

**Testimony in Opposition to House Bill 2168  
To the House Committee on Agriculture and Natural Resources  
By Deputy Secretary of Agriculture Kelsey Olson  
Kansas Department of Agriculture  
March 15, 2023**

Good afternoon, Chairman Rahjes and members of the committee. My name is Kelsey Olson and I serve as the Deputy Secretary at the Kansas Department of Agriculture (KDA). I appreciate the opportunity to provide opponent testimony on House Bill 2168.

House Bill 2168 seeks to amend several elements of the industrial hemp program in Kansas. Unfortunately, most of the proposed changes would not only put the industrial hemp program in jeopardy but also may trigger unintended consequences for other economic drivers in the state.

**Hemp in Animal Feed**

Striking the word “animal” and references to “the commercial feeding stuffs act” from the restricted product list is particularly problematic. These modifications would allow hemp to be included as a feedstuff for all animals, including livestock animals raised for human consumption and pets; Kansas would be one of the first states to take such a stride as it pertains to livestock feed. Research has only begun to explore the effects of using hemp as a component in feed for livestock or pets, and at this time, there is insufficient data to support what level of hemp content is safe for the animals consuming it or the humans consuming the products of those animals. Further, the U.S. Food and Drug Administration (FDA) has not approved industrial hemp in animal feed, so any feed produced in Kansas that included hemp would be considered adulterated by federal standards and ineligible for movement in interstate commerce. Such a restriction would jeopardize the multi-million-dollar animal feed and pet food industries and may result in a negative impact on the state economy as a whole.

The FDA also has a 0% threshold for tetrahydrocannabinol, or THC, in food for human consumption. German researchers recently published an article that found THC in milk from dairy cows which were fed hemp as a feed source<sup>1</sup>. Milk produced by dairy cattle that ingested industrial hemp could test positive for THC thus making the product adulterated and unable to be shipped in interstate commerce. The same could be true for beef cattle and meat harvested for human consumption. Kansas meat and dairy industries participate heavily in interstate commerce, and allowing hemp as a feedstuff for livestock would threaten the economic vitality of both industries. KDA continues to advocate for further research into industrial hemp as a feed source and the potential downstream impacts to humans. Authorizing the use of industrial hemp

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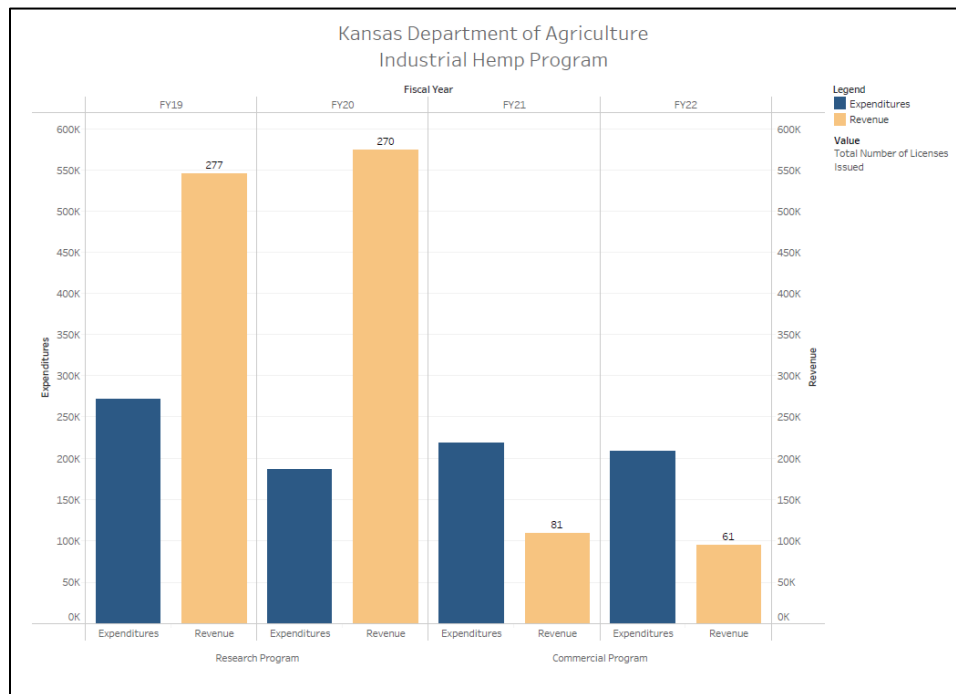
<sup>1</sup> Wagner, B., Gerletti, P., Fürst, P. *et al.* Transfer of cannabinoids into the milk of dairy cows fed with industrial hemp could lead to  $\Delta^9$ -THC exposure that exceeds acute reference dose. *Nat Food* 3, 921–932 (2022). <https://doi.org/10.1038/s43016-022-00623-7>

in animal feed without sufficient knowledge that neither humans nor animals would be harmed by any level of THC consumption would be ill-advised.

Though a few states have enacted legislation allowing hemp in animal feed, we must point out that the authorization is generally limited to pet foods and feed for animals not intended for the human food chain. By and large, these states also prohibit the sale of those animal feeds containing hemp-derived products in interstate commerce. As stated above, the necessary scientific research to determine its safety in animal feeds has not been completed to allow its widespread use as this bill would allow.

### Hemp Producer Fees

The graph below shows the expenses incurred and the revenues generated for each year since the inception of the Industrial Hemp Research Program in Fiscal Year (FY) 2019. Annual expenditures include inspection costs, sampling and laboratory testing costs, as well as staff salaries and other administrative costs. Revenues consist of fees associated with the license cost and background checks.



The Industrial Hemp Program is funded with license fees and does not utilize State General Funds to cover programmatic costs. During the Industrial Hemp Research Program, the number of licenses was high, and revenues exceeded expenditures in the first two years. However, licenses have substantially dropped, while the expenses have been somewhat level. The carry-over revenue from the first two years has offset the decrease in licenses in FY 21 and FY 22.

Currently, the Industrial Hemp License fee is \$1,200. The proposed reduction of this fee to a maximum of \$500 would allow the program to remain fee-funded for approximately one more year, assuming license numbers are level, before KDA would be unable to cover the expenses of the Commercial Industrial Hemp Program. After that year, KDA’s administration of the program would require funding from other sources or increased fees.

## **Definitions**

Besides changes relating to allowances for hemp in animal feed and programmatic fees, the proposed legislation includes provisions to add a more expansive definition of "*Hemp fiber, grain or seeds.*" KDA believes this is unnecessary and potentially overbroad. Adding to the definition, though intended to clarify, may have the unintended result of creating loopholes for intoxicating derivatives made from industrial hemp and increasing confusion in administering the Grain Warehouse Law. In a practical sense, the definition should simply mean the fiber, grain, and seed of hemp; however, under the proposed definition of "*Hemp fiber, grain or seeds,*" individuals storing *any compound, manufacture, salt, derivative, mixture or preparation of the mature stalks* would encompass a broader array of products.

## **Performance-Based Sampling**

The federal 2018 Farm Bill directed the U.S. Department of Agriculture (USDA) to establish a national regulatory framework for hemp production in the United States. The USDA developed the U.S. Domestic Hemp Production Program to provide regulatory oversight of the cultivation of hemp in the United States. The program includes provisions that require states to submit plans for industrial hemp programs to the USDA for approval. KDA currently administers the industrial hemp program, which was passed by the legislature and ultimately approved by the USDA. It is critical that any changes to the industrial hemp program be approved and implemented within the parameters of the federal framework so that we do not fall out of compliance.

The only change in this bill that KDA is comfortable with is the addition of the performance-based sampling as added on the bottom of page four. At the time when KDA submitted the state's plan to the USDA, performance-based sampling was not allowed under the USDA guidelines. Performance-based sampling is an alternative method of sampling and testing of hemp that does not require every grower lot to be sampled. Instead of testing every lot, Kansas could establish metrics for sampling hemp that ensure only legal hemp is being growing under the program. Kansas would need to prove that the sampling regime meets the confidence interval required by the USDA Final Rule and submit it as part of the state's plan for approval by the USDA. The USDA Final Rule says, "*Sampling protocols must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot.*"

If it is the will of the legislature, KDA will work to incorporate a performance-based sampling protocol into the Kansas plan and seek USDA approval. However, it is worth noting that allowing performance-based sampling does not necessarily result in a reduction in the volume of sampling, especially considering the need for a 95% confidence level that hemp harvested will not exceed the acceptable THC level required by the USDA.

KDA respectfully requests that the committee consider removing problematic elements of House Bill 2168 before considering its passage. HB 2168 would reduce KDA's ability to administer the existing industrial hemp program and could place the large economic drivers of meat and dairy industry in jeopardy by reducing the ability to sell our products in interstate commerce. If the FDA later determines that industrial hemp is safe for livestock and human consumption, then this bill should be reconsidered.