

**Testimony in Support of House Bill 2607
to the Senate Committee on Agriculture and Natural Resources
by Kelsey Olson, Deputy Secretary
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Good morning, Chairman Peck and members of the committee. I am Kelsey Olson and I serve as Deputy Secretary at the Kansas Department of Agriculture. Thank you for the opportunity to present testimony in support of House Bill 2607.

The Kansas Department of Agriculture (KDA) is authorized to administer and enforce the laws applicable to pesticide use in Kansas, including the licensure of pesticide businesses and dealers, and the requirements associated with training and certification of pesticide applicators through the Kansas Pesticide Law. Because of this law, KDA maintains primacy for enforcement of the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA) and the certification of pesticide applicators in the state. HB 2607 proposes updates to the current statutes in order to maintain the state's primacy over pesticide regulation, update the act for financial responsibility, and reduce restrictions on eligible pesticide applicators and employees.

On January 4, 2017, the U.S. Environmental Protection Agency (EPA) updated the Certification of Pesticide Applicators regulations to ensure that states have consistent standards for any person or entity that applies restricted use pesticides (RUPs), which can only be used by certified pesticide applicators or individuals under a certified pesticide applicator's direct supervision and not by the general public. The key revisions to EPA's Certification of Pesticide Applicators Rule (EPA's 2017 Rule) include:

- Enhanced requirements for applicator education and safety.
- Required specialized certifications for people using specific application methods.
- Establishment of a nationwide minimum age for certified pesticide applicators who use or supervise the use of RUPs.
- Required mandatory training for uncertified applicators and recordkeeping requirements for training.

One of the major components of this legislation is simply to include all persons and entities that apply RUPs. Having all pesticide applicators follow the same standards is important to the state of Kansas to ensure products are safely applied and that potential for damage to others' property is limited. These standards protect the health of certified pesticide applicators and those under their direct supervision. All states, territories, tribes, and federal agencies which certify pesticide applicators who use RUPs were required by EPA's 2017 Rule to submit revised certification plans to EPA for approval by November 4, 2023. KDA submitted a revised certification plan to the EPA and the revised certification plan was approved in the fall of 2023.

Civil Penalty Authority

KDA currently has civil penalty authority over pesticide businesses if they are found in violation of a provision within the Kansas Pesticide Law. Civil penalty authority over individuals is a required component for KDA to maintain FIFRA primacy in the state. HB 2607 would extend that authority over any person or entity that is found in violation of the Kansas Pesticide Law. Under current law, a civil penalty must be in an amount not less than \$100 and no more than \$5,000. While the agency strives to ensure that certified pesticide applicators are adhering to the law, there have been situations in which a violation has occurred, and the agency has been unable to pursue a civil penalty due to the limited civil penalty authority over only pesticide businesses.

The House Agriculture and Natural Resources Committee proposed an amendment to the original bill that adjusted the proposed civil penalty authority over a person or entity and limited the civil penalty amount to not less than \$100, and no more than \$500 for each violation, and provided a maximum total civil penalty for continuing violations which cannot exceed \$2,500. KDA believes there is value in reevaluating this amendment and would request this committee consider an amendment that provides a separation of civil penalty amounts for businesses and individuals. Civil penalty authority is a key component to allow KDA to respond to violations of the Kansas Pesticide Law. As such, that authority must be flexible so it can reflect the varying severities of violations, and ensure that businesses and individual applicators would not choose payment of a civil penalty over adhering to the law.

Education and Training Requirements

HB 2607 enhances the certification requirements for certified private applicators. While certified private applicators would be required to pass a closed-book examination to certify their eligibility for purchase and use of RUPs, this bill also grants KDA the authority to establish requirements to allow certified private applicators to obtain initial certification through a training program in lieu of a written examination. Private applicator certification would remain in effect for five years, at which time the certification may be renewed by completing the private applicator examination or by attending a recertification training program. Certified private applicators are still permitted to supervise an uncertified applicator using RUPs so long as the uncertified applicator is working under the direct supervision of the certified private applicator.

Additionally, this bill provides that certified applicators (both commercial and private applicators) must properly supervise uncertified applicators. It authorizes KDA to use rules and regulation authority to establish mandatory training requirements for those uncertified applicators and to require the documentation and maintenance of such training records.

Agency Recordkeeping

Recordkeeping requirements are a key element to complying with EPA's 2017 Rule. Labeling requirements for RUPs have evolved significantly in recent years and now prescribe wind conditions, temperature limits, and even equipment specifications in order to appropriately apply RUPs. Recordkeeping is critical in the case that a complaint is made against a government agency, pesticide business or certified applicator. Many pesticide businesses and government agencies are already including the additional information in their recordkeeping documentation. KDA verifies

pesticide application records to ensure pesticide applications are made in accordance with the pesticide products' labels and the Kansas Pesticide Law.

Special Certifications

HB 2607 provides for additional categories of licensure and certification, including aerial pest control, soil fumigation, and sodium cyanide predator control, which is a unique component of the bill. The state of Kansas currently has restrictions pertaining to the use of sodium cyanide; however, the EPA required the state to address the use of such pesticide products within the Kansas Pesticide Law. KDA worked with other state agencies to ensure that the bill language is sufficient for those agencies while also addressing EPA's requirements.

An additional specialized certification category that EPA required KDA to address is sodium fluoroacetate predator control. KDA did not elect to include this as a certification category; however, it is not clear that such certification is consistent for private applicators, commercial certification, and business licensure. KDA would request this committee consider an amendment to Section 7 that includes language prohibiting such certification and licensure, similar to the proposed language prohibiting private applicator certification, which is found in Section 8, subsection (c)(3).

Financial Responsibility

In 2020, KDA pursued a bill (2020 HB 2463) that would have revised the existing requirements for pesticide businesses to provide proof of financial responsibility via liability insurance coverage and removed the agency's assessment of "sufficient rehabilitation". The agency pursued this legislation after it determined that other forms of financial responsibility are rarely used and possibly insufficient.

While not a requirement of the EPA's 2017 Rule, KDA believes those revisions are still appropriate, so we have included those provisions from 2020 HB 2463 in this year's bill, HB 2607. 2020 HB 2463 passed the House but was not taken up by the Senate before the Legislature adjourned due to COVID-19. During this legislative session, the House Committee on Agriculture and Natural Resources proposed an amendment that permits proof of financial responsibility to be provided by presenting either a certificate of liability insurance or proof of possession of a surety bond.

Currently, pesticide business licensees may provide proof of financial responsibility in the form of a surety bond, liability insurance, letter of credit, or an escrow account. The bill as originally introduced proposed to allow proof of financial responsibility to be shown only by evidence of liability insurance coverage. The current requirements for liability insurance are set at a minimum of \$25,000 for bodily injury and \$5,000 for property damage, compared to \$6,000 for surety bonds. The House Committee on Agriculture and Natural Resources amended the bill to allow proof of financial responsibility to be shown by evidence of liability insurance coverage or a surety bond.

KDA does not oppose the proposed House amendment, as it would provide alternative options to pesticide businesses; however, KDA would propose a technical amendment to Section 10,

subparagraph (b)(2) to include a “surety bond” reference to clarify that liability insurance or a surety bond must be in place on or before January 1, 2025.

Vetting Pesticide Applicators

Currently, KDA may deny, suspend, revoke or modify any license, registration, permit or certification issued under the Kansas Pesticide Law or the Kansas Chemigation Safety Act if an applicant has been convicted of a felony and the Secretary of Agriculture determines that such applicant “has not been sufficiently rehabilitated to warrant the public trust.” This places KDA staff in the uncomfortable position of conducting an investigation and attempting to determine the appropriate standard for determining the meaning of “sufficiently rehabilitated to warrant the public trust.” KDA does not have statutory authority to conduct background checks, so KDA’s investigative process only occurs when an applicant self-reports a felony conviction on their application. This investigative process requires the applicant to submit extensive documentation of their conviction and their subsequent “rehabilitation” which then requires considerable review by KDA staff. Not only does this requirement put KDA in a difficult position, but it also makes these job fields less accessible to some possibly deserving candidates. These revisions included in HB 2607 will allow KDA to protect the public when there are violations of state and federal laws related to the application of pesticides and the operation of chemigation systems, while not negatively impacting applicants with prior felony convictions.

The revisions proposed in HB 2607 will ensure that the Kansas Pesticide Law meets the standards required by EPA for certified applicators, updates our financial responsibility requirements, and reduces barriers to becoming a certified pesticide applicator. Because the law is consistent with the revised certification plan approved by the EPA, it will allow KDA to maintain primacy for FIFRA enforcement and the certification of pesticide applicators in the state.

Thank you for the opportunity to present testimony on HB 2607, I encourage you to support this bill. I will stand for questions at the appropriate time.