



Kansas Grain and Feed Association
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To: House Committee on Agriculture
From: Randy Stookey, Senior Vice President & General Counsel, KGFA, KARA
Re: **Joint Proponent Testimony on HB 2607, amending the Kansas pesticide law**

Chairman Rahjes and members of the committee, thank you for the opportunity to provide testimony in support of House Bill 2607. This testimony is submitted jointly on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA).

KGFA is the state association of the grain receiving, storage, processing, and shipping industry in Kansas. With a membership exceeding 950 Kansas business locations, KGFA represents 99% of the commercially licensed grain storage in the state. KARA is a state-wide agribusiness industry trade association comprising over 700 members companies that supply inputs to Kansas farmers, including pesticides, herbicides, seed, fertilizer, fuel, and agronomic services. Members of these associations are involved in the sale and application of agricultural pesticides, including restricted use pesticides.

We understand the intent of House Bill 2607 is to amend the Kansas pesticide law to come into conformity with current federal regulations. These amendments are required to allow the department of agriculture to continue to maintain primacy – or delegated authority from EPA - to regulate the sale, handling, and application of certain agricultural pesticides.

HB 2607 would place numerous regulatory requirements on private applicators of restricted use pesticides, including expanded training, supervision, and record keeping requirements. These changes are necessary to ensure continued state primacy over this highly regulated industry sector. For this reason, we support the bill.

While we support this bill, we would also provide the following comments:

Section 5, K.S.A. 2-2440e(a) – New Civil Penalties on Individuals: Current law allows KDA to assess civil penalties against pesticide businesses for violating the act (from \$100 to \$5,000). The proposed change would expand this authority to encompass not only the business, but also to the individuals applying the pesticides, such as certified applicators and non-certified applicators employed by the business. This expanded authority would also allow for the assessment of civil penalties on private applicators such as farmers and farm employees. It is our understanding that this change is required by EPA.

Section 5, K.S.A. 2-2440e(a) – Maximum Civil Penalties: This section authorizes the Secretary to assess civil penalties up to \$5,000 against both persons and entities. This maximum civil penalty seems overly aggressive for the employees of pesticide application businesses. A \$5,000 civil penalty on applicators might only serve to discourage people from working as pesticide applicators in an industry that is chronically under-staffed. It is our opinion that, for individuals, a maximum civil penalty of \$1,000 per violation seems more appropriate.

Section 5, K.S.A. 2-2440e(a) – Continuing Violations: The section authorizes a maximum civil penalty of \$5,000 per violation. However, for a continuing violation, each day may be deemed a separate violation, and there does not appear to be a maximum civil penalty for continuing violations. Should the bill move forward, we would seek an amendment to include a maximum civil penalty cap of \$5,000 for continuing violations by pesticide businesses, and a maximum civil penalty cap of \$2,000 for continuing violations by persons. We understand it is the department’s practice to graduate penalties based on the severity of the violation pursuant to a “penalty matrix”, and we would agree with that approach.

Section 5, K.S.A. 2-2440e(b) – Drafting: There are many changes proposed in this section. The proposed verbiage is one long run-on sentence that is difficult to read and could use additional punctuation or be recast.

Section 8, K.S.A. 2-2445a(f) – Private Applicators: This section would allow an uncertified applicator to apply restricted use pesticides if working under the direct supervision of a certified applicator.

The second sentence should be amended to state that “No certification shall be required hereunder for individuals operating under the direct supervision of a certified applicator.” (Language does not require “direct supervision”).

The third sentence states that “If supervised by a relative or family member, the supervised applicator shall be at least 16 years of age.” This language should be amended to clarify that the 16-year-old age exception applies only to uncertified applicators that are directly supervised by certified private applicators and only when applying pesticides “on property owned or rented by the individual or such individual’s employer.”

Additionally, while we understand the purpose behind the 16-year-old age exception, we would caution against this exception noting that commercial applicators applying the same agricultural chemicals must be 18 years old.

Section 8, K.S.A. 2-2445a(g) - Training Fee: This section would create a maximum testing and training fee for private applicator certification. As other organizations already provide KDA-approved applicator training, and it is our understanding that the agency will not provide training, we would recommend striking the words “or training”.

Section 10, K.S.A. 2-2448 - Financial Responsibility: Currently, licensed pesticide businesses must demonstrate proof of financial responsibility to the agency by one of four ways: (1) a certificate of liability insurance, (2) \$6,000 escrow account, (3) \$6,000 surety bond, or (4) \$6,000 letter of credit. The bill would remove all except for a certificate of liability insurance. Most licensed pesticide businesses carry liability insurance of at least \$1 million in coverage. As the \$6,000 thresholds in current law are substantially inadequate to address misapplication events, we would support this change.

Section 13, K.S.A. 2-2455 – Government Agency Records: This section concerns records of pesticide applications that are required to be made and maintained. New paragraph (e) would require government agencies to make and maintain application records similar to commercial applicators. To assist the agency with conducting misapplication investigations, we would strongly support this change.

Section 14, K.S.A. 2-2461(a) – Criminal Violations: This section states that any person “violating or failing to comply with any provision of this act or any authorized rule or regulation of the secretary shall be deemed guilty of a class A misdemeanor.” This language is overly broad. Also, as the agency has sufficient civil penalty authority, we would recommend striking this provision from the act.

Thank you for allowing us the opportunity to testify in support of House Bill 2607. We respectfully request that the committee consider adopting our proposed amendments and then pass the bill out favorably. We will stand for questions at the appropriate time.