

SESSION OF 2009

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2121**

As Agreed to April 1, 2009

**Brief\***

HB 2121 would enact modifications and additions to statutes relating to pesticides and fertilizers; make adjustments to the fees dealing with pesticides and fertilizers; extend the current fees imposed to administer the dairy inspection program; enact new law regarding the labeling of dairy products; and shift responsibility for review of swine nutrient utilization plans from the Kansas Department of Agriculture to the Kansas Department of Health and Environment.

**Modifications to Pesticide and Fertilizer Law**

The bill would change substantive law in the regulation of pesticide and fertilizer. Specifically, the bill would:

- Delete the requirement that a portion of the fertilizer tonnage fee be credited to the Fertilizer and Pesticide Compliance and Administration Fund;
- Clarify that the terms “agricultural chemical” and “pesticide” are synonymous;
- Clarify that reference in labeling requirements may be made to publications of various agencies of the federal government and to state and federal experimental stations and extension services;

---

\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

- Clarify that a pesticide may be considered to be mislabeled if it does not bear a hazard or cautionary statement sufficient to prevent harm to the environment, especially the waters of the state, or does not bear an Environmental Protection Agency (EPA) registration number, unless exempted;
- Add definitions for “emergency exemption,” “restricted use,” “special local need registration,” “suspended pesticide,” “distribute,” “EPA,” and “FIFRA” (the Federal Insecticide, Fungicide and Rodenticide Act);
- Delete requirements to color or discolor certain pesticides listed in current statute;
- Give specific authority to the Secretary of Agriculture to classify or designate any pesticide registered for sale or use in the state as a restricted use pesticide;
- Delete the ability of a pesticide registrant to submit only a statement of different information than was originally submitted when a pesticide was first registered in the state (the registrant would need to submit a full statement);
- Allow the Secretary to require a pesticide registrant to submit a copy of the product label registered by the EPA under the provisions of FIFRA;
- Require a modified label to be submitted to the Secretary for review and approval;
- Permit the Secretary to require the submission of data in support of the registration of a pesticide including trade secrets which would be considered as confidential;
- Allow the Secretary to deny registration of a product if the applicant does not make appropriate changes in labeling or product information within 30 days;

- Cancel or suspend product registration under Kansas law if the registration is suspended or cancelled under FIFRA;
- Suspend or revoke registration if the product fails to meet claims made on the label or the product or its labeling do not comply with the act or rules and regulations;
- Permit information required to be filed to be submitted electronically;
- Permit the Secretary to issue a stop sale or use if the label is altered or defaced or if the package or container has pesticide residue on the container or if the pesticide dealer has failed to register as a pesticide dealer;
- Permit agency personnel to enter premises during reasonable business hours to conduct inspections, obtain samples, obtain records, and document compliance;
- Allow the Secretary to issue a permit for the experimental use of a pesticide in lieu of registration;
- Provide that during an emergency exemption such pesticides need not be registered;
- Exempt from the registration fee pesticide products used for the first year under the provisions for “special local need” registration;
- Allow the Secretary to have the authority to apply for a permit for pesticide use in emergency situations;
- Delete a portion of the definition of the term “certified private applicator” which had permitted those controlling ornamental shrubbery or turf pests to use restricted use pesticides at their own private residence;
- Add to the definition of the term “registered pest control technician” those who apply pesticides for interior

landscape pest control and recognize this practice in other provisions of the law;

- Subject pesticide dealers to some of the same requirements as pesticide business licensees;
- Clarify that a fee is to be charged for each examination taken, including each category, subcategory and general core examination;
- Delete language that addressed fees to be charged to out-of-state certified applicators if the requirements in the other state were the full equivalent of Kansas requirements;
- Allow a certified commercial applicator to recertify by training after the certification period under certain conditions;
- Clarify that if a pesticide business fails to employ one or more commercial applicators certified in each category and subcategory in which applications are made, then the Secretary will suspend, without hearing, the pesticide business license in that category until the business employs an applicator with the appropriate certification;
- Make it unlawful to distribute, sell, or make available any restricted use pesticide other than by a certified applicator or under a certified applicator's supervision;
- Make it unlawful to distribute, sell, or make available for use any pesticide unless it is in the unbroken container with an intact label;
- Make it unlawful to distribute, sell or offer for sale any pesticide with altered, defaced or detached labeling;
- Make it unlawful to distribute, sell or offer for sale any pesticide product with pesticide residue on the container or packaging; and

- Delete a provision which requires that rules and regulations be adopted within 60 days after the effective date of the act.
- Require all rules and regulations to be promulgated on or before July 1, 2010.

### **Modifications to Pesticide and Fertilizer Fees**

The bill would clarify that the registration fee for an agricultural chemical would be an amount not to exceed \$150 per year, rather than not to exceed \$150 multiplied by the number of years registered, as is the case under current law.

A new provision would require an applicant for a commercial applicator's certificate to pay \$75 per category unless a fee less than the \$75 is established through rules and regulations of the Secretary. Under current law, applicants pay "proper fees."

In addition, the bill would make the following adjustments to Department of Agriculture fees dealing with pesticides and fertilizers. The bill would extend most current fee amounts until July 1, 2015, when they would revert to 2002 levels.

Program	Service	Amount Which the Current Fee Would Revert to on July 1, 2015	Fee Under the Bill	Sec. No.
Pesticide & Fertilizer	Failure to file affidavit and pay inspection fees	\$5 per day	\$10 per day	1
Pesticide & Fertilizer	Business License Application	\$112 per category	\$140 per category	11
Pesticide & Fertilizer	Uncertified Applicator Registration	\$10	\$15	11
Pesticide & Fertilizer	Government Agency Registration	\$35	\$50	11
Pesticide & Fertilizer	Technician Registration	\$25	\$40	13
Pesticide & Fertilizer	Commercial Certification Examination per category and re-exam per category	\$25 maximum	\$45 maximum	17
Pesticide & Fertilizer	Agricultural Liming Material Registration	\$25	\$30	27
Pesticide & Fertilizer	Agricultural Liming Material Inspection Fee	\$0.05 / ton	\$0.07/ton	28
Pesticide & Fertilizer	Chemigation User Permit	\$55	\$75	29
Pesticide & Fertilizer	Chemigation User Permit for additional points of diversion	\$10	\$15	29
Pesticide & Fertilizer	Chemigation Equipment Operator Certification or renewal	\$10	\$25	30

The fee for a certificate for a certified private applicator would be made permanent in an amount not to exceed \$25.

### **Dairy Inspection Fees**

The bill would lengthen the sunset provisions on various dairy inspection and dairy-related fees from the current June 30, 2010, date to June 30, 2015. After the 2015 date, the fees would revert to prior amounts.

## **Dairy Labeling**

The bill would require all milk, milk products, or dairy products which contain a label that states, "This milk is from cows not supplemented with rBST" (or contain a substantially equivalent statement) to possess, on the label panel (in a similar font, style, case, size, and color), the following qualifying statement: "The FDA has determined that no significant difference has been shown between milk derived from rBST-supplemented and non-rBST-supplemented cows." Any label without the qualifying statement would be deemed misleading.

Additionally, the bill would require the owner or operator of each dairy manufacturing plant that makes the production claim to have an affidavit or any other documentation deemed necessary to support the claim that the milk is from cows not supplemented with rBST. These documents would need to be available for inspections conducted by the Kansas Department of Agriculture.

The bill would not permit production labels on milk or dairy products with respect to hormones. This would include labels stating, "No Hormone," "Hormone Free," "rBST Free," "rBGH Free," and "BST Free." Also prohibited would be labels containing a statement indicating the absence of a compound that is not permitted by the U.S. Food and Drug Administration to be present in the product.

The bill would apply to labeling on all reusable and non-reusable containers of milk or dairy products purchased by the owner or operator of a dairy processing plant on or after January 1, 2011. The qualifying language would not be required to be on the same label as the production claim on all reusable containers purchased before January 1, 2011.

The provisions of the bill would not apply to agricultural products certified as organic agricultural products by the U.S. Department of Agriculture under its National Organic Program.

## **Transfer of Nutrient Utilization Plan Review for Swine**

The bill would amend existing law by stating that the Kansas Department of Agriculture's (KDA) statutorily required review of nutrient utilization plans, relating to swine permits, would be transferred to the Kansas Department of Health and Environment (KDHE).

Under current law, KDA is charged with reviewing and approving nutrient utilization plans as part of KDHE's larger swine waste permitting process. If a Plan is approved, KDHE then accepts the KDA recommendation as satisfying one of the swine permit requirements. KDHE verifies any additional state or federal requirements to complete the livestock waste permitting process.

## **Conference Committee Action**

The Second Conference Committee on this bill agreed to:

- Adopt the language of HB 2121, as amended by the Senate Committee of the Whole, relating to changes in the statutes regulating fertilizers and pesticides, and including adjustments to the fees regarding pesticides and fertilizers and fees imposed under the state's Dairy Inspection Program;
- Include the provisions of HB 2295 dealing with dairy product labeling, with minor modifications to the version as amended by the House Committee on Agriculture and Natural Resources; and
- Include the provisions of SB 316, as amended by the Senate Committee of the Whole, regarding the transfer of the review of nutrient utilization plans requirements for swine facility operators from the Kansas Department of Agriculture to the Kansas Department of Health and Environment.



## **Background**

The following outlines the background on each of the bills included in the Conference Committee Report.

### **HB 2121**

This bill was introduced at the request of a spokesperson from the Kansas Department of Agriculture. At the hearing on the bill, proponents were representatives from the Kansas Department of Agriculture and the Kansas Agribusiness Retailers Association. The opponent was a representative of the Kansas Farm Bureau. Neutral testimony was presented by a representative of the Kansas Cooperative Council.

The House Committee on Agriculture and Natural Resources amended the bill to:

- Clarify that the registration fee for an agricultural chemical would be an amount not to exceed \$150 per year, rather than not to exceed \$150 multiplied by the number of years registered as is the case under current law; and
- Clarify that if a commercial applicator fails to employ one or more commercial applicators certified in each category and subcategory in which pesticide applications are made, then the Secretary would suspend the pesticide business license in that category until the business employs an applicator with the appropriate certification.

The House Committee of the Whole amended the bill to put into place increased fee amounts until July 1, 2015, when the fee amounts would revert to 2002 levels.

The Senate Committee on Agriculture amended the bill to lengthen the sunset provisions on certain dairy inspection and dairy-related fees.

At the Senate Committee hearing on the bill, officials from the Kansas Department of Agriculture, Kansas Cooperative Council, and Kansas Agribusiness Retailers Association testified in support of the bill. Neutral testimony was presented on behalf of the Kansas Farm Bureau. No testimony opposing the bill was provided.

The bill was amended by the Senate Committee of the Whole to require the Secretary of Agriculture to promulgate rules and regulations on or before July 1, 2010.

In the fiscal note on the original bill, the Kansas Department of Agriculture indicates there would be an increase of \$7,500 in revenues from the increased fees for the pesticide applicator examination fee, the new recertification-by-training fee and the new reciprocity fees, all of which finance the Agency's Pesticide and Fertilizer Program. The fiscal note on the original bill states that the revenues assessed from penalties cannot be estimated because there is not enough information on which to base an estimate. The fiscal note also states that without the removal of the sunset on the pesticide and fertilizer fees, the Department of Agriculture would lose approximately \$237,000 in fee revenues annually, beginning in FY 2011. The Department indicates it can implement HB 2121 within existing staff and resources. Any fiscal effect associated with the enactment of HB 2121 is not accounted for in *The FY 2010 Governor's Budget Report*.

## **HB 2295**

The bill was introduced by the House Committee on Taxation and referred to the House Committee on Agriculture and Natural Resources. At the House Committee hearing, testimony in support of the bill was provided by representatives of the Kansas Agribusiness Retailers Association, Kansas Dairy Association, Kansas Farm Bureau, private citizens, and individually owned dairy operations. Testimony opposing the bill was provided by Ben and Jerry's Homemade Inc., Campaign for Safe Food, Kansas City Food Circle, Kansas

Farmers Union, Kansas Rural Center, Organic Trade Association, Sierra Club, private citizens, and individually owned dairy operations. Neutral testimony was provided by the Kansas Department of Agriculture.

The House Committee on Agriculture and Natural Resources amended the bill to remove language commenting on the validity of statements made about hormones in milk. An additional amendment was made to allow the qualifying label to be in a similar font and size as the production claim.

The original fiscal note indicates that enactment of HB 2295 would have a fiscal effect on the agency by requiring the review of records and documents at dairy manufacturing facilities. However, the Department states that the added inspection costs could be handled within existing resources.

## **SB 316**

The bill was introduced by the Senate Committee on Ways and Means at the request of Senator Taddiken on behalf of the Kansas Department of Agriculture.

At the hearing, testimony opposing the bill was provided by an official from KDHE. Neutral testimony was provided by officials from KDA and the Kansas Pork Association.

The Senate Committee of the Whole amended the bill to transfer responsibility for review of Nutrient Utilization Plans to the Secretary of Health and Environment and to remove language that would have made the transfer of responsibility from the Kansas Department of Agriculture to the Kansas Department of Health and Environment contingent upon funding.

pesticide and fertilizer law; dairy labeling; swine nutrient utilization plan