

Approved: Eugene Shore 3-29-93  
Date

## MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Eugene Shore at 9:10 a.m. on March 18, 1993 in Room 423-S of the Capitol.

All members were present except: Representative Correll - Excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Kay Johnson, Committee Secretary

Conferees appearing before the committee:

Chairman Shore called the meeting to order and asked for discussion on **SB 335**.

### **SB 335: Registering agricultural crop consultants.**

Chairman Shore told committee members the fiscal note for this bill has been distributed, attachment #1. Regarding questions about who this bill would cover, Chairman Shore said he had been assured that it only covers crop consultants. Several amendments were requested by crop consultants and those have been included in a balloon, attachment #2. The biggest change is to raise the registration fee to \$35.00 to cover the cost of administering the program. Representative Rezac made a motion to adopt the balloon. Representative McClure seconded the motion. The motion carried.

Representative Lloyd expressed concern over lack of testing requirements in the bill.

Chairman Shore explained this will only register who is or isn't a crop consultant and does not involve licensing.

Representative Alldritt said he thought the State would have to assume some liability for a consultant's performance if they register those consultants.

Representative McClure said she had been told the crop consultants were trying to be certified within their own group.

Representative Neufeld explained that registration provides a protected title to an individual. Licensing provides a scope of practice. There is no liability in either case and the state has never been sued. Registration of crop consultants simply grants the use of the title and compiles a list for the state.

Responding to Representative Swall's question on the policy intent of the bill, Representative Gatlin explained that it completes the loop between consultant, applicator and client and Representative Freeborn pointed out that it also allows for enforcement of civil penalties.

Representative Alldritt expressed concern over not requiring the address of the consultant and farmer on the written pesticide recommendation statement and made a motion to reinsert "and address" on page 2, lines 9 and 11 of the bill. Representative Swall seconded the motion.

Representative Gatlin opposed the motion because part of the negotiations involved in writing this bill included omitting the address.

Representative Freeborn stated the Board of Agriculture, through the registration process, would already have the name and address on file. The motion carried.

Representative Powers made a motion to pass SB 335 favorably as amended. Representative Gatlin seconded the motion. The motion carried.

The meeting adjourned at 9:25am.

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1504  
(913) 296-2436  
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Joan Finney  
Governor

Gloria M. Timmer  
Director

February 24, 1993

The Honorable David Corbin, Chairperson  
Committee on Agriculture  
Statehouse, Room 143-N  
Topeka, Kansas 66612

Dear Senator Corbin:

SUBJECT: Fiscal Note for SB 335 by Senate Committee on  
Agriculture

In accordance with KSA 75-3715a, the following fiscal note  
concerning SB 335 is respectfully submitted to your committee.

HB 335 would require agricultural pest consultants to be  
registered with the State Board of Agriculture. A registration fee  
of \$15 would be charged for each application, and the registrations  
would expire annually.

An agricultural pest consultant would be an individual,  
association, business, or corporation who receives compensation for  
providing advice on eliminating pests from agricultural crops. SB  
335 would not apply to veterinarians, employees of government  
agencies, employees of cooperative extension services, sellers of  
household pesticides, and others required to be licensed or  
registered by the Kansas Pesticide Law.

SB 335 would require agricultural pest consultants to provide  
specific information to customers on a written statement of  
services or contract. This information would include the name and  
address of the business, the pest to be controlled, and the  
recommended pesticide to be used. The agricultural pest consultant  
would be required to retain copies of all written statements of  
services or contracts issued for three years. SB 335 would allow  
the Secretary of Agriculture access to records maintained by  
agricultural pest consultants.

HOUSE AGRICULTURE  
3-18-93  
ATTACHMENT #1

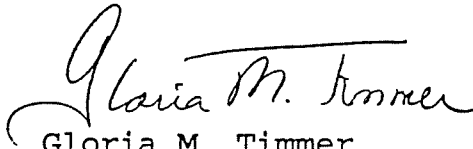
The Honorable David Corbin, Chairperson  
February 24, 1993  
Page 2

Violators of SB 335 would be subject to civil penalties of not less than \$100 or more than \$5,000 for each violation or each separate daily violation, if the violation continues. SB 335 provides for the right of an accused person to appeal the action to the Secretary of the State Board of Agriculture and the district court. All civil penalties recovered because of this act would be credited to the State General Fund.

The Board of Agriculture estimates that 130 individuals would be eligible for agricultural pest consultant licenses. The \$15 application fee, per registrant, would increase fee receipt estimates to the Pesticide Use Fee Fund by \$1,950 for FY 1994.

According to the State Board of Agriculture, SB 335 would require additional expenditures of \$24,495 for FY 1994 above the amounts included in the *FY 1994 Governor's Budget Report*. This would include State General Fund expenditures of \$22,545 and expenditures from other funding sources of \$1,950. Expenditures would fund a keyboard operator position at a cost of \$19,052, with fringe benefits, and \$5,443 for other operating expenditures.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer". The signature is written in dark ink and is positioned above the printed name and title.

Gloria M. Timmer  
Director of the Budget

cc: Don Jacka, Board of Agriculture

335.fn

SENATE BILL No. 335

By Committee on Agriculture

2-16

9 AN ACT concerning the Kansas pesticide law; relating to the reg-  
10 istration of agricultural ~~pest crop~~ consultants; amending K.S.A.  
11 2-2438a and repealing the existing section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section. 1. (a) Any person who is an agricultural ~~pest crop~~  
15 consultant shall register with the state board of agriculture. Regis-  
16 tration shall be required for each ~~business location~~ individual pro-  
17 viding agricultural ~~pest crop~~ consultation and shall be on a form  
18 ~~provided by the secretary. Each registration shall expire on June~~

19 ~~30 December 31~~ following issuance unless such registration is re-  
20 newed annually. A registration fee of ~~\$15~~ shall accompany the ap-  
21 plication. The consultant's registration shall be subject to denial,  
22 suspension or revocation after a hearing in accordance with the pro-  
23 visions of the Kansas administrative procedure act for any violation  
24 of this act whether committed by the agricultural ~~pest crop~~ con-  
25 sultant or by the agricultural ~~pest crop~~ consultant's representatives.

26 (b) The provisions of this section shall not apply to any veteri-  
27 narian as defined in K.S.A. 47-816, and amendments thereto, pro-  
28 viding consultation concerning pests on animals; to employees of  
29 businesses involved in the sale of general use pesticides purchased  
30 for household use only; to any federal, state, county or municipal  
31 agency personnel which provide ~~pest crop~~ consultation only for such  
32 agency's own programs; or to cooperative extension service personnel  
33 in performance of such personnel's official duties; ~~to any person~~  
34 ~~who is otherwise licensed, registered or certified pursuant to~~  
35 ~~the Kansas pesticide law.~~

36 (c) Any agricultural ~~pest crop~~ consultant is responsible for the  
37 acts of each individual employed by such consultant in the ~~solicitation of services of pesticides and all claims and~~ recommendations  
38 ~~for use of pesticides.~~

39 (d) All fees received under this section shall be remitted to the  
40 state treasurer in accordance with K.S.A. 2-2464a, and amendments  
41 thereto. Upon receipt of each such remittance, the state treasurer  
42 shall deposit the entire amount thereof in the state treasury and  
43

approved

\$35

making

HOUSE AGRICULTURE  
3-18-93  
ATTACHMENT #2

1 such amount shall be credited to the pesticide use fee fund.

2 (e) This section shall be part of and supplemental to the Kansas  
3 pesticide law.

4 New Sec. 2. (a) Any agricultural ~~pest crop~~ consultant shall pres-  
5 ent to each customer, for whom such ~~consultant person~~ performs  
6 agricultural pest consultation involving the recommendation of the  
7 application of pesticides, a written statement of ~~services or contract~~  
8 *pesticide recommendations* setting forth the following information:

9 (1) Business name ~~and address~~ of the agricultural ~~pest crop~~  
10 consultant;

11 (2) name ~~and address~~ of the customer *and crop and field*  
12 *location*;

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

15 (4) pesticide to be recommended for use including the kind, rate  
16 *and method* of application; ~~concentration and quantity applied;~~  
17 *and*

18 ~~(5) the expiration date of all guarantees, if any be given;~~

19 ~~(6) (5) the signature of the individual who provided the ag-~~  
20 ~~ricultural pest consultation; and individual who provided the~~  
21 *recommendation.*

22 ~~(7) that the suggested application was less than label rate,~~  
23 ~~when applicable.~~

24 (b) The required written statement of ~~services or contract~~ for  
25 *services pesticide recommendations* involving the agricultural ~~pest~~  
26 *crop* consultation may be incorporated into any business form used  
27 by the agricultural ~~pest crop~~ consultant. The written statement of  
28 ~~services or contract pesticide recommendations~~ shall be presented  
29 to the customer at a time established by rules and regulations  
30 adopted by the secretary or board. The agricultural ~~pest crop~~ con-  
31 sultant shall retain a copy of each written statement of ~~services or~~  
32 ~~contract pesticide recommendations~~ in such consultant's files for a  
33 period of three years from the ~~expiration~~ date of any written state-  
34 ment of ~~services or contract pesticide recommendations~~. Each ag-  
35 ricultural pest ~~consultant~~ shall faithfully carry out the  
36 stipulations set forth in any written statement of ~~services or~~  
37 ~~contract prepared by such consultant or of such consultant's~~  
38 ~~representatives.~~

39 (c) Each agricultural ~~pest crop~~ consultant shall make available to  
40 the secretary, upon request, a copy of any written ~~statement of~~  
41 ~~services or contract~~ records of all agricultural pesticide ~~consulta-~~  
42 ~~tions recommendations during any specified period~~ records of all  
43 employees who performed any service involving, or in conjunction

name

and agricultural pesticide recommendation



1 with, such ~~consultations~~ *recommendations* concerning agricultural  
2 pesticides and any other requested information pertinent to the ad-  
3 ministration of this act or any rule and regulation adopted hereunder  
4 by the secretary or board.

5 (d) This section shall be part of and supplemental to the Kansas  
6 pesticide law.

7 New Sec. 3. (a) Any agricultural ~~pest crop~~ consultant who vi-  
8 olates any of the provisions of K.S.A. ~~2-2453~~ or 2-2454, and amend-  
9 ments thereto, in addition to any other penalty provided by law,  
10 may incur a civil penalty imposed under subsection (b) in the amount  
11 fixed by rules and regulations of the secretary ~~or board~~ in an amount  
12 not less than \$100 nor more than \$5,000 for each violation and, in  
13 the case of a continuing violation, each day such violation continues  
14 shall be deemed a separate violation.

15 (b) A duly authorized agent of the secretary, upon a finding that  
16 an agricultural ~~pest crop~~ consultant or any employee or agent thereof  
17 or any person or entity required to be registered as an agricultural  
18 ~~pest crop~~ consultant has violated any of the provisions of K.S.A. 2-  
19 2454, and amendments thereto, may impose a civil penalty as pro-  
20 vided in this section upon such consultant or employee.

21 (c) No civil penalty shall be imposed pursuant to this section  
22 except upon the written order of the duly authorized agent of the  
23 secretary to the agricultural ~~pest crop~~ consultant who committed  
24 the violation. Such order shall state the violation, the penalty to be  
25 imposed and the right of such agricultural ~~pest crop~~ consultant to  
26 appeal to the secretary. Any such consultant, within 20 days after  
27 notification, may make written request to the secretary for a hearing  
28 or informal conference hearing in accordance with the provisions of  
29 the Kansas administrative procedure act. The secretary shall affirm,  
30 reverse or modify the order and shall specify the reasons therefor.

31 (d) Any person aggrieved by an order of the secretary made under  
32 this section may appeal such order to the district court in the manner  
33 provided by the act for judicial review and civil enforcement of  
34 agency actions.

35 (e) Any civil penalty recovered pursuant to the provisions of this  
36 section shall be remitted to the state treasurer, deposited in the  
37 state treasury and credited to the state general fund.

38 (f) This section shall be part of and supplemental to the Kansas  
39 pesticide law.

40 Section 4. K.S.A. 2-2438a is hereby amended to read as follows:  
41 2-2438a. As used in this act, unless the context otherwise requires,  
42 the following words and phrases shall have the meanings ascribed  
43 to ~~them~~ in this section:

2-4

1 (a) "Animal" means all vertebrate and invertebrate species, in-  
2 cluding but not limited to man and other mammals, birds, fish and  
3 shellfish.

4 (b) "Board" means the board of agriculture of the state of Kansas.

5 (c) "Certified applicator" means any individual who is certified  
6 under this act to use or supervise the use of any restricted use  
7 pesticide which is classified for restricted use by a certified applicator.

8 (1) "Certified commercial applicator" means a certified applicator,  
9 whether or not a private applicator with respect to some uses, who  
10 uses or supervises the use of any pesticide which is classified for  
11 restricted use for any purpose or on any property other than as  
12 provided in paragraph 2 of this section.

13 (2) "Certified private applicator" means a certified applicator who  
14 uses or supervises the use of any pesticide which is classified for  
15 restricted use for purposes of: (A) producing any agricultural com-  
16 modity, (i) on property owned or rented by such person or such  
17 person's employer or, (ii) if applied without compensation other than  
18 trading of personal services between producers of agricultural com-  
19 modities, on the property of another person; or (B) controlling or-  
20 namental shrubbery or turf pests on property which is owned or  
21 rented by such person and which is used as such person's residence.

22 (d) "Defoliant" means any substance or mixture of substances  
23 intended to cause the leaves or foliage to drop from a plant, with  
24 or without causing abscission.

25 (e) "Desiccant" means any substance or mixture of substances  
26 intended for artificially accelerating the drying of plant tissue.

27 (f) "Equipment" means any ground, water or aerial apparatus,  
28 used to apply any pesticide but shall not include any pressurized  
29 hand size household apparatus used to apply any pesticide or any  
30 equipment, apparatus or contrivance of which the person who is  
31 applying the pesticide is the source of power or energy in making  
32 such pesticide application.

33 (g) "Fungus" means any nonchlorophyll-bearing thallophyte, in-  
34 cluding, but not limited to, rust, smut, mildew, mold, yeast and  
35 bacteria, except those on or in man or other animals and those on  
36 or in processed food, beverages or pharmaceuticals.

37 (h) "General use pesticide" ~~shall mean means and include in-~~  
38 ~~cludes~~ all pesticides which have not been designated, by rule ~~or~~  
39 ~~and~~ regulation of the secretary or the board, as being restricted use  
40 pesticides.

41 (i) "Insect" means any small invertebrate animal having the body  
42 segmented, belonging to the class insecta and other classes of ar-  
43 thropods, including, but not limited to, beetles, bugs, bees, flies,

1 spiders, mites, ticks and centipedes.

2 (j) "Registered pest control technician" means an uncertified com-  
3 mercial applicator who applies pesticides for wood destroying pest  
4 control, for structural pest control, for ornamental pest control, or  
5 for turf pest control, or for any combination of these types of pest  
6 control, and who has received verifiable training.

7 (k) "Nematode" means any unsegmented roundworms of the class  
8 nematoda, with elongated, fusiform, or saclike bodies covered with  
9 cuticle, inhabiting soil, water, plants or plant parts. Such round-  
10 worms may also be referred to as nemas or eelworms.

11 (l) "Person" means any individual, partnership, association of per-  
12 sons, corporation or governmental agency.

13 (m) "Pest" means, but is not limited to, any insect, rodent, nem-  
14 atode, fungus, weed or any other form of terrestrial or aquatic plant  
15 or animal life or virus, bacteria or other microorganism, except vi-  
16 ruses, bacteria or other microorganisms on or in man or other an-  
17 imals, or which the secretary may declare to be a pest.

18 (n) "Pesticide" means, but is not limited to, (1) any substance or  
19 mixture of substances used to prevent, destroy, control, repel, attract  
20 or mitigate any pest and (2) any substance or mixture of substances  
21 intended to be used as a plant regulator, defoliant or desiccant.

22 (o) "Pesticide business" means any individual, partnership, as-  
23 sociation of persons or corporation which applies pesticides to the  
24 property of another for compensation.

25 (p) "Pesticide business licensee" shall mean an individual, busi-  
26 ness, association of persons or corporation who is licensed or would  
27 be required to be licensed under the provisions of K.S.A. 2-2440,  
28 and amendments thereto.

29 (q) "Pesticide dealer" means any person who sells a pesticide to  
30 another person for application.

31 (r) "Plant regulator" means any substance or mixture of sub-  
32 stances intended through physiological action, to accelerate or retard  
33 the rate of growth or maturation, or to otherwise alter the behavior  
34 of plants but shall not include substances insofar as they are used  
35 as plant nutrients, trace elements, nutritional chemicals, plant in-  
36 oculants or soil amendments. The term "plant regulator" shall not  
37 include any such nutrient mixtures or soil amendments as are com-  
38 monly known as vitamin-hormone horticultural products, intended  
39 for improvement, maintenance, survival, health and propagation of  
40 plants, and not for pest destruction if such mixtures or soil amend-  
41 ments, in the undiluted packaged concentration are nontoxic and  
42 nonpoisonous.

43 (s) "Restricted use pesticide" ~~shall mean means and include~~

2-5



1 *includes* all pesticide uses designated as such by rules and regulations  
2 of the secretary or the board.

3 (t) "Secretary" means the secretary of the state board of  
4 agriculture.

5 (u) "Under the supervision of" means, unless otherwise provided  
6 by the labeling of the pesticide product, acting under the instructions  
7 and control of another person who is available if and when needed,  
8 even though such other person is not physically present at the time  
9 and place the act is done.

10 (v) "Weed" means any plant or part thereof which grows where  
11 not wanted.

12 (w) "Use of any pesticide in a manner inconsistent with its label  
13 or labeling" means to use any pesticide in a manner not permitted  
14 by the label or labeling.

15 (x) "Pest control" means the destruction, prevention, repulsion  
16 or mitigation of a population, infection or infestation of a pest.

17 (y) "Pesticide management area" means a site or area designated  
18 by the secretary pursuant to K.S.A. 2-2472, *and amendments thereto*,  
19 within which a pesticide management plan is deemed necessary for  
20 the protection of the public health, safety, welfare or natural re-  
21 sources of the state.

22 (z) "Natural resources" means and includes soils, water and any  
23 form of terrestrial or aquatic or animal life.

24 (aa) "Pesticide rinsate" means the water contaminated with pes-  
25 ticides from the cleaning of the inside of pesticide containers or  
26 pesticide tanks.

27 (bb) "Agricultural ~~pest~~ crop consultant" means an individual,  
28 business, association of persons or corporations who, for direct com-  
29 pensation, provides advice concerning methods, pesticide products  
30 or other means for ~~eliminating~~ managing pests ~~from growing~~ for  
31 production of agricultural crops.

32 Sec. 5. K.S.A. 2-2438a is hereby repealed.

33 Sec. 6. This act shall take effect and be in force from and after  
34 its publication in the statute book.