



House Agriculture Committee HB 2271 – Plant Pest February 16, 2011

Good morning Chairman Powell and members of the House Agriculture Committee. I am Mary Jane Stankiewicz, the COO and Senior Vice President of the Kansas Agribusiness Retailers Association and I appear before you regarding HB 2271 on behalf of the Kansas Cooperative Council (KCC) and the Kansas Agribusiness Retailers Association (KARA).

KARA's membership includes over 700 agribusiness firms that are primarily retail facilities which supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. The KCC is a voluntary, statewide trade association representing all forms of cooperative businesses across the state -- agricultural, utility, credit, financial, refining and consumer cooperatives.

Our associations have been supportive of the clean up and clarification language that is contained in this bill. However, we have real concerns about Section 9 and 10 on page 7 of the bill pertaining to the criminal penalties that may be imposed for violations of this act. Previously, if you violated the act then you were fined, now you risk being convicted of a felony. This tremendous jump in the penalties is scary because under this bill, a person could violate one of these provisions, admit to the violation thus the person "intentionally" acted and could then be sentenced as a felon. Further complicating the matter is that under Section 9 (b) "each day a violation of this act occurs or continues shall constitute a separate violation."

While I understand the Kansas Department of Agriculture only intends for this criminal penalty section to be used for the really bad actors, they can only point to one example in the last year when

this was needed. Which makes us concerned about changing a whole penalty section based on a bad actor that occurred a year or two ago. Is this really necessary when the Attorney General has the authority to prosecute fraud, consumer protection and other criminal activities right now?

If someone is convicted of a felony, there are penalties beyond this act: could prevent someone from certain jobs, could restrict their movement if they are on probation. None of these violations seem egregious enough to warrant such stiff penalties, especially when there is only one bad example that the Department can point to.

Even for the subsections of section 9 where violations are misdemeanors, they are going from "unclassified" misdemeanor to a "Class A" misdemeanor. This is an important distinction as the penalty for an unclassified misdemeanor is contained in the specific act if falls under and that has been a fine. Now moving it to a Class A misdemeanor moves the penalty to time in a county jail, which can be converted to probation.

We think this the criminal reference is too punitive, especially in light of the lack of cases that might serve this level and because most of the violations are and should be handled by fines. We think a criminal penalty is too harsh and we ask you to strike Section 10 and return this to the original law.