

## **Kansas Pesticide Law and Kansas Chemigation Safety Law; HB 2607**

**HB 2607** amends and updates the Kansas Pesticide Law (Pesticide Law) and Kansas Chemigation Safety Law (Chemigation Law).

### ***Supervision and Training; Rules and Regulations***

The bill requires pesticide business licensees and private applicators to provide appropriate supervision and training for uncertified applicators who apply restricted use pesticides.

The bill prohibits uncertified applicators from applying any restricted use pesticide unless the application is supervised by a certified applicator who is certified to apply restricted use pesticides for the control of pests in the category or subcategory for which the pesticide application is made.

Uncertified applicators are required to have received training in each of the subjects included in the commercial applicator's examination, listed in KSA 2-2443a.

Each pesticide business licensee is required to maintain records that verify each uncertified applicator employed by the business has been properly trained.

The bill authorizes the Secretary of Agriculture (Secretary) to adopt rules and regulations for the following purposes:

- To prescribe requirements for appropriate supervision and training of uncertified applicators by certified applicators; and
- To prescribe record requirements, including, but not limited to, training information that pesticide business licensees are required to maintain. The bill requires the records to be:
  - Maintained for three years after the training has been given; and
  - Available upon request of the Secretary or the Secretary's designee.

This section of the bill is part of and supplemental to the Pesticide Law.

### ***Definitions***

The bill defines "governmental agency" or "government agency" for purposes of the Kansas Pesticide Law to mean any officer, department, bureau, division, board, authority, agency, commission, or institution of a local, state, or federal government when acting to enforce or administer any law, regulation, or ordinance, or otherwise acting in its official capacity.

### ***Financial Responsibility***

The bill clarifies the requirements of proof of financial responsibility for a pesticide business license. An applicant for a license is required to file a surety bond or certificate of liability insurance instead of letters of credit or proof of an escrow account. The bill also clarifies that a government agency is not required to furnish proof of financial responsibility during the registration process.

### ***Government Agency***

The bill requires a government agency to register for pesticide applications of sodium cyanide predator control pesticides, and applicators of these pesticides are required to be certified. [Note: According to the U.S. Environmental Protection Agency (EPA), sodium cyanide is a single-dose poison used on pastures, range, and forest land to control coyote, red fox, grey fox, and wild dog populations that prey upon, or are likely to prey upon, livestock, poultry, or endangered species.]

### ***Registered Pest Control Technicians***

The bill allows uncertified applicators to apply general use pesticides when a certified applicator or registered pest control technician is physically present. The bill prohibits registered pest control technicians from supervising the use of, or applying, any restricted use pesticide unless supervised by a commercial applicator who is certified to apply restricted use pesticides for pest control in the category or subcategory for which the application is made.

The bill authorizes the Secretary to adopt rules and regulations to prescribe requirements concerning the direct supervision of registered pest control technicians by certified applicators.

### ***Civil Penalties***

#### ***Pesticide Business Licensee and Pesticide Dealer***

The bill clarifies the civil penalties that could be imposed by the Secretary upon a finding that a pesticide business licensee or pesticide dealer has violated the Pesticide Law or rules and regulations. In the case of a continuing violation, the bill caps the maximum civil penalty at \$10,000.

#### ***Individual Person (Non-business, Non-dealer)***

The bill states that except as provided under this section, any person who holds a license, certification, registration, or permit, or is required to hold such pursuant to the Pesticide Law, and violates any provision of the Pesticide Law or any adopted rules and regulations could incur a civil penalty in an amount set through rules and regulations adopted by the Secretary.

The civil penalty will be an amount no less than \$100 and no more than \$500 for each violation. In the case of a continuing violation, every day the violation continues could be deemed a separate violation, and the maximum civil penalty would be \$2,500.

#### *Any Pesticide Business Licensee, Pesticide Dealer, or Person*

The bill clarifies the authority of the Secretary to impose a civil penalty upon a finding that a pesticide business licensee, pesticide dealer, or any person has violated any provision of the Pesticide Law or any rules and regulations adopted by the Secretary.

#### **Commercial Applicators Certification**

The bill gives discretion to the Secretary to allow a certified commercial applicator to obtain an additional certification in another category or subcategory upon:

- Submission of a complete and accurate application;
- Payment of a \$45 fee; and
- Completion of a training course approved by the Secretary to authorize the additional certification.

The bill sunsets this provision of the bill on December 31, 2028.

The bill also states commercial applicator certification would not allow applications in the category of sodium cyanide predator control, with the exception that the Secretary may allow government agencies to obtain certification in that category.

#### **Certification and License Categories**

The bill adds sodium cyanide predator control, aerial pest control, and soil fumigation to the categories of qualification for certification and licensing.

#### **Private Applicator Certification**

The bill requires individuals applying for certification to apply restricted use pesticides to be at least 18 years old. The bill clarifies a private applicator certification may only be used for the purpose of producing any agricultural commodity on property owned or rented by the individual or their employer.

Private applicator certification will not authorize applications in the following categories:

- Sodium cyanide predator control;
- Non-soil fumigation;
- Aerial application; or

- Soil fumigation.

Private applicators may obtain commercial applicator certification to make applications in the above categories except for sodium cyanide predator control. The bill also prohibits application of sodium fluoroacetate predator control. [Note: Sodium fluoroacetate, known as Compound 1080, may not be used in the state unless authorized by a permit issued under the authority of the Secretary of Wildlife and Parks. It is non-selective, meaning it is toxic to all mammals.]

The bill requires a certified private applicator to pass a written examination. The bill authorizes the Secretary to adopt rules and regulations to establish a training program as an alternative to the written examination.

In lieu of a private applicator examination, the Secretary may accept attendance and satisfactory completion of a training course approved by the Secretary. If certification is renewed by training, the renewal application form may be accompanied by a recertification-by-training fee of \$50, unless established at a lower amount by the Secretary through rules and regulations.

Certification renewal may occur every five years by retaking the private applicator examination or attending recertification training.

The bill removes the requirement the Secretary offer a correspondence course for a private applicator's certification.

The bill authorizes restricted use pesticides to be used only by a certified applicator or by an uncertified applicator working under the direct supervision of a certified applicator. No certification is required for individuals operating under the direct supervision of a certified private applicator, but the supervised applicators must be at least 18 years of age. If the uncertified applicator is directly supervised by a relative or family member and is applying restricted use pesticides for the purpose of producing any agricultural commodity on property owned or leased by the individual or the individual's relative or family member, then the supervised applicator must be at least 16 years of age.

The bill clarifies that private applicator certification may be issued to individuals who have complied with all other applicable requirements; those individuals are subject to any testing or initial training fee established in rules and regulations adopted by the Secretary and could not exceed \$75.

### ***Secretary's Authority***

The bill removes the authority of the Secretary to deny, suspend, revoke, or modify any license, registration, permit, or certificate issued based on conviction, or a guilty plea, of an applicant, licensee, registrant, permit holder, or certificate holder to a non-Pesticide Law felony under state law or laws of the United States. Continuing law allows the Secretary to take action for Pesticide Law violations.

### ***Statement of Services; Record Retention***

Continuing law requires an applicator to present a statement of services to each customer. The bill adds information to be included in the statement of services.

The bill adds requirements for retention of government agency records regarding pesticide application. The bill requires each government agency to maintain records relating to each application of pesticide made by the government agency. The records must be provided to the Secretary upon request.

The bill requires the records to include:

- The name, complete street address, and registration number of the government agency;
- The pest or pests to be controlled, which may be stated in general terms;
- The pesticide to be used, including the quantity applied and total area where the pesticide is applied;
- The concentration or rate of application, when applicable;
- The date, location, and start and end times of the application of the pesticide;
- The signature and applicator certification number of the individual who performed the pest control service or the application of pesticides;
- The signature and applicator certification number of the individual who supervised the performance of the pest control service or the application of pesticides, when applicable;
- The wind direction and velocity, when applicable;
- The complete product name of the pesticide as the name appears on the label; and
- The pesticide's EPA registration number.

In addition, the bill requires pesticide business licensees and government agencies to create or verify the existence of records documenting that each uncertified applicator has the necessary qualifications as set forth in rules and regulations adopted by the Secretary.

### ***Criminal Penalties***

The bill states any person who violates Pesticide Law and Chemigation Law is guilty of a class A misdemeanor.