

HOUSE BILL No. 2607

By Committee on Agriculture and Natural Resources

Requested by Kelsey Olson on behalf of the Kansas Department of Agriculture

1-25

1 AN ACT concerning agriculture; relating to the Kansas department of
 2 agriculture; the Kansas pesticide law; the Kansas chemigation safety
 3 law; requiring supervision and training for uncertified applicators;
 4 clarifying definition of governmental agency; requiring applicants to
 5 file certificates of liability insurance in lieu of bonds, letters of credit or
 6 proof of an escrow; government agency certification for pesticide
 7 applications in the sodium cyanide predator control category; requiring
 8 direct supervision of registered pest control technicians by a certified
 9 commercial applicator when applying restricted use pesticides;
 10 expanding applicability of the current civil penalty provisions to any
 11 person or entity that violates the Kansas pesticide law; adding
 12 additional categories of qualification for certification and licensing;
 13 updating private applicator certification requirements; allowing the
 14 secretary to establish a training program for initial certification of
 15 private applicators as an alternative to a written examination; requiring
 16 additional information in statements of service or contracts;
 17 government agencies to maintain records relating to each application of
 18 pesticide made by such government agency; applying the same criminal
 19 penalty to certified private applicators as other persons for violations of
 20 the Kansas pesticide law; removing the secretary's authority to deny,
 21 suspend, revoke or modify a permit if an applicant, registrant or permit
 22 holder has been convicted or pled guilty to a state or federal felony;
 23 amending K.S.A. 2-2438a, 2-2440, 2-2440b, 2-2440e, 2-2443a, 2-
 24 2444a, 2-2445a, 2-2446, 2-2448, 2-2449, 2-2450, 2-2455, 2-2461, 2-
 25 2467a and 2-3310 and repealing the existing sections.
 26

27 *Be it enacted by the Legislature of the State of Kansas:*

28 New Section 1. (a) Each pesticide business licensee who applies
 29 restricted use pesticides or causes restricted use pesticides to be applied
 30 and employs uncertified applicators to make such pesticide applications
 31 shall provide appropriate supervision and training for each uncertified
 32 applicator.

33 (b) Each private applicator who permits uncertified applicators to
 34 apply restricted use pesticides or causes restricted use pesticides to be
 35 applied shall provide appropriate supervision and training for each

In line 5, after "insurance", insert "or surety bonds";
 before "letters", strike "bonds,"

PROPOSED AMENDMENT
 House Committee on Agriculture
 and Natural Resources
 Office of Revisor of Statutes

1 renewal;

2 (2) if the applicant is an individual, receiver, trustee, representative,
3 agent, firm, partnership, association, corporation or other organized group
4 of persons, whether or not incorporated, the full name of each owner of the
5 firm or partnership or the names of the officers of the association,
6 corporation or group;

7 (3) the principal business address of the applicant in the state and
8 elsewhere; and

9 (4) any other information the secretary, by rules and regulations,
10 deems necessary for the administration of this act.

11 (c) The secretary may issue a pesticide business license to apply
12 pesticides in categories for which an applicant has applied if the applicant
13 files the ~~bond, certificate of liability insurance, letter of credit or proof of~~
14 ~~an escrow account~~ as required under K.S.A. 2-2448, and amendments
15 thereto, satisfies the requirements of subsection (b); and pays the required
16 fees. Such license shall expire at the end of the calendar year for which it
17 is issued unless it has been revoked or suspended prior thereto. If a license
18 is not issued as applied for, the secretary shall inform the applicant in
19 writing of the reasons therefor.

20 (d) The following persons shall be exempted from the licensing
21 requirements of this act:

22 (1) State or federal personnel using pesticides or pest control services
23 while engaged in pesticide use research;

24 (2) veterinarians or physicians using pesticides as a part of their
25 professional services; and

26 (3) any person or such person's employee who applies pesticides on
27 or at premises owned, leased or operated by such person.

28 (e) Subject to the provisions of subsection (d), it is unlawful for any
29 governmental agency that has not been issued a government agency
30 registration to apply pesticides within this state. *Government agency*
31 *registration shall be required for pesticide applications in the sodium*
32 *cyanide predator control category, and applicators in this category shall*
33 *have sodium cyanide predatory control certification.* Application for
34 government agency registration shall be made on a form obtained from the
35 secretary and shall be accompanied by a fee fixed by rules and regulations
36 adopted by the secretary, except that such fee shall not exceed \$50, except
37 that on and after July 1, 2028, such fee shall not exceed \$35. The
38 governmental agency registration fee in effect on the day preceding the
39 effective date of this act shall continue in effect until the secretary adopts
40 rules and regulations fixing a different fee therefor under this subsection.
41 No fee shall be required of any township located within a county that has
42 previously applied for and received government agency registration. Each
43 application for registration shall contain information including, but not

surety bond or

1 succeeding three-year period by paying the fees prescribed in K.S.A. 2-
2 2441a, and amendments thereto, passing the examinations provided for in
3 K.S.A. 2-2443a, and amendments thereto, and completing the renewal
4 application form prescribed by the secretary.

5 (b) In lieu of such examinations, the secretary may accept attendance
6 and satisfactory completion of a training course approved by the secretary.
7 If certification is renewed by training, the renewal application form shall
8 be accompanied by a recertification-by-training fee of \$50 per category
9 unless a fee not to exceed \$50 is established in rules and regulations
10 adopted by the secretary.

11 (c) A certified commercial applicator may recertify by training
12 following the expiration of the certification period, if:

13 (1) All training requirements were completed during the certification
14 period; and

15 (2) the renewal application form and all appropriate fees were
16 received by the secretary on or before 30 days following expiration of the
17 certification period.

18 (d) (1) A private applicator's certification may be renewed for a
19 succeeding five-year period by paying the fee prescribed in K.S.A. 2-
20 2445a, and amendments thereto, passing the examination provided for in
21 K.S.A. 2-2445a, and amendments thereto, and completing the renewal
22 application form prescribed by the secretary. ~~Such examination shall be~~
23 ~~offered by the secretary by mail.~~ County extension agricultural meetings
24 shall include pertinent pesticide information for private applicators.

25 ~~(e)(2) In lieu of such private applicator examination, the secretary~~
26 ~~may accept attendance and satisfactory completion of a training course~~
27 ~~approved by the secretary pursuant to K.S.A. 2-2445a, and amendments~~
28 ~~thereto. If certification is renewed by training, the renewal application~~
29 ~~form shall be accompanied by a recertification-by-training fee of \$50~~
30 ~~unless a fee not to exceed \$50 is established in rules and regulations~~
31 ~~adopted by the secretary.~~

32 (e) A pest control technician's registration may be renewed for a
33 succeeding one-year period by paying the fees prescribed in K.S.A. 2-
34 2440b, and amendments thereto, completing the renewal form prescribed
35 by the secretary, and completing any requirements concerning retraining
36 prescribed by rules and regulations.

37 Sec. 10. K.S.A. 2-2448 is hereby amended to read as follows: 2-2448.
38 (a) Except as provided by subsection (b), the secretary shall not issue a
39 pesticide business license until the applicant has furnished proof of
40 financial responsibility by ~~one of the following:~~

41 ~~(1) A surety bond in an amount not less than \$6,000 per year. The~~
42 ~~bond shall be executed by a corporate surety and shall state the effective~~
43 ~~date and the expiration date. The surety bond shall be executed on a form~~

1 approved by the secretary. The applicant shall be named as the principal in
 2 the bond. Such bond shall be to the state of Kansas and shall be
 3 conditioned upon compliance by the principal and by the principal's
 4 officers, agents, representatives and employees, with the provisions of this
 5 act and acts amendatory thereof and supplemental thereto. It shall be
 6 unlawful for any licensed person to use the words "bond" or "bonded" in
 7 advertising or in publicizing such person's operations in connection with
 8 the application of pesticides unless such bond is a performance bond and
 9 that fact and the amount of such bond are specified.

10 ~~(2) — providing a certificate of liability insurance. The certificate of~~
 11 liability insurance shall be executed by an insurance company authorized
 12 to do business in Kansas or by a licensed insurance agent operating under
 13 authority of K.S.A. 40-246b, and amendments thereto, and shall state the
 14 effective date and the expiration date of the policy. Such liability insurance
 15 shall be subject to the insurer's policy provisions filed with and approved
 16 by the commissioner of insurance pursuant to K.S.A. 40-216, and
 17 amendments thereto, except as authorized by K.S.A. 40-246b, and
 18 amendments thereto. The liability insurance policy shall provide: ~~(A)~~ (1)
 19 Coverage for not less than \$25,000 for bodily injury liability for each
 20 occurrence; and ~~(B)~~ (2) coverage for not less than \$5,000 for property
 21 damage liability for each occurrence. In addition to the coverage specified
 22 above, if the applicant for a pesticide business license is an aerial
 23 applicator, the liability insurance policy shall provide coverage for any
 24 pesticide such applicant will be applying and for comprehensive chemical
 25 coverage. Pesticide application equipment, if required to be registered
 26 under K.S.A. 2-2456, and amendments thereto, shall be covered. The
 27 insurer shall notify the secretary, in writing, of any expiration, reduction or
 28 cancellation of liability insurance, furnished as a prerequisite of licensure,
 29 not later than 10 days before the expiration, reduction or cancellation takes
 30 effect. Upon expiration, reduction or cancellation of the liability insurance,
 31 the secretary shall suspend such pesticide applicator's business license
 32 until the insurance requirement is met by the licensee for the current
 33 license period. The certificate shall be executed on a form approved by the
 34 secretary.

35 (3) A \$6,000 letter of credit from a Kansas financial institution, as
 36 defined in K.S.A. 16-117, and amendments thereto. The letter of credit
 37 shall be executed on a form approved by the secretary. The letter of credit
 38 shall state the effective date and the expiration date and shall be valid
 39 through the term of the applicant's business license. Upon cancellation of
 40 the letter of credit, the secretary shall suspend such pesticide applicator's
 41 business license until the letter of credit requirement is met by the licensee
 42 for the current license period.

43 (4) Maintaining a minimum balance of \$6,000 in an escrow account

one of the following:

(1) A surety bond in an amount not less than \$6,000 per year. The bond shall be executed by a corporate surety and shall state the effective date and the expiration date. The surety bond shall be executed on a form approved by the secretary. The applicant shall be named as the principal in the bond. Such bond shall be to the state of Kansas and shall be conditioned upon compliance by the principal and by the principal's officers, agents, representatives and employees, with the provisions of this act and acts amendatory thereof and supplemental thereto. It shall be unlawful for any licensed person to use the words "bond" or "bonded" in advertising or in publicizing such person's operations in connection with the application of pesticides unless such bond is a performance bond and that fact and the amount of such bond are specified.

(2)

In line 10, strike "providing a" and insert "A"

1 regulations of any other state or the United States relating to licensing or
 2 other provisions concerning pesticide use or control; or
 3 (c) had any license, certificate, registration or permit issued to the
 4 person under this act, or the pest control or pesticide use laws of any other
 5 state revoked.

6 Sec. 12. K.S.A. 2-2450 is hereby amended to read as follows: 2-2450.

7 (a) If the ~~surety bond~~, certificate of liability insurance, ~~letter of credit or~~
 8 ~~proof of an estate account~~ previously furnished by the licensee expires or
 9 is canceled or terminated, the secretary shall suspend without a hearing the
 10 pesticide business license until ~~an acceptable substitute surety bond, letter~~
 11 ~~of credit, proof of an estate account or~~ an acceptable substitute surety bond or
 12 acceptable replacement of liability insurance is supplied.

13 (b) If the pesticide business fails to employ one or more commercial
 14 applicators certified in each category and subcategory in which the
 15 pesticide business makes commercial pesticide applications, the secretary
 16 may suspend, without a hearing, the pesticide business license for that
 17 category until the pesticide business employs a commercial applicator with
 18 the appropriate certification.

19 Sec. 13. K.S.A. 2-2455 is hereby amended to read as follows: 2-2455.

20 (a) Each pesticide business shall present to each customer for whom such
 21 business performs a pest control service involving the application of
 22 pesticides a statement of services or contract setting forth the following
 23 information:

24 (1) Business name ~~and~~, address ~~and~~ license number of the pesticide
 25 business licensee;

26 (2) name and address of the customer;

27 (3) pest or pests to be controlled, which may be stated in general
 28 terms;

29 (4) pesticide to be used including the quantity applied and total area
 30 to which the pesticide is applied;

31 (5) the concentration or rate of application, when applicable;

32 (6) the date ~~and~~, location ~~and~~ start ~~and~~ end time of the application of
 33 the pesticide;

34 (7) the expiration date of all guarantees, if any be given;

35 (8) the signature ~~and~~ applicator certification number of the individual
 36 who performed the pest control service or the application of pesticides;

37 (9) the signature ~~and~~ applicator certification number of the individual
 38 who supervised the performance of the pest control service or the
 39 application of pesticides, when applicable;

40 (10) the wind direction and velocity, when applicable; and

41 (11) that the application was less than label rate, when applicable.

42 (b) Whenever the service involving the application of pesticides is
 43 performed for the purpose of controlling termites, powder-post beetles,

surety bond or

an acceptable substitute surety bond or

1 Sec. 14. K.S.A. 2-2461 is hereby amended to read as follows: 2-2461.
 2 (a) Any person ~~other than a certified private applicator~~ violating or failing
 3 to comply with any provision of this act or any authorized rule or
 4 regulation of the secretary shall be deemed guilty of a class A
 5 misdemeanor. Each separate violation shall constitute a separate offense.

6 (b) ~~Any certified private applicator who violates any of the provisions
 7 of this act or any authorized rules and regulations of the secretary shall be
 8 deemed guilty of a misdemeanor, and upon conviction shall be punished
 9 by a fine of not less than \$100 and not more than \$500. Each day of
 10 operation after notice shall constitute a separate offense.~~

11 (c) The district courts of Kansas shall have jurisdiction to restrain
 12 violations of this act by injunction without the institution of criminal
 13 proceedings. ~~Said~~ Such injunction shall be issued without bond.

14 Sec. 15. K.S.A. 2-2467a is hereby amended to read as follows: 2-
 15 2467a. The secretary is hereby authorized to promulgate and adopt rules
 16 and regulations for the administration of this act ~~and concerning the
 17 following matters which include, but are, including, but not limited to:~~

18 (a) The designation of certain pesticides as restricted use pesticides as
 19 provided in K.S.A. 2-2439, and amendments thereto;
 20 (b) the designation of categories for the issuance of pesticide business
 21 licenses as provided in K.S.A. 2-2444a, and amendments thereto;

22 (c) the designation of categories for the certification of applicators as
 23 provided in K.S.A. 2-2444a, and amendments thereto;

24 (d) the designation of training requirements for those persons
 25 applying for a pest control technician's registration as provided in K.S.A.
 26 2-2440b, and amendments thereto;

27 (e) the registration and identification of equipment used in the
 28 commercial application of pesticides as provided in K.S.A. 2-2456, and
 29 amendments thereto;

30 (f) the storing and discarding of pesticides, pesticide materials,
 31 pesticide rinsates and pesticide containers;

32 (g) proper health and safety precautions;

33 (h) ~~proof of financial responsibility including acceptable surety bond,
 34 liability insurance coverage, letter of credit or proof of an escrow account;~~

35 (i) furnishing of reports and information necessary for the secretary to
 36 carry out the provisions of this act; ~~and~~

37 (j) imposing limitations on the use of any pesticide in a manner
 38 inconsistent with its label or labeling, pursuant to K.S.A. 2-2471, and
 39 amendments thereto; and

40 (k) any procedural or other matters related to the designation of
 41 pesticide management areas.

42 Sec. 16. K.S.A. 2-3310 is hereby amended to read as follows: 2-3310.
 43 The secretary, after notice and opportunity for a hearing in accordance

financial responsibility, including acceptable surety
 bond or