

**Testimony in Support of House Bill 2244
to the House Committee on Agriculture
by Kenneth Titus, Chief Counsel
Kansas Department of Agriculture
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Good afternoon Chairman Rahjes and members of the committee. I am Kenneth Titus and I serve as Chief Counsel to the Kansas Department of Agriculture (KDA). Thank you for the opportunity to provide testimony in support of House Bill 2244 which would create a new procedure for the effective disposal of industrial hemp and amend the registration requirements for industrial hemp processors.

Effective Disposal of Industrial Hemp

House Bill 2244 would amend the laws regulating the commercial production of industrial hemp in Kansas to allow KDA to directly assist in the disposal of non-compliant hemp crops under the supervision of law enforcement. The 2018 Farm Bill opened up the opportunity for states to develop plans for the commercial production of industrial hemp, which the Kansas Legislature authorized in the 2019 session. K.S.A. 2-3905 and K.S.A. 2-3906 directed KDA to develop a commercial production plan but in order to comply with federal requirements for industrial hemp production, KDA was required to wait for the U.S. Department of Agriculture (USDA) to adopt their own regulations.

KDA has worked with the Kansas Sheriffs' Association and the Kansas Bureau of Investigation to develop House Bill 2244. This bill would make KDA employees duly authorized, in limited circumstances, to take the lead in ensuring non-compliant hemp is properly disposed of in coordination with local law enforcement. The bill ensures that local law enforcement officials are involved in any disposal operation as they must be notified of the non-compliant field and they must approve any disposal plan. Further, any KDA employees involved can be required to undergo a background check and KDA's authority only applies to licensees of the commercial industrial hemp program.

USDA promulgated their Interim Final Rule (IFR) for the Establishment of a Hemp Production Program on October 29, 2019. USDA's rule required at 7 CFR § 990.27 that "Cannabis plants exceeding the acceptable hemp THC level constitute marijuana, a schedule I controlled substance under the Controlled Substances Act...and must be disposed of in accordance with the CSA and [Drug Enforcement Administration] regulations." In effect, this requires that either state or local law enforcement officers take possession of and dispose of any non-compliant hemp. KDA worked closely with law enforcement stakeholders in developing a commercial

production plan, and local law enforcement was concerned with the potentially large burden that could be placed upon their limited resources in manpower and cost if all non-compliant hemp had to be collected and disposed of by law enforcement.

After accepting initial comments on the IFR, USDA announced they would delay enforcement of this provision and issued guidance that would allow producers to utilize normal on-farm practices such as mowing, discing, and burning non-compliant hemp crops. The USDA published their Final Rule on January 15, 2021, and it is scheduled to become effective on March 22, 2021. At this time, the new administration has not re-opened the rule for further comments, but the rule is being reviewed by new leadership at USDA and could be pulled back. As it is currently written, the Final Rule allows for the use of these standard farm practice disposal methods as well as increased opportunities for remediation for non-compliant hemp, such as removing flowers or combining shredded biomass. Despite the new flexibilities, the new federal rule at 7 CFR § 990.3 still requires that if disposal is not conducted on site at the farm, disposal must be done through a reverse distributor or law enforcement. Therefore, KDA believes that it is still important to adopt these disposal procedures to ensure appropriate coordination between KDA and law enforcement in a positive and resource-wise manner. We believe this will leave Kansans best prepared to meet any unforeseen future requirements from USDA while also providing a blueprint for state and local cooperation in industrial hemp production.

Hemp Processors

KDA, along with the Office of the State Fire Marshal, is also seeking to amend K.S.A. 2-3907. As adopted in 2019, K.S.A. 2-3907 provided for the creation of an industrial hemp processor registry and background checks for certain industrial hemp processor employees. As part of a compromise between stakeholders, background checks were to be performed by the industrial hemp processor. However, the Federal Bureau of Investigation has determined that such a procedure is not allowable under federal law. Since the background check provision has been invalidated, the statutory requirements for industrial hemp processing can no longer be met, and hence, the State Fire Marshal cannot conduct a national criminal history background check.

In addition to fixing the background check requirements, law enforcement agencies were concerned that KDA could not provide an appropriate level of regulation for industrial hemp processors. KDA worked with the office of Kansas Attorney General Derek Schmidt, the Kansas Bureau of Investigation, and the Kansas State Fire Marshal to develop an alternative plan for the regulation of industrial hemp processors. It was determined that the best path forward would be for the State Fire Marshal to assume jurisdiction over industrial hemp processors because of the use of combustible solvents and pressurized equipment. Along with reviewing the necessary background checks, the State Fire Marshal will be authorized to ensure that processors operate under the proper safety conditions and that they are properly disposing of the extracted waste materials, which otherwise could easily be diverted for criminal activities or dumped unlawfully. The State Fire Marshal will provide the necessary technical expertise and law enforcement authority to protect the public's health, safety, and welfare, in ways that are beyond the expertise of KDA. We fully support the proposed amendments to K.S.A. 2-3907. This authority was temporarily transferred via a budget proviso for Fiscal Year 2021 only and these provisions,

along with the other amendments requested by the State Fire Marshal, should be approved to finalize this transfer and provide stability for industrial hemp processors.

Overall, this bill will allow KDA to operate the commercial industrial hemp program and to assist local law enforcement in limited circumstances in order to avoid an undue burden being placed on local law enforcement resources while at the same time ensuring the proper level of involvement and oversight of controlled substances. Further, the proposed amendments to K.S.A. 2-3907 are necessary for industrial hemp processors in Kansas to continue operations and will better protect the public's health, safety, and welfare.

Thank you for the opportunity to provide testimony on House Bill 2244 and we urge you to support this bill.