concerning the direct supervision of registered pest control technicians by certified applicators.

Civil Penalties (Section 5)

Pesticide Business Licensee and Pesticide Dealer

The bill would make clarifying changes to the civil penalties that could be imposed by the Secretary upon a finding that a pesticide business licensee or pesticide dealer has violated the Pesticide Law or rules and regulations.

In the case of a continuing violation, the bill would cap the maximum civil penalty at \$10,000.

Individual Person (Non-business, Non-dealer)

The bill would state that except as provided under this section, any person who holds a license, certification, registration, or permit, or is required to hold as such pursuant to the Pesticide Law, and violates any provision of the Pesticide Law or any adopted rules and regulations, could incur a civil penalty in an amount set through rules and regulations adopted by the Secretary.

The civil penalty would be an amount no less than \$100 and no more than \$500 for each violation. In the case of a continuing violation, every day the violation continues could be deemed a separate violation, and the maximum civil penalty would be capped at \$2,500.

Any Pesticide Business Licensee, Pesticide Dealer, or Person

The bill would clarify and authorize the Secretary to impose a civil penalty as provided by this section upon a finding that a pesticide business licensee, pesticide dealer, or any person has violated any provision of the Pesticide Law or any rules and regulations adopted by the Secretary.

Commercial Applicators Certification (Section 6)

The bill would, at the discretion of the Secretary, allow certified commercial applicators to obtain an additional certification in another category or subcategory upon:

- Submission of a complete and accurate application;
- Payment of a \$45 fee; and
- Completion of a training course approved by the Secretary to authorize the additional certification.

The bill would sunset this provision of the bill on December 31, 2028.

The bill would also state commercial applicator certification would not allow applications in the category of sodium cyanide predator control, with some exceptions; however, the Secretary could allow government agencies to obtain certification in that category.

Certification and License Categories (Section 7)

The bill would add sodium cyanide predator control, aerial pest control, and soil fumigation to the categories that would be required to obtain certification and licensing.

Private Applicator Certification (Sections 8–9)

The bill would require individuals applying for certification to apply restricted use pesticide to be at least 18 years old. The bill would clarify a private applicator certification would only be used for the purpose of producing any agricultural commodity on property owned or rented by the individual or their employer.

Private applicator certification would not authorize applications in the following categories:

- Sodium cyanide predator control;
- Non-soil fumigation;
- Aerial application; or
- Soil fumigation.

Private applicators could obtain commercial applicator certification to make applications in the above categories except for sodium cyanide predator control. The bill would also prohibit application of sodium fluoroacetate predator control.

[*Note:* Sodium fluoroacetate is known as Compound 1080 and is not allowed to be used in the state unless authorized by a permit issued under the authority of the Secretary of Wildlife and Parks. It is non-selective, meaning it is toxic to all mammals.]

The bill would require a certified private applicator to pass a written examination. The Secretary could adopt rules and regulations to establish a training program as an alternative to the written examination.

In lieu of a private applicator examination, the Secretary could accept attendance and satisfactory completion of a training course approved by the Secretary. If certification is renewed by training, the renewal application form would be accompanied by a recertification-by-training fee of \$50, unless established at a lower amount by the Secretary through rules and regulations.

Certification renewal could occur every five years by retaking the private applicator examination or attending recertification training.

The bill would remove the requirement the Secretary offer a correspondence course for a private applicator's certification.

The bill would authorize restricted use pesticides to be used only by a certified applicator or by an uncertified applicator working under the direct supervision of a certified applicator. No certification would be required for individuals operating under the direct supervision of a certified private applicator, but the supervised applicators would be at least 18 years of age. If the uncertified applicator is directly supervised by a relative or family member and is applying restricted use pesticides for the purpose of producing any agricultural commodity on property owned or leased by the individual or the individual's relative or family member, then the supervised applicator would be required to be at least 16 years of age.

The bill would clarify that private applicator certification could be issued to individuals who have complied with all other applicable requirements and would be subject to any testing or initial training fee established in rules and regulations adopted by the Secretary that could not exceed \$75.

Secretary's Authority (Sections 11 and 16)

The bill would remove the authority of the Secretary to deny, suspend, revoke, or modify any license, registration, permit, or certificate issued based on if an applicant, licensee, registrant, permit holder, or certificate holder has been convicted of or pleaded guilty to a non-Pesticide Law felony under state law or laws of the United States. Continuing law allows the Secretary to take action for Pesticide Law violations.

Statement of Services; Record Retention (Section 13)

Currently, an applicator is required to present a statement of services to each customer. The bill would add additional information to be included in the statement of services.

The bill would add requirements for government agency record retention. Each government agency would be required to maintain records relating to each application of pesticide made by the government agency. The records would be provided to the Secretary upon request.

The bill would require the records to include:

- The name, complete street address, and registration number of the government agency;
- The pest or pests to be controlled, which may be stated in general terms;
- The pesticide to be used, including the quantity applied and total area where the pesticide is applied;
- The concentration or rate of application, when applicable;
- The date, location, and start and end times of the application of the pesticide;
- The signature and applicator certification number of the individual who performed the pest control service or the application of pesticides;
- The signature and applicator certification number of the individual who supervised the performance of the pest control service or the application of pesticides, when applicable;
- The wind direction and velocity, when applicable;
- The complete product name of the pesticide as the name appears on the label; and
- The pesticide EPA registration number.

In addition, the bill would require pesticide business licensees and government agencies to create or verify the existence of records documenting that each uncertified applicator has the necessary qualifications as set forth in rules and regulations adopted by the Secretary.

Criminal Penalties (Section 14)

The bill would apply the same criminal penalty, class A misdemeanor, to any person who violates Pesticide Law and Chemigation Law.

Background

The bill was introduced by the House Committee on Agriculture and Natural Resources at the request of the Deputy Secretary of Agriculture.

House Committee on Agriculture and Natural Resources

In the House Committee hearing, **proponent** testimony was provided by the Deputy Secretary of Agriculture and representatives of Kansas Agricultural Aviation Association; Kansas Corn Growers Association; Kansas Farm Bureau; and Kansas Grain and Feed Association and Kansas Agribusiness Retailers Association.

The proponents stated the changes proposed in the bill reflect Kansas Department of Agriculture's (KDA) environmental plan that has been approved by the EPA. The changes to statute would reflect the changes that the EPA has mandated in state programs. The proponents stated that stakeholder organizations support the proposed changes, as compliance will allow Kansas to keep its primacy on environmental policy and issues.

Written-only proponent testimony was provided by a representative of the Kansas Cooperative Council.

No other testimony was provided.

The House Committee amended the bill to:

- Restore an exemption for trading personal services between producers of agricultural commodities, on the property of another person (bartering);
- Decrease the maximum cap on the fine for a violation from \$5,000 to \$500 and create a total maximum cap on fines of \$2,500;
- Restore language to authorize the Secretary to impose a civil penalty on any person or entity in violation of Pesticide Law and Chemigation Law;
- Require a person applying a restricted use pesticide being supervised by a family member to be at least 17 years old;
- Require the initial certification and training be conducted by the KDA; and
- Restore the proof of financial responsibility to include surety bonds.

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, **proponent** testimony was provided by Representative Gardner and representatives of Kansas Agricultural Aviation Association, Kansas Corn Growers Association, and Kansas Farm Bureau. The proponents provided feedback on the amendments made by the House Committee and suggested further amendments on the civil penalties portion of the bill.

Written-only testimony was provided by a representative of the Kansas Cooperative Council.

No other testimony was provided.

The Senate Committee amended the bill to:

- Restore language to current law regarding “pesticide business licensee or pesticide dealer” rather than “person or entity”;
- Restore the civil penalty cap for violation of the Kansas Pesticide Law or any rules and regulations to the current limitation of \$5,000 (current law) rather than \$500;
- Add a maximum civil penalty of \$10,000 in the case of a continuing violation by a pesticide business licensee or pesticide dealer;
- Authorize the Secretary to adopt rules and regulations that would set a civil penalty at an amount no less than \$100 and no more than \$500;
- Add a maximum civil penalty of \$2,500 in the case of a continuing violation by a person who holds a license, certification, registration, or permit;
- Restore language regarding the age from 17 to 16 years old of a person who could apply a restricted use pesticide while being supervised by a family member (the bill, as introduced); and
- Add technical amendments.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KDA indicates enactment of the bill could increase fee revenue in both FY 2025 and FY 2026 with the addition of the licensure and certification of sodium cyanide applications. However, the KDA cannot estimate a fiscal effect as it cannot accurately determine if current commercial applicators would choose the new method. The Kansas Department of Health and

Environment indicates the enactment of the bill would not have a fiscal effect on the agency. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Kansas Department of Agriculture; Secretary of Agriculture; Kansas Pesticide Law; Kansas Chemigation Safety Law; restricted use pesticides; pesticide applicators; fees