

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2563

As Amended by Senate Committee on
Agriculture and Natural Resources

Brief*

HB 2563, as amended, would create new 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 (KDA).

Commercial Industrial Hemp Act (New Section 1 and Sections 15-19)

The bill would create new law regarding industrial hemp testing services and make substantive and technical amendments to the 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 (New Section 1)

The bill would allow the 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.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would authorize the Secretary of Agriculture (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 (Section 15)

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 (Section 16)

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 Board to the Commercial Industrial Hemp Program.]

The Board would provide input and information regarding the regulation and development of industrial hemp in Kansas. The 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 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 (Section 16)

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 (Section 18)

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 (New Section 2)

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 (Sections 3-11)

Definitions (Section 3)

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 listed under the definition of

“horticultural seeds.” The bill would delete the definition of “horticultural seeds.”

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

Labeling (Section 4)

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 (Section 5)

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 (Section 6)

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 (Section 7-8)

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 (Section 9)

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 (Sections 10-11)

The bill would clarify current law regarding the actions the Secretary would 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
(Sections 12-14)***

Definitions (Section 12)

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

Inspection Fees (Section 13)

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 (Section 14)

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.

Background

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; 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; and remove the Secretary's authority to assess the civil penalty in addition to any other penalty proscribed by law.

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 continuing violations; and
- Increase from \$5,000 to \$10,000, the annual gross receipt amount cap for the ability to apply for a reduced license fee.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, 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*.

Industrial hemp; seeds; plants; labeling; registrations; inspections; testing; Kansas Department of Agriculture