

SESSION OF 2018

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 263**

As Amended by House Committee on  
Agriculture

**Brief\***

SB 263, as amended, would enact the “Alternative Crop Research Act” (Act), which would allow the Kansas Department of Agriculture (KDA), either alone or in coordination with a state institution of higher education, to grow and cultivate industrial hemp and promote the research and development of industrial hemp, in accordance with federal law. The bill would allow individuals to participate in the research program under the authority of the KDA. Nothing in the Act would be construed to authorize any person to violate state or federal law.

***Research and Development***

Research and development of industrial hemp, under the provisions of the bill, would include such things as analysis of industrial hemp growth including required soils, growing conditions, and harvest methods; research on seeds most suitable for Kansas; and market analysis to determine the potential for an industrial hemp market in Kansas.

The bill would authorize the KDA to establish a pilot program in Russell County, and other counties determined by the KDA, for the purpose of economic development, research, cultivation, market analysis, manufacturing, and transportation of industrial hemp and industrial hemp products.

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\*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>

### ***Advisory Board***

If the KDA would act without coordination with a state institution of higher learning to cultivate industrial hemp grown from certified seed, in effort to promote the research and development of industrial hemp, the Secretary of Agriculture (Secretary) would be required to establish an advisory board within the KDA to review and recommend applications for pilot projects and research proposals to the Secretary. The Secretary would be prohibited from approving any project or proposal without the recommendation of the advisory board.

### ***Licensure and Fees***

The KDA would be required to annually license program participants and maintain oversight of all industrial hemp activities, including cultivation, growth, research, oversight, study, analysis, transportation, processing, or distribution of certified seed or industrial hemp pursuant to the Act.

In addition, the KDA would be authorized to establish fees for licenses, license renewals, and other necessary expenses to defray the cost of implementing and operating the Act in the State on an ongoing basis. Licensing and renewal fees would be established by rules and regulations adopted by the Secretary under the Act.

The KDA would require all license holders to be fingerprinted and undergo a state and national criminal history check at the license holder's expense. The KDA would be authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI), and the KBI would be able to charge a reasonable fee for conducting a criminal history record check. The KDA would not issue licenses to individuals who have been convicted of felonies involving controlled substances.

### ***Fee Fund***

The bill would create the Alternative Crop Research Act Licensing Fee Fund (Fund) in the State Treasury, which would be administered by the Secretary. Moneys received from fees would be deposited in the State Treasury and would be credited to the Fund. All expenditures from the Fund would be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers signed by the Secretary or the Secretary's designee.

### ***Rules and Regulations***

The bill would require the KDA to promulgate rules and regulations by December 31, 2018, to carry out the provisions of the Act.

The rules and regulations of the KDA would include, but not be limited to, a requirement that license holders keep in their possession at all times the license that they are engaged in cultivation, growth, research, oversight, study, analysis, transportation, processing, or distribution of certified seed or industrial hemp pursuant to the Act.

### ***Report***

The bill would require the KDA to report to the Senate Committee on Agriculture and Natural Resources and the House Committee on Agriculture by January 14, 2019, on the process by which the KDA would allow program participants to grow and process industrial hemp in Kansas and then sell it outside of Kansas. In addition, the KDA would be required to send each committee an annual supplemental report on the continued progress on the process at the beginning of each regular Legislative Session for the next three years.

### ***Legislative Review***

The bill would require the Legislature to review the provisions of the Act prior to July 1, 2022.

### ***Other Provisions***

The bill would amend KSA 2017 Supp. 21-5701, dealing with criminal law, to exclude “industrial hemp” from the definition of “marijuana,” when cultivated, possessed, or used for activities authorized by the Act.

The bill also would amend KSA 2017 Supp. 65-4101, dealing with controlled substances, to clarify the definition of “marijuana” to exclude “industrial hemp” as it would be defined in the bill, when cultivated, possessed, or used for activities authorized by the Act.

In addition, the bill would amend KSA 2017 Supp. 65-4105, dealing with controlled substances included in schedule I, to exclude tetrahydrocannabinols (THC) obtained from industrial hemp as it would be defined in the bill, when cultivated, possessed, or used for activities authorized by the Act.

### ***Effective Date***

The bill would become effective upon publication in the *Kansas Register*.

### ***Background***

The bill was introduced by the Senate Committee on Agriculture and Natural Resources at the request of Senator Kerschen.

### **Senate Action**

In the hearing before the Senate Committee on Agriculture and Natural Resources, Representatives Dove and Johnson, and representatives of the KDA and the Sierra Club – Kansas Chapter testified in support of the bill. A representative of the Kansas Farm Bureau submitted written-only testimony in support of the bill.

Opponent testimony was provided by two private citizens.

Neutral testimony was provided by representatives of the Kansas Association of Police Chiefs, Kansas Sheriffs' Association, KBI, and Russell County Economic Development and CVB (convention and visitor bureau).

The Senate Committee adopted the following amendments:

- The first amendment makes the following changes;
  - Revises the definition of THC;
  - Requires the KDA to promulgate rules and regulations with respect to the Act, and outlines the requirements for rules and regulations to require licenses for those engaged in cultivation, growth, research, oversight, study, analysis, or transportation of industrial hemp or certified seed;
  - Requires the KDA to license prospective program participants, and to submit to fingerprinting. The amendment authorizes the KDA to submit the fingerprints to the KBI for a state and national criminal background check;
  - Prevents a person from obtaining or maintaining a license if they have a felony conviction involving a controlled substance;

- Authorizes the KBI to charge a reasonable fee for the criminal history record check and requires the prospective program participant to pay the costs of the fingerprinting and criminal history record check; and
- Makes a technical change;
- The second amendment makes the following changes;
  - Allows a “grower” to grow or cultivate industrial hemp and promote the research and development of industrial hemp; and
  - Allows the KDA to approve, as a grower, a person to grow or cultivate industrial hemp. For the purposes of the term “grower,” the amendment defines “person” as an individual, partnership, corporation, association, or other legal entity;
- The third amendment adds a requirement for the KDA to submit a report to the Legislature, by January 14, 2019, outlining a process to allow program participants to grow and process industrial hemp, and sell industrial hemp outside Kansas;
- The fourth amendment authorizes a pilot program for the purpose of economic development and market research for industrial hemp in Russell County; and
- The fifth amendment requires the KDA to develop industrial hemp rules and regulations by December 31, 2018.

The Senate Committee of the Whole adopted the following amendments:

- The first amendment deletes the words “grower” and “person” and corresponding definitions from the bill. The amendment also replaces the word “person” with the word “individual”;
- The second amendment amends KSA 2017 Supp. 65-4101, dealing with controlled substances, to exclude “industrial hemp” from the definition of “marijuana” for the purposes of the bill;
- The third amendment amends KSA 2017 Supp. 21-5701, dealing with criminal law relative to controlled substances, to exclude “industrial hemp” from the definition of “marijuana”; and
- The final amendment amends KSA 2017 Supp. 65-4105 to exclude “industrial hemp” from being included as a cannabinoid, its salts, isomers, or salts of its isomers.

### ***House Action***

In the hearing before the House Committee on Agriculture, proponent testimony was provided by Representatives Dove, Johnson, and Waymaster, the Deputy Director of the KDA, representatives of the Russell County Economic Development and CVB, Sierra Club – Kansas Chapter, and seven members of the public. Written-only proponent testimony was provided by the City Manager of the City of Russell and four members of the public.

Neutral testimony was provided by the Executive Officer for the KBI, who requested clarifying language for the bill. Written-only neutral testimony was provided by a representative of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriffs’ Association; and one member of the public.

Opponent testimony was provided by one member of the public, who stated the language and timeline proposed for production of industrial hemp is too slow for his company, as his company is already working with producers in Colorado.

The House Committee adopted amendments that would do the following:

- Add a reference to federal law;
- Authorize pilot programs to be conducted in other counties as determined by the KDA;
- Add cultivation, market analysis, manufacturing, and research to the purpose of pilot programs;
- Authorize the Secretary to create an advisory committee and in the event the KDA acts along to cultivate industrial hemp, require the Secretary to approve projects or proposals only upon recommendation of the advisory board;
- Add processing and distribution to the activities a licensee could undertake regarding industrial hemp;
- Authorize the KDA to establish license and renewal fees;
- Require the KDA to send its report to the House Committee on Agriculture and require annual updates to both the House and Senate Committees for three years;
- Require the Legislature to review the provisions of the Act prior to July 1, 2022;
- Create the Fund and direct fees to be deposited into the Fund and authorize expenditures;

- Require licensing and renewal fees to be established pursuant to rules and regulations under the Act;
- Clarify that industrial hemp, when cultivated, possessed, or used for activities authorized by the Act, is excluded from the definition of marijuana in current law regarding controlled substances, schedule I of controlled substances, and criminal law;
- Delete the Senate Committee of the Whole amendment with regard to excluding industrial hemp from the law regarding schedule I of controlled substances; and
- Change the effective date of the bill from upon publication in the statute book to upon publication in the *Kansas Register*.

The fiscal note on the original version of the bill prepared by the Division of the Budget indicates there would be no immediate or quantifiable fiscal effect. Any fiscal effect would depend on the amount of testing that may be required for THC quantification or plant DNA testing, and the number of research licenses that would be issued by the KDA.