HOUSE BILL No. 2463

By Committee on Agriculture

AN ACT concerning agriculture; relating to pesticides; the licensure of persons applying pesticides; the permitting of persons utilizing chemigation; amending K.S.A. 2-2448, 2-2467a and 2-3310 and K.S.A. 2019 Supp. 2-2440, 2-2449 and 2-2450 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2019 Supp. 2-2440 is hereby amended to read as follows: 2-2440. (a) Subject to the provisions of subsection (d), it is unlawful for any pesticide business which has not been issued a pesticide business license to:
1. Advertise, offer for sale, sell or perform any service for the control of a pest on the property of another or apply a pesticide to the property of another within this state; or
2. Perform any service for the control of a pest or apply any pesticide on or at the premises of another person under any commission, division of receipts or subcontracting arrangement with a licensed pesticide business.

Nothing in this subsection shall be construed to require the licensing of any person applying restricted use pesticides to the property of another as a certified private applicator or under the supervision of a certified private applicator.

(b) Application for a pesticide business license or renewal shall be made on a form obtained from the secretary and shall be accompanied by an application fee per category in which the licensee applies, and an additional fee for each uncertified individual employed by the applicant to apply pesticides. The application fee per category shall be $140 per category in which the licensee applies, except that on and after July 1, 2023, the application fee per category shall be $112 per category in which the licensee applies. An additional fee of $15 shall be paid for each uncertified individual employed by the applicant to apply pesticides. The application fee per category and the additional fee for each uncertified employee in effect on the day preceding the effective date of this act shall continue in effect until the secretary adopts rules and
regulations fixing a different fee under this subsection. Any uncertified individual employed for a period of more than 10 days in a 30-day period or for five consecutive days by a licensee to apply pesticides subsequent to such application shall be reported to the secretary within 30 days of such employee's hiring and the fee shall be paid at that time. Each application shall also include the following:

(1) The business name of the person applying for such license or renewal;

(2) if the applicant is an individual, receiver, trustee, representative, agent, firm, partnership, association, corporation or other organized group of persons, whether or not incorporated, the full name of each owner of the firm or partnership or the names of the officers of the association, corporation or group;

(3) the principal business address of the applicant in the state and elsewhere; and

(4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(c) The secretary may issue a pesticide business license to apply pesticides in categories for which an applicant has applied if the applicant files the bond, certificate of liability insurance, letter of credit or proof of an escrow account as required under K.S.A. 2-2448, and amendments thereto, satisfies the requirements of subsection (b), and pays the required fees. Such license shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(d) The following persons shall be exempted from the licensing requirements of this act:

(1) State or federal personnel using pesticides or pest control services while engaged in pesticide use research;

(2) veterinarians or physicians using pesticides as a part of their professional services; and

(3) any person or such person's employee who applies pesticides on or at premises owned, leased or operated by such person.

(e) Subject to the provisions of subsection (d), it is unlawful for any governmental agency which has not been issued a government agency registration to apply pesticides within this state. Application for government agency registration shall be made on a form obtained from the secretary and shall be accompanied by a fee fixed by rules and regulations adopted by the secretary, except that such fee shall not exceed $50, except that on and after July 1, 2023, such fee shall not exceed $35. The governmental agency registration fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary adopts
rules and regulations fixing a different fee therefor under this subsection. No fee shall be required of any township located within a county which has previously applied for and received government agency registration. Each application for registration shall contain information including, but not limited to:

(1) The name of the government agency;
(2) the mailing address of the applicant;
(3) the name and mailing address of the person who heads such agency and who is authorized to receive correspondence and legal papers. Such person shall be: (A) The mayor or city manager for municipalities; (B) the chairperson of the board of county commissioners for counties; (C) the township trustee for townships; or (D) any person designated by any other governmental agency; and
(4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(f) If the secretary finds the application to be sufficient, the secretary shall issue a government agency registration. The government agency is not required to furnish a surety bond proof of financial responsibility under this act. Such government agency registration shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a registration is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(g) A pesticide business license or government agency registration may be renewed by meeting the same requirements as for a new license or registration. Neither the pesticide business license nor the government agency registration shall be transferable, except that, in the event of the disability, incapacity or death of the owner, manager or legal agent of a pesticide business licensee, a permit may be issued by the secretary to permit the operation of such business until the expiration period of the license in effect at the time of such disability, incapacity or death if the applicant therefor can show that the policies and services of such business will continue substantially as before, with due regard to protection of the public and the environment.

(h) No pesticide business license may be issued to any person until such person is or has in such person's employ one or more individuals who are certified commercial applicators in each of the categories for which the license application is made.

Sec. 2. K.S.A. 2-2448 is hereby amended to read as follows: 2-2448.
(a) Except as provided by subsection (b), the secretary shall not issue a pesticide business license until the applicant has furnished proof of financial responsibility by one of the following:
(1) A surety bond in an amount not less than $6,000 per year. The bond shall be executed by a corporate surety and shall state the effective
date and the expiration date. The surety bond shall be executed on a form
approved by the secretary. The applicant shall be named as the principal in
the bond. Such bond shall be to the state of Kansas and shall be
conditioned upon compliance by the principal and by the principal's-
officers, agents, representatives and employees, with the provisions of this
act and acts amendatory thereof and supplemental thereto. It shall be-
unlawful for any licensed person to use the words "bond" or "bonded" in
advertising or in publicizing such person's operations in connection with
the application of pesticides unless such bond is a performance bond and
that fact and the amount of such bond are specified.

(2) providing a certificate of liability insurance. The certificate of
liability insurance shall be executed by an insurance company authorized
to do business in Kansas or by a licensed insurance agent operating under
authority of K.S.A. 40-246b, and amendments thereto, and shall state the
effective date and the expiration date of the policy. Such liability insurance
shall be subject to the insurer's policy provisions filed with and approved
by the commissioner of insurance pursuant to K.S.A. 40-216, and
amendments thereto, except as authorized by K.S.A. 40-246b, and
amendments thereto. The liability insurance policy shall provide:

(A) (1) Coverage for not less than $25,000 for bodily injury liability for each
occurrence; and
(B) (2) coverage for not less than $5,000 for property
damage liability for each occurrence. In addition to the coverage specified
above, if the applicant for a pesticide business license is an aerial
applicator, the liability insurance policy shall provide coverage for any
pesticide such applicant will be applying and for comprehensive chemical
coverage. Pesticide application equipment, if required to be registered
under K.S.A. 2-2456, and amendments thereto, shall be covered. The
insurer shall notify the secretary, in writing, of any expiration, reduction or
cancellation of liability insurance, furnished as a prerequisite of licensure,
not later than 10 days before the expiration, reduction or cancellation takes
effect. Upon expiration, reduction or cancellation of the liability insurance,
the secretary shall suspend such pesticide applicator's business license
until the insurance requirement is met by the licensee for the current
license period. The certificate shall be executed on a form approved by the
secretary.

(3) A $6,000 letter of credit from a Kansas financial institution, as
defined in K.S.A. 16-117, and amendments thereto. The letter of credit
shall be executed on a form approved by the secretary. The letter of credit
shall state the effective date and the expiration date and shall be valid
through the term of the applicant's business license. Upon cancellation of
the letter of credit, the secretary shall suspend such pesticide applicator's
business license until the letter of credit requirement is met by the licensee
for the current license period.
(4) Maintaining a minimum balance of $6,000 in an escrow account in a Kansas financial institution as defined in K.S.A. 16-117, and amendments thereto. The escrow account shall maintain the minimum balance through the term of the applicant’s business license. The secretary shall be notified in writing by the financial institution within 10 days if the amount in the escrow account falls below the $6,000 minimum balance. Upon notification, the secretary shall suspend such pesticide applicator’s business license until the escrow account minimum balance is at $6,000.

(b) Before June 1, 1994, the financial responsibility and proof of financial responsibility required pursuant to this section prior to March 1, 1994, shall continue to apply to any pesticide business holding a valid pesticide business license on February 28, 1994, and no different or additional financial responsibility or proof of financial responsibility shall be required of such business. On or before June 1, 1994, each pesticide business licensed before March 1, 1994, shall furnish to the secretary proof of financial responsibility conforming to the requirements of this section as amended by this act.

(c) The requirements of this section as amended by this act shall apply to any applicant applying for an original pesticide business license on or after March 1, 1994, and no different or additional financial responsibility or proof of financial responsibility shall be required of such applicant.

Prior to January 1, 2021, any existing proof of financial responsibility that has been properly filed with the secretary and remains valid shall fulfill the proof of financial responsibility requirements of the Kansas pesticide law, but, on and after January 1, 2021, pesticide business licensees and applicants shall have a certificate of liability insurance properly filed with the secretary in accordance with the provisions of this section to fulfill the proof of financial responsibility requirements of the Kansas pesticide law.

Sec. 3. K.S.A. 2019 Supp. 2-2449 is hereby amended to read as follows: 2-2449. The secretary may deny, suspend, revoke or modify the provisions of any license, registration, permit or certificate issued under this act, if the secretary finds, after notice and opportunity for a hearing are given in accordance with the provisions of the Kansas administrative procedure act, that the applicant, licensee, registrant, permit holder or certificate holder has:

(a) Been convicted of or pleaded guilty to a violation of this act, or been convicted of or pleaded guilty to a felony under the laws of this state or of the United States, if the secretary determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust; or

(b) failed to comply with any provision or requirement of this act or
any rule and regulation adopted thereunder, or any of the laws or rules and
regulations of any other state or the United States relating to licensing or
other provisions concerning pesticide use or control; or
(e) had any license, certificate, registration or permit issued to the
person under this act, or the pest control or pesticide use laws of any other
state revoked.
Sec. 4. K.S.A. 2019 Supp. 2-2450 is hereby amended to read as
follows: 2-2450. (a) If the surety bond, certificate of liability insurance,
letter of credit or proof of an escrow account previously furnished by the
licensee expires or is canceled or terminated, the secretary shall suspend
without a hearing the pesticide business license until an acceptable
substitute surety bond, letter of credit, proof of an escrow account or a
certificate establishing acceptable replacement of liability insurance is
supplied.
(b) If the pesticide business fails to employ one or more commercial
applicators certified in each category and subcategory in which the
pesticide business makes commercial pesticide applications, the secretary
may suspend, without a hearing, the pesticide business license for that
category until the pesticide business employs a commercial applicator with
the appropriate certification.
Sec. 5. K.S.A. 2-2467a is hereby amended to read as follows: 2-
2467a. The secretary is hereby authorized to promulgate and adopt rules
and regulations for the administration of this act and concerning the
following matters which include, but are not limited to:
(a) The designation of certain pesticides as restricted use pesticides as
provided in K.S.A. 2-2439, and amendments thereto;
(b) the designation of categories for the issuance of pesticide business
licenses as provided in K.S.A. 2-2444a, and amendments thereto;
(c) the designation of categories for the certification of applicators as
provided in K.S.A. 2-2444a, and amendments thereto;
(d) the designation of training requirements for those persons
applying for a pest control technician's registration as provided in K.S.A.
2-2440b, and amendments thereto;
(e) the registration and identification of equipment used in the
commercial application of pesticides as provided in K.S.A. 2-2456, and
amendments thereto;
(f) the storing and discarding of pesticides, pesticide materials,
pesticide rinsates and pesticide containers;
(g) proper health and safety precautions;
(h) proof of financial responsibility including acceptable surety
bond, certificate of liability insurance coverage, letter of credit or proof of
an escrow account;
(i) furnishing of reports and information necessary for the secretary to
carry out the provisions of this act; and

   (j) imposing limitations on the use of any pesticide in a manner
inconsistent with its label or labeling, pursuant to K.S.A. 2-2471, and
amendments thereto; and

   (k) any procedural or other matters related to the designation of
pesticide management areas.

Sec. 6. K.S.A. 2-3310 is hereby amended to read as follows: 2-3310.
The secretary, after notice and opportunity for a hearing in accordance
with the provisions of the Kansas administrative procedure act, may deny,
suspend, revoke or modify the provisions of any permit issued under this
act, if the secretary finds that the applicant, registrant or permit holder has:

   (a) Been convicted of or pleaded guilty to a violation of this act or the
Kansas pesticide law, or has been convicted of or pleaded guilty to a
felony under the laws of this state or of the United States, if the board
determines, after investigation, that such person has not been sufficiently
rehabilitated to warrant the public trust;

   (b) failed to comply with any provision or requirement of this act or
any rule and regulation adopted thereunder; or

   (c) had any certificate, registration or permit issued under this act or
the Kansas pesticide law revoked.

Sec. 7. K.S.A. 2-2448, 2-2467a and 2-3310 and K.S.A. 2019 Supp. 2-
2440, 2-2449 and 2-2450 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its
publication in the statute book.