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MEMORANDUM

To: House Committee on Agriculture and Natural Resources

From: The Office of Revisor of Statutes

Date: 02/01/2024

Re: H.B. 2607; Amending the Kansas pesticide law to expand the applicability of civil and criminal penalties and update requirements for training and supervision, proof of financial responsibility, pesticide applications in the sodium cyanide predator control category and record retention by government agencies.

New Section 1 would require pesticide business licensees and private applicators to provide appropriate supervision and training for uncertified applicators who apply restricted use pesticides. Subsections (d) and (e) would authorize the secretary of agriculture to adopt rules and regulations to prescribe requirements for appropriate supervision and training of uncertified applicators. Subsection (f) would require each pesticide business licensee to maintain records to verify that the business's uncertified applicators have been properly trained. The subsection would also authorize the secretary to adopt rules and regulations to prescribe such record requirements. The records would be required to be maintained for three years after the training has been given and made available to the department upon request.

Section 2 would amend K.S.A. 2-2438a, an existing statute that provides definitions for the Kansas pesticide law. The section would be amended to strike part of the definition of "certified private applicator (pg. 3, line 2)"¹ and add a clarifying definition of governmental agency (subsection (bb)) that applies to local, state and federal governments.²

¹ "Certified private applicator" means a certified applicator who uses or supervises the use of any pesticide ~~which~~ *that* is classified for restricted use for purposes of producing any agricultural commodity, ~~(A) on property owned or rented by such person or such person's employer or (B) if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.~~

² (bb) "Governmental agency" or "government agency" means 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.

Section 3 would amend K.S.A. 2-2440, which concerns pesticide business licensee requirements. Subsection (c) would be amended to require applicants to file certificates of liability insurance in lieu of bonds, letters of credit or proof of an escrow, which are allowed under current law. Subsection (e) would be amended to require government agencies to be issued a government agency registration by the department before such agency can apply pesticides that are in the sodium cyanide predator control category. Applicators of such pesticides would need to be appropriately certified. Under current law, a government agency is not required to furnish a surety bond to the department to become registered. In subsection (f), the words “a surety bond” would be replaced with “proof of financial responsibility”.

Section 4 would amend K.S.A. 2-2440b, which concerns pest control technician requirements. A new subsection (b) would be added to require direct supervision of registered pest control technicians by a certified commercial applicator when applying restricted use pesticides.

Section 5 would amend K.S.A. 2-2440e, which concerns violations by pesticide business licensees and pesticide dealers. Under subsections (a) and (b), penalties would now apply to any person or entity for any violation of the Kansas pesticide law or any rules or regulations adopted thereunder.

Section 6 would amend K.S.A. 2-2443a, which concerns examinations required for commercial applicator certification. New language would be added to subsection (b) to allow certified commercial applicators, at the discretion of the secretary, to obtain certification in additional categories or subcategories of pesticides. This new provision would expire on December 31, 2028. New language would be added to subsection (c) stating that commercial applicator certification shall not allow applications in the category of sodium cyanide predator control. However, the secretary could permit applicators of government agencies to obtain certification in such category of pesticides.

Section 7 would amend K.S.A. 2-2444a to add additional categories of pesticides that require certification and licensing (sodium cyanide predator control; aerial pest control; and soil fumigation).

Section 8 would amend K.S.A. 2-2445a, which concerns certified private applicator requirements. Subsection (a) would add a requirement that individuals using restricted use pesticide be at least 18 years of age. In subsection (b), private applicator certification could now only be used on property owned or rented by the individual or such individual's employer. Under current law, it can be used on the property of another for no compensation other than the trading of personal services between producers. Subsection (c) would list specific categories unauthorized for use under a private applicator certification. Private applicators could obtain commercial applicator certification to make applications in such categories except sodium cyanide predator control. Under subsection (d), a passing score on a written exam would still be required for private applicator certification, except that the secretary could now adopt rules and regulations to establish a training program as an alternative to the written examination. Under subsection (e), the certification could be renewed for an additional five years by retaking the private applicator examination or by attending recertification training. Subsection (f) would state that uncertified applicators could use restricted use pesticides only if they are at least 18 years of age and under the supervision of a certified applicator or, if supervised by a relative or family members, they are at least 16 years of age. Old language concerning examinations would be stricken on pg. 12, lines 15 through 34. Applicators would be subject to any testing or training fee established in rules and regulations adopted by the secretary, in an amount not to exceed \$75.

Section 9 would amend K.S.A. 2-2446, which concerns certification and registration renewals. New language would be added to subsection (d) to reflect the previous section's changes and state that if a private applicator renews their certification through training, they will need to pay a fee not to exceed \$50.

Sections 10 and 12 amend the proof of financial responsibility requirements to only allow use of certificates of liability insurance.

Section 11 would amend K.S.A. 2-2449, which concerns grounds for denial, suspension, revocation or modification of licenses. The statute would be limited to apply to violations of state or federal laws or rules and regulations that concern pesticide use or control.

Section 13 would amend K.S.A. 2-2455, which concerns written statements for services to customers and required records. Statements of services would be required to include additional

information (pg. 16, lines 24 through 37). Additionally, each government agency would be required to maintain records relating to each application of pesticide made by such government agency.

Section 14 would amend K.S.A. 2-2461, which concerns criminal penalties for violations of the Kansas pesticide law. The section would now apply the same criminal penalty to any person who violates the Kansas pesticide law (Class A misdemeanor).

Section 15 would amend K.S.A. 2-2467a, which concerns rules and regulations, to update proof of financial responsibility requirements.

Section 16 would amend K.S.A. 2-3310, which is part of the Kansas chemigation safety law. The section concerns the denial, suspension, revocation or modification of permits and, similar to section 11, would be amended to apply only to violations of the Kansas chemigation safety law or Kansas pesticide law.

H.B. 2607 would become effective upon publication in the statute book.