

Kansas Cotton Boll Weevil Act; Industrial Hemp; Seeds; Plant Pests; HB 2559

HB 2559 establishes the Kansas Cotton Boll Weevil Act (Boll Weevil Act) and creates the Kansas Cotton Boll Weevil Program (Boll Weevil Program). The bill also creates law regarding industrial hemp testing services and seed treated with an irritating or poisonous substance, and updates laws that are administered by the Plant Protection and Weed Control Program of the Kansas Department of Agriculture (KDA).

Kansas Cotton Boll Weevil Act

The bill establishes the Boll Weevil Act and creates the Boll Weevil Program, which will be administered by a board of directors.

Boll Weevil Act and Definitions

The bill establishes the Boll Weevil Act and defines the terms “Act,” “board,” “cotton pest,” “grower,” “person,” and “Secretary” for purposes of the Act.

Boll Weevil Program and Boll Weevil Board

The bill establishes the Boll Weevil Program and authorizes the Kansas Cotton Boll Weevil Program Board of Directors (Boll Weevil Board) to administer and implement the Boll Weevil Program.

Board membership. The Boll Weevil Board will consist of five voting members and three ex officio non-voting members: the Dean of the Kansas State University College of Agriculture, or the Dean’s designee; the Secretary of Agriculture (Secretary), or the Secretary’s designee; and the Kansas Cotton Association chairperson, or the chairperson’s designee.

The bill requires the Board of Directors of the Kansas Cotton Association to submit seven nominations to the Secretary, from which the Secretary would appoint the five voting members.

Each appointed Boll Weevil Board member will serve a four-year term, and two of the Board members first appointed on and after the effective date of the bill will be appointed for two-year terms.

The Boll Weevil Board will elect a chairperson from the voting members of the Boll Weevil Board each year. The Boll Weevil Board will be required to meet at least once every calendar year in conjunction with the Kansas Cotton Association’s annual meeting.

The bill requires, upon a vacancy on the Boll Weevil Board, or at least 30 days prior to the expiration of the term of any voting member, the Board of Directors of the Kansas Cotton Association to submit three nominations to the Secretary for each vacancy or expiring term, from which the Secretary will appoint a voting member.

Board authority. The Boll Weevil Board will have authority, for the purposes of administering and implementing the Boll Weevil Program, to:

- Establish and implement a cotton pest monitoring plan required to include:
 - Development and distribution of educational materials; and
 - Authority for the Board's designee to, subject to notice requirements, enter private property to:
 - Perform inspections of any cotton field upon the private property to determine whether an infestation of cotton exists or whether cotton pests are present on the property; and
 - Set and monitor traps;
 - Accept grants and donations;
 - Sue and be sued;
- Appoint and compensate an administrator, who is knowledgeable about the cotton industry, and other personnel as needed, and establish an office for the administrator at any place in the state selected by the Boll Weevil Board; and
- Enter into contracts for purposes of the Boll Weevil Act, including, but not limited to, collection of the cotton assessment or coordination with any local, state, or national organization or agency, whether private or created by state or federal law, engaged in work or activities similar to the work and activities of the Boll Weevil Board.

Private property notification. The bill requires an individual entering private property to perform inspections or to set or monitor traps to notify the owner, operator, or lessee of the property for the purpose of the entry and allow any present and notified owner, operator, or lessee, or any representative, to accompany the individual conducting the inspections or setting or monitoring traps.

Eradication plan. The bill allows the Boll Weevil Board to authorize the development and implementation of an eradication plan with the Secretary, pursuant to the Plant Pest and Agriculture Commodity Certification Act (KSA 2-2112 *et seq.*).

Cotton Bale Assessment

The bill authorizes the Boll Weevil Board to set an assessment per cotton bale at an amount not to exceed \$2. The Boll Weevil Board will review, set, and communicate the assessment to cotton growers each year.

The assessment will be levied on a grower at the time of deposit at the cotton gin and will be collected and remitted to the Boll Weevil Board.

An in-state cotton gin that serves as the selling agent for the cotton products will be required to:

- Collect the assessment by deducting the assessment from the ginning price of the cotton as a ginning cost or from any funds advanced for ginning costs;
- Provide monthly reports to the Boll Weevil Board on or before the 15th day of each month regarding the collected assessments;
- Remit all of the collected assessments each month to the Boll Weevil Board;
- Provide the Boll Weevil Board with any other information reasonably requested by the Board to ensure the collection of the assessments; and
- Provide a copy of the sales invoice or other document showing the transaction to the grower that shows the amount of the assessment collected.

The bill authorizes an out-of-state cotton gin that serves as the selling agent for the cotton produced, subject to any contract with the Boll Weevil Board, to:

- Collect the assessment on behalf of the grower at the time of the deposit at the gin; and
- Remit all of the assessments collected each month to the Board.

On June 1 of each year, the bill requires each cotton gin required to collect an assessment to forward to the Boll Weevil Board an accounting of all assessments collected and paid, and payment for all assessments previously collected but not paid.

The bill requires all funds expended by the Boll Weevil Board for administration and payment of all claims from performance or neglect of any duties or activities pursuant to the Boll Weevil Act to be paid from proceeds of the assessment. The bill prohibits use of these funds for any other purposes.

Bank accounts used for operating and conducting the Boll Weevil Program's duties must be secured by pledge of securities in the manner prescribed in law for state bank accounts (KSA 75-4218). The bill requires an institution to be licensed by a state or by the federal government if the bank account is in an institution outside of the state.

Violations

Any violation of the Boll Weevil Act is a class C nonperson misdemeanor.

Discontinuation of Program

The Boll Weevil Program, or any activity conducted under the Boll Weevil Program, may be discontinued upon resolution of the Boll Weevil Program, or such activity, and with approval by the Secretary, if the Boll Weevil Board determines the Boll Weevil Program, or activity, is no longer necessary or reasonable to operate pursuant to the Boll Weevil Act.

Before the dissolution, however, the Boll Weevil Board will be required to file a final report with the Secretary, including a financial report, and submit all remaining funds to the Kansas Cotton Association. Final books of the Boll Weevil Program will be required to be filed with the Secretary and will be subject to audit by the Secretary.

The bill requires the Secretary to pay from the Boll Weevil Program's remaining funds all of the Boll Weevil Program's outstanding obligations and authorizes the Secretary to collect assessments until all obligations are paid, with any remaining funds returned to the Kansas Cotton Association.

The bill requires the Secretary to submit a final report to the Legislature upon the conclusion of all activities related to the dissolution of the Boll Weevil Program.

Commercial Industrial Hemp Act

The bill creates law regarding industrial hemp testing services and amends the Commercial Industrial Hemp 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

The bill allows the KDA to provide industrial hemp testing services to non-licensed persons or governmental entities, including law enforcement agencies, when available testing capacity is not required for testing industrial hemp produced by licensees subject to the Commercial Industrial Hemp Act.

The bill authorizes the Secretary to establish a fee schedule for any testing services through rules and regulations; any moneys received from fees will be deposited into the Laboratory Testing Services Fee Fund.

The bill requires KDA to provide the results of any tests to the Kansas Bureau of Investigation (KBI) upon request. The KDA will 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 will not limit the Secretary's authority to refuse to provide testing services to any non-licensee.

Definitions

The bill removes the definition of "seed research," and adds, to named Board of Regents institutions, any other college, university, technical college, or community college to the definition of "state educational institution."

Industrial Hemp Advisory Board

The bill requires 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 transfers the Industrial Hemp Advisory Board to the Commercial Industrial Hemp Program.]

The Industrial Hemp Advisory Board will provide input and information regarding the regulation and development of industrial hemp in Kansas. The Industrial Hemp Advisory Board will 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 bill requires the Industrial Hemp Advisory Board to meet at least once each year. Board members will receive no compensation but will be paid subsistence allowances, mileage, and other expenses as provided in law.

Fingerprinting

The bill authorizes the Secretary to determine whether to require fingerprinting of persons employed with KDA who are overseeing or regulating industrial hemp.

State Plan

The bill adds “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

Treated Seed

The bill requires 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 also requires the seed to be labeled with specific language, as detailed in the bill.

The bill requires 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 also requires seed that has been treated with an inoculant to be labeled with the inoculant's expiration date.

The bill allows a separate label to be used for the information required by the bill, but also allows this information to be included in the main label.

Definitions

The bill makes numerous changes to the definitions section of law regarding the sales and distribution of seeds, including naming that article of the statutes the Kansas Seed Law.

The bill adds definitions for "prohibited weed seed," "wild mustard (*Brassica* spp.)," "cover crop seed," "food plot," "oil seed," and "Act" or "Kansas Seed Law." The bill also adds a definition of "feminized seed," which means 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 amends definitions for "noxious weed seed," "restricted weed seed," "seizure," "hybrid," "chaffy range grasses," "blend," "mixture," and "grower of agricultural seed." The bill also amends the definition of "agricultural seed" to add oil seed, food plot seed, and any hemp crop authorized by state law, and specifies that the definition does not include those seeds generally classified as vegetable, fruit, flower, tree, or shrub or grown for personal use or commercial sale, except cover crop seed. The bill deletes the definition of "horticultural seeds."

The bill also makes technical and conforming amendments to several definitions.

Labeling

The bill amends labeling requirements for seed by reorganizing subsections of continuing law and making technical changes. The bill adds 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

The bill amends wholesaler and retailer requirements by reorganizing subsections of continuing law and making technical changes.

The bill also adds 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 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

The bill prohibits 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 authorizes 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 state or the United States related to the registration of agricultural seed dealers, seed testing, seed labeling, or seed certification; 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 removes registration requirements for seed conditioners.

Penalties and Court Orders

The bill authorizes 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 Kansas Seed Law or any rules and regulations adopted under that law of \$100 to not more than \$1,000 per violation. The bill allows the Secretary, in the case of a continuing violation, to deem each day of the violation a separate violation. This civil penalty will be assessed in addition to any other penalty provided by law.

Inspection, Access, and Stop Sale Order

The bill amends law on inspection, access, and stop sale orders by the Secretary regarding agricultural seed. The bill authorizes the Secretary to adopt rules and regulations regarding stop sale and movement of agricultural seed in violation of the Kansas Seed 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 authorizes the law to apply to any seed the Secretary has reason to believe is or may be exposed for sale, except for 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

The bill clarifies law regarding the actions the Secretary must take upon determination that a violation of this act or rules and regulations had occurred and clarifies the Secretary's rules and regulations authority.

Plant Pest and Agriculture Commodity Certification Act

Definitions

The bill adds definitions of "temporary location" and "special event live plant dealer" and makes technical changes to continuing definitions.

Inspection Fees

The bill increases 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

The bill adds "advertising for sale" to the list of actions before which every live plant dealer must procure a live plant dealer's license for each location from which a live plant dealer engages in business. The bill also adds an exemption to this requirement for temporary locations that are registered with the Secretary.

The bill increases the cap for an application fee for a live plant dealer's license from \$80 to \$100.

The bill establishes 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 bill limits the fee to \$50, excluding the plant pest emergency

fee. The bill requires the application for the reduced fee to be on a license application form provided by the Secretary.

The bill establishes 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 will not be issued until all fees are paid.

The bill requires 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.