

Pesticide and Fertilizer Law Amendments; Extension and Modification of Fees; and Transfer of Swine Nutrient Utilization Plans

Agency Fees and Regulations

Senate Sub. for HB 2295 enacts modifications and additions to statutes relating to pesticides and fertilizers; makes adjustments to the fees dealing with pesticides and fertilizers; extends the current fees imposed to administer the dairy inspection program; and shifts 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 changes 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 references in labeling requirements may be made to publications of various agencies of the federal government and of state and federal experimental stations and extension services;
- 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, through the promulgation of rules and regulations, 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 does 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, through the promulgation of rules and regulations, 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 a person controlling ornamental shrubbery or turf pests to use restricted use pesticides at his or her own private residence;
- Add to the definition of the term “registered pest control technician” those who apply pesticides for interior landscape pest control and recognizes 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’s 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;
- Delete a provision which requires that rules and regulations be adopted within 60 days after the effective date of the Act; and

- Require all rules and regulations to be promulgated on or before July 1, 2010.

Modifications to Pesticide and Fertilizer Fees

The bill clarifies that the registration fee for an agricultural chemical will 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 prior law.

A new provision requires 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.

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

Program	Service	Amount to Which the Current Fee Would Revert 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 maximum	\$40 maximum	13
Pesticide & Fertilizer	Commercial Certification Examination per category and re-exam per category	\$35 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 is made permanent in an amount not to exceed \$25.