

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2559**

As Agreed to March 30, 2022

Brief*

HB 2559 would establish the Kansas Cotton Boll Weevil Act (Boll Weevil Act) and create the Kansas Cotton Boll Weevil Program (Boll Weevil Program). The bill would also create law regarding industrial hemp testing services and seed treated with an irritating or poisonous substance, and update laws that are administered by the Plant Protection and Weed Control Program of the Kansas Department of Agriculture.

Kansas Cotton Boll Weevil Act

The bill, as amended, would establish the Boll Weevil Act and create the Boll Weevil Program, which would be administered by a board of directors.

Boll Weevil Act and Definitions

The bill would establish the Boll Weevil Act and would define the terms “Act,” “board,” “cotton pest,” “grower,” “person,” and “Secretary” for purposes of the Act.

Boll Weevil Program and Boll Weevil Board

The bill would establish the Boll Weevil Program and authorize the Kansas Cotton Boll Weevil Program Board of Directors (Boll Weevil Board) to administer and implement the Boll Weevil Program.

Board membership. The Boll Weevil Board would consist of five voting members and three ex officio non-voting members: the Dean of the Kansas State University College of Agriculture, or the Dean’s designee; the Secretary of Agriculture (Secretary), or the Secretary’s designee; and the Association chairperson, or the chairperson’s designee.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

The bill would require the Board of Directors of the Kansas Cotton Association to submit seven nominations to the Secretary, from which the Secretary would appoint the five voting members.

Each appointed Boll Weevil Board member would serve a four-year term, and two of the Board members first appointed on and after the effective date of the bill would be appointed for two-year terms.

The Boll Weevil Board would elect a chairperson from the voting members of the Boll Weevil Board each year. The Boll Weevil Board would be required to meet at least once every calendar year in conjunction with the Kansas Cotton Association's annual meeting.

The bill would require that, upon a vacancy on the Boll Weevil Board, or at least 30 days prior to the expiration of the term of any voting member, the Board of Directors of the Kansas Cotton Association would submit three nominations to the Secretary for each vacancy or expiring term, from which the Secretary would appoint a voting member.

Board authority. The Boll Weevil Board would have the following authority, for the purposes of administering and implementing the Boll Weevil Program, to:

- Establish and implement a cotton pest monitoring plan that would be required to include:
 - Development and distribution of educational materials; and
 - Authority for the Board's designee to, subject to notice requirements, enter private property to:
 - Perform inspections of any cotton field upon the private property to determine whether an infestation of cotton exists or whether cotton pests are present on the property; and
 - Set and monitor traps;
- Accept grants and donations;
- Sue and be sued;
- Appoint and compensate an administrator, who is knowledgeable about the cotton industry, and other personnel as needed, and establish an office for the administrator at any place in the state selected by the Boll Weevil Board; and
- Enter into contracts for purposes of the Boll Weevil Act, including, but not limited to, collection of the cotton assessment or coordination with any local, state, or national organization or agency, whether private or created by state or federal law, engaged in work or activities similar to the work and activities of the Boll Weevil Board.

Private property notification. The bill would require an individual entering private property to perform inspections or to set or monitor traps to notify the owner, operator, or lessee of the property for the purpose of the entry and allow any present and notified owner, operator, or lessee, or any representative, to accompany the individual conducting the inspections or setting or monitoring traps.

Eradication plan. The bill would allow the Boll Weevil Board to authorize the development and implementation of an eradication plan with the Secretary, pursuant to the Plant Pest and Agriculture Commodity Certification Act (KSA 2-2112 *et seq.*).

Cotton Bale Assessment

The bill would authorize the Boll Weevil Board to set an assessment per cotton bale at an amount not to exceed \$2. The Boll Weevil Board would review, set, and communicate the assessment to cotton growers each year.

The assessment would be levied on a grower at the time of deposit at the cotton gin and would be collected and remitted to the Boll Weevil Board.

For an in-state cotton gin that serves as the selling agent for the cotton products, the cotton gin would be required to:

- Collect the assessment by deducting the assessment from the ginning price of the cotton as a ginning cost or from any funds advanced for ginning costs;
- Provide monthly reports to the Boll Weevil Board on or before the 15th day of each month regarding the collected assessments;
- Remit all of the collected assessments each month to the Boll Weevil Board;
- Provide the Boll Weevil Board with any other information reasonably requested by the Board to ensure the collection of the assessments; and
- Provide a copy of the sales invoice or other document showing the transaction to the grower that shows the amount of the assessment collected.

For an out-of-state cotton gin that serves as the selling agent for the cotton produced, subject to any contract with the Boll Weevil Board, the bill would authorize the gin to:

- Collect the assessment on behalf of the grower at the time of the deposit at the gin; and
- Remit all of the assessments collected each month to the Board.

On June 1 of each year, the bill would require each cotton gin required to collect an assessment to forward to the Boll Weevil Board an accounting of all assessments collected and paid, and payment for all assessments previously collected but not paid.

The bill would require all funds expended by the Boll Weevil Board for administration and payment of all claims from performance or neglect of any duties or activities pursuant to the Boll Weevil Act to be paid from proceeds of the assessment. The bill would prohibit use of these funds for any other purposes.

Bank accounts used for operating and conducting the Boll Weevil Program's duties would be required to be secured by pledge of securities in the manner prescribed in law for state bank

accounts (KSA 75-4218). The bill would require an institution to be licensed by a state or the federal government if the bank account would be in an institution outside of the state.

Violations

Any violation of the Boll Weevil Act would be a class C nonperson misdemeanor.

Discontinuation of Program

The Boll Weevil Program, or any activity conducted under the Boll Weevil Program, could be discontinued upon resolution of the Boll Weevil Program, or such activity, and with approval by the Secretary, if the Boll Weevil Board determines the Boll Weevil Program, or activity, is no longer necessary or reasonable to operate pursuant to the Boll Weevil Act.

Before the dissolution, however, the Boll Weevil Board would be required to file a final report with the Secretary, including a financial report, and submit all remaining funds to the Kansas Cotton Association. Final books of the Boll Weevil Program would be required to be filed with the Secretary and would be subject to audit by the Secretary.

The bill would require the Secretary to pay from the Boll Weevil Program's remaining funds all of the Boll Weevil Program's outstanding obligations and would authorize the Secretary to collect assessments until all obligations are paid, with any remaining funds returned to the Kansas Cotton Association.

The bill would require the Secretary to submit a final report to the Legislature upon the conclusion of all activities related to the dissolution of the Boll Weevil Program.

Commercial Industrial Hemp Act

The bill would create law regarding industrial hemp testing services and make substantive and technical amendments to the Commercial Industrial Hemp Act (Industrial Hemp Act) to reflect the ending of the Industrial Hemp Research Program.

[*Note:* Kansas operates a U.S. Department of Agriculture-approved commercial industrial hemp production program.]

Industrial Hemp Testing Services

The bill would allow the Kansas Department of Agriculture (KDA) to provide industrial hemp testing services to non-licensed persons or governmental entities, including law enforcement agencies, when there is available testing capacity not required for testing industrial hemp produced by licensees subject to the Commercial Industrial Hemp Act.

The bill would authorize the Secretary to establish a fee schedule for any testing services through rules and regulations; any moneys received from fees would be deposited into the Laboratory Testing Services Fee Fund.

The bill would require KDA to provide the results of any tests to the Kansas Bureau of Investigation (KBI) upon request. The KDA would be required to coordinate testing services with the KBI in order to provide excess testing capacity without displacing any services that could also be provided by the KBI.

The bill would not limit the Secretary's authority to refuse to provide testing services to any non-licensee.

Definitions

The bill would remove the definition of "seed research," and add other colleges, university, technical colleges, and community colleges to the definition of "state educational institution."

Industrial Hemp Advisory Board

The bill would authorize the KDA to adopt rules and regulations to establish the Industrial Hemp Advisory Board as part of the Commercial Industrial Hemp Program.

[*Note:* The current Industrial Hemp Advisory Board was created as part of the Industrial Hemp Research Program. The bill would transfer the Industrial Hemp Advisory Board to the Commercial Industrial Hemp Program.]

The Industrial Hemp Advisory Board would provide input and information regarding the regulation and development of industrial hemp in Kansas. The Industrial Hemp Advisory Board would include a minimum of six members that represent:

- The Legislature;
- Crop research;
- Industrial hemp production or processing;
- Law enforcement;
- Seed certification; and
- The state entity designated to regulate hemp processors.

The Industrial Hemp Advisory Board would be required to meet at least once each year. Board members would receive no compensation but would be paid subsistence allowances, mileage, and other expenses as provided in law.

Fingerprinting

The bill would authorize the Secretary to determine whether to require fingerprinting of persons employed with KDA who are overseeing or regulating industrial hemp.

State Plan

The bill would add “standards for authorized seed or clone plants” to the list of topics to be included as part of the state plan for the Commercial Industrial Hemp Program and in the adoption of rules and regulations.

Kansas Seed Law

Treated Seed

The bill would require seed that has been treated with an irritating or poisonous substance that is harmful to humans or other vertebrate animals to be colored or dyed a color that clearly identifies the seed as treated. The bill would also require the seed to be labeled with specific language, as detailed in the bill.

The bill would require seed that has been treated with a substance that is not irritating, poisonous, or harmful to humans or other vertebrate animals to be labeled with a statement describing the applied substance.

The bill would also require seed that has been treated with an inoculant to be labeled with the inoculant’s expiration date.

The bill would allow a separate label to be used for the information required by the bill, but also allow this information to be included in the main label.

Sales and Distribution of Seeds Law

Definitions

The bill would make numerous changes to the definitions section of the Sales and Distribution of Seeds Law.

The bill would add definitions for “prohibited weed seed,” “wild mustard (*Brassica* spp.),” “cover crop seed,” “food plot,” “oil seed,” “Act,” and “Kansas Seed Law.” The bill would also add a definition of “feminized seed,” which would mean seeds produced by a *cannabis sativa* (hemp) plant that are specially bred, treated, or genetically engineered to eliminate male chromosomes to produce only female plants.

The bill would amend definitions for “noxious weed seed,” “restricted weed seed,” “seizure,” “hybrid,” “chaffy range grasses,” “blend,” “mixture,” and “grower of agricultural seed.” The bill would also amend the definition of “agricultural seed” to include oil seed, food plot seed, and any hemp crop authorized by state law, and specify that the definition does not include those seeds generally classified as vegetable, fruit, flower, tree, or shrub or grown for personal use or commercial sale, except cover crop seed. The bill would delete the definition of “horticultural seeds.”

The bill would also make technical and conforming amendments to several definitions.

Labeling

The bill would amend labeling requirements for seed by reorganizing subsections of current law and making technical changes. The bill would add a requirement that a label that makes claims that a bulk quantity, package, or parcel of hemp seeds contains feminized seeds include the percentage by weight of feminized seed.

Sales of Agricultural Seed

The bill would amend wholesaler and retailer requirements by reorganizing subsections of current law and making technical changes.

The bill would also add required conditions for when a grower of agricultural seed, who sells or offers or exposes for sale agricultural seed that has not been tested and labeled, would not be in violation of law. The conditions would include when the agricultural seed does not contain restricted weed seed in excess of the quantity established in rules and regulations adopted by the Secretary and is of a variety that is not prohibited from being sold or offered or exposed for sale by any legal, contractual, or other protection.

Wholesalers and Retailers

The bill would prohibit wholesalers from offering or exposing seed for sale when the wholesaler knows or has reason to know the buyer or potential buyer is not actively registered with the Secretary, as provided by continuing law.

The bill would authorize the Secretary, after providing notice and an opportunity for a hearing in accordance with the Kansas Administrative Procedure Act (KAPA), to deny any application or revoke, suspend, modify, or refuse to renew any registration if the applicant or the holder of a registration has:

- Failed to comply with the law or rules and regulations;
- Failed to comply with law or rules and regulations of any other states or the United States related to the registration of agricultural seed dealers, seed testing, or seed labeling; or
- Had revoked, suspended, or modified any license, certificate, registration, or permit issued by Kansas or any other state, or the United States, related to the registration of agricultural seed dealers, the testing of seed, the labeling of seed, or seed certification.

The bill would remove registration requirements for seed conditioners and would make technical and conforming amendments.

Penalties and Court Orders

The bill would authorize the Secretary, after providing notice of an opportunity for a hearing in accordance with KAPA, to suspend, revoke, or deny any registration and assess a civil

penalty against any person who violates or fails to comply with the Sales and Distribution of Seeds Law or any rules and regulations adopted under that law of \$100 to not more than \$1,000 per violation. The bill would allow the Secretary, in the case of a continuing violation, to deem each day of the violation a separate violation. This civil penalty would be assessed in addition to any other penalty provided by law.

The bill would also make technical and conforming amendments.

Inspection, Access, and Stop Sale Order

The bill would amend and make technical amendments regarding inspection, access, and stop sale orders by the Secretary regarding agricultural seed. The bill would authorize the Secretary to adopt rules and regulations regarding stop sale and movement of agricultural seed in violation of the Sales and Distribution of Seeds Law, and enter into agreement with the U.S. Department of Agriculture (USDA) on seed law enforcement [Note: Continuing law allows the Secretary to cooperate with the USDA in seed law enforcement.]

The bill would authorize the law to apply to any seed the Secretary has reason to believe is or may be exposed for sale, with the exception of agricultural seeds that are clearly and permanently marked as not for sale and stored separately from seed that is or may be offered for sale.

Clarification of Current Law

The bill would clarify current law regarding the actions the Secretary must take upon determination that a violation of this act or rules and regulations had occurred and clarify the Secretary's rules and regulations authority.

Plant Pest and Agriculture Commodity Certification Act

Definitions

The bill would add definitions of "temporary location" and "special event live plant dealer" and make technical changes to continuing definitions.

Inspection Fees

The bill would increase the cap for inspection fees from \$30 to \$45 for inspections requested by any person who owns or possesses plants or plant products or for certification purposes of regulated articles intended for shipment.

Exemption; Application Fee; License Fees

The bill would add "advertising for sale" to the list of actions before which every live plant dealer would be required to procure a live plant dealer's license for each location from which a

live plant dealer engages in business. The bill would also add an exemption to this requirement for temporary locations that are registered with the Secretary.

The bill would increase the cap for an application fee for a live plant dealer's license from \$80 to \$100.

The bill would establish a reduced license fee for live plant dealers who do not export live plants from the state, have annual gross receipts under \$10,000, and have only one location, other than temporary locations. The fee could not exceed \$50, excluding the plant pest emergency fee. The bill would require the application to be on a license application form provided by the Secretary.

The bill would establish a late fee of \$25 if a license is renewed on or after January 31 of each year or \$50 if the license is renewed after March 1. A live plant dealer license would not be issued until all fees are paid.

The bill would require any person who conducts business as a special event live plant dealer to register with the Secretary in a form and manner prescribed by the Secretary.

Conference Committee Action

The Conference Committee agreed to the provisions of HB 2559, as amended by the Senate Committee of the Whole, and agreed to add the contents of HB 2563, as amended by the Senate Committee on Agriculture and Natural Resources, regarding industrial hemp testing services, seed treated with an irritating or poisonous substance, and laws that are administered by the Plant Protection and Weed Control Program of KDA.

Background

The Conference Committee added the contents of HB 2563, as amended by the Senate Committee on Agriculture and Natural Resources, to HB 2559, as amended by the Senate Committee of the Whole.

HB 2559 (Cotton Boll Weevil Act)

The bill was introduced by the House Committee on Agriculture at the request of a representative of the Kansas Cooperative Council.

House Committee on Agriculture

In the House Committee hearing on February 3, 2022, representatives of the Kansas Cotton Association, Southern Kansas Growers Cooperative, and U.S. Cotton Growers provided **proponent** testimony, stating that while boll weevils still exist in southwest Texas, other cotton-growing states have eradicated the boll weevil population; however, because boll weevils are hardy and high reproducers, cotton-growing states must remain vigilant to ensuring that outbreaks do not occur. The proponents stated Kansas is increasing its cotton acres each year, to the point where other states have requested that Kansas start its own boll weevil program. In

addition, cotton producers currently pay a \$.50 per cotton bale assessment on a voluntary basis. Other proponent testimony was provided by representatives of the Kansas Cooperative Council and Kansas Farm Bureau.

Written-only proponent testimony was provided by a representative of the KDA. No other testimony was provided.

The House Committee recommended the bill be passed on February 11, 2022. The bill was withdrawn from the House Calendar and rereferred to the House Committee on February 15, 2022.

On February 16, 2022, the House Committee amended the bill to change the appointment process for the voting members of the Boll Weevil Board and recommended the bill be passed as amended [*Note: The amendment was retained by the Conference Committee.*].

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing on March 10, 2022, **proponent** testimony was provided by the Deputy Secretary of Agriculture and representatives of the Kansas Cooperative Council, National Cotton Council of America, and Southern Kansas Cotton Growers Cooperative, Inc. Written-only proponent testimony was provided by representatives of Kansas Farm Bureau and the State of Oklahoma Boll Weevil Eradication Organization. No other testimony was provided.

Senate Committee of the Whole

On March 22, 2022, the Senate Committee of the Whole amended the bill to:

- Decrease the number of nominations, from seven to three, required to be submitted by the Board of Directors of the Kansas Cotton Association for a vacancy or expiring term on the Boll Weevil Board [*Note: The amendment was retained by the Conference Committee.*]; and
- Require an individual entering private property to perform inspections or to set or monitor traps to notify the owner of the property. The bill would have previously required attempted notification, if practicable [*Note: The amendment was retained by the Conference Committee.*].

HB 2563 (Industrial hemp testing service; seeds; Plant Protection and Weed Control Program)

The bill was introduced by the House Committee on Agriculture at the request of a representative of the KDA.

House Committee on Agriculture

In the House Committee hearing, the Program Manager, Plant Protection and Weed Control Program, KDA, provided **proponent** testimony, stating the bill would update three

different program acts, providing updated language that reflects the current workings of the program and increasing fee caps to reflect the needs of program. He stated the legislation was developed in consultation with 14 stakeholder groups and individual seed dealers.

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

Neutral testimony was provided by a representative of the Kansas Agribusiness Retailers Association, who stated an agreement had been made with KDA to ask for an amendment on the civil penalty that would be created by the bill. Neutral testimony was also provided by a representative of Kansans for Hemp and the Planted Association of Kansas, who provided information on the differences between hemp and marijuana and questioned the need for the KBI to be involved in seed testing or seed data.

Opponent testimony was provided by a private citizen, who objected to several parts of the bill and discussed his opposition to the current federal guidelines regarding all cannabis.

The House Committee amended the bill to:

- Change the civil penalty created by the bill from “not less than \$100 nor more than \$1,000” per violation to “not less than \$100 nor more than \$3,000” per violation [*Note:* The amendment was not retained by the Conference Committee];
- Remove a provision that would allow the Secretary, in the case of a continuing violation, discretion in deeming a separate violation each day the violation continues [*Note:* The amendment was not retained by the Conference Committee]; and
- Remove the Secretary’s authority to assess the civil penalty in addition to any other penalty proscribed by law [*Note:* The amendment was retained by the Conference Committee.].

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, **proponent** testimony was provided by the Program Manager, Plant Protection and Weed Control Program, KDA, and a representative of the Kansas Agribusiness Retailers Association.

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

Opponent testimony was provided by a private citizen.

No other testimony was provided.

The Senate Committee amended the bill to:

- Remove House Committee amendments regarding the amount of civil penalties and restore language stating the civil penalty may be assessed in addition to any other penalty provided by law [*Note:* The amendment was retained by the Conference Committee]; and

- Increase from \$5,000 to \$10,000, the annual gross receipt amount cap for the ability to apply for a reduced license fee. [*Note:* The amendment was retained by the Conference Committee.]

Fiscal Information

HB 2559 (Cotton Boll Weevil Act)

According to the fiscal note prepared by the Division of the Budget on HB 2559, as introduced, the KDA and Kansas State University indicate that any costs to the agencies resulting from enactment of the bill would be absorbed within existing resources. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

HB 2563 (Industrial Hemp Testing Service; Seeds; Plant Protection and Weed Control Program)

According to the fiscal note prepared by the Division of the Budget on HB 2563, as introduced, the KBI indicates the bill would have no fiscal effect on the agency. KDA indicates the bill could require the agency to complete five tests of hemp for non-KDA licenses per year at a cost of \$450 for each sample analyzed for time, lab supplies, equipment utilization, and associated costs. For five samples that would be an increase in revenue from the samples of \$2,250, with a corresponding increase in expenditures of the same amount. KDA indicates it would collect a total of \$60,164 in fees from analyzed samples, Live Plant Dealer licenses, and other associated fees. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Kansas Cotton Boll Weevil Act; Kansas Cotton Boll Weevil Program; Board of Directors of the Kansas Cotton Boll Weevil Program; cotton; agriculture; pests; assessments; industrial hemp; seeds; plants; labeling; registrations; inspections; testing; Kansas Department of Agriculture

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