

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2419

2001 SENATE AGRICULTURE

SB 2419

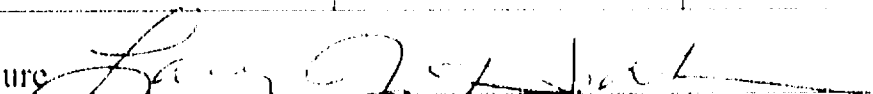
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2419

Senate Agriculture Committee

Conference Committee

Hearing Date February 8, 2001

Tape Number	Side A	Side B	Meter #
Feb. 8 1	X		32.0 - END
		X	0.0 - 1.2
Committee Clerk Signature 			

Minutes:

SENATOR NICHOLS: Sponsor, introduced the bill to the committee. This bill relates to proof of financial responsibility of commercial pesticide applicators. Section 1 of the bill would ask legislative council to consider studying these issue regarding financial responsibility requirements.

ANDREW THOSTENSON; NDSU Extension Service, Pesticide Program Specialist. Testified in support of this bill. See attached testimony.

SENATOR WANZEK; Are you aware that we past a bill in this committee and it past on the Senator floor, that would require certification for even all general use pesticides?

ANDREW THOSTENSON; Yes, I am well aware of that. That would change this a little bit, but don't really do anything in terms of addressing the enforcement side. The certification program runs over a three year period, proof comes in annually. It would help matters to some

degree if the bill that has past the Senate comes into law, but it still won't cover the main problem.

MERLIN LEITHOLD; ND Weed Control Association, testified in support of the bill. See attached testimony.

JEFF OLSON; Program Manager Plant Industries, ND Dept. Of Agriculture, testified in support of this bill. See attached testimony.

SENATOR WANZEK; This is an ongoing issue and hopefully we can figure something out, but this a difficult issue to find a solution for.

JEFF OLSON; I have been looking at this frequently and a lot of discussion about the certification. This is difficult topic because of the different interest groups and I think a study would help find a middle ground.

GARY KNUTSON; NDAA, testified in the neutral position on this bill. We realize that this doesn't work and need to be worked on. There are a lot of complexities to this bill.

LOWELL BERNTSON; testified in opposition of this bill. We as producers have to protect ourselves and these applicators have to have liability insurance and have to be responsible for their actions. A good applicator is cover by liability and drift insurance.

ANDREW THOSTENSON; The downside of this bill is that it doesn't do anything for drift liability insurance.

DONALD VIG; testified in opposition to this bill.

SENATOR KLEIN; There is always people that will break the law and create these issues.

The hearing was closed.

Page 3
Senate Agriculture Committee
Bill/Resolution Number SB 2419
Hearing Date February 8, 2001

February 9, 2001

SENATOR KLEIN moved to DO PASS.

SENATOR NICHOLS seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR NICHOLS will carry the bill.

Date: 2-9-01
Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2419

Senate Agriculture Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Klein Seconded By Sen. Nichols

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Nichols

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 9, 2001 1:09 p.m.

Module No: SR-24-2871
Carrier: Nichols
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2419: Agriculture Committee (Sen. Wanzek, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2419 was placed on the
Eleventh order on the calendar.

2001 HOUSE AGRICULTURE

SB 2419

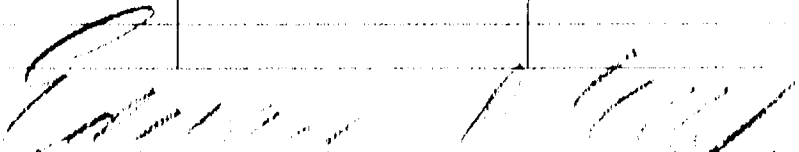
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2419

House Agriculture Committee

Conference Committee

Hearing Date 3--09--01

Tape Number	Side A	Side B	Meter #
THREE	A		1080 TO 3455
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: COMMITTEE MEMBERS WE WILL OPEN THE HEARING ON SB 2419. SENATOR NICHOLS GO AHEAD ON 2419.

SENATOR NICHOLS: I am here today as the prime sponsor of SB 2419. In general terms we have had some problems in this area for quite sometime. We have tried legislation in the past. It has not worked very well. I know that the legislation that is on the book right now is extremely hard to administer and for that reason I submitted this Bill. It will offer a study of the issues regarding financial responsibility requirements for commercial applicators. To repeal the law that we now have on the books that really dose not work and takes a lot of time and effort and money and basically it can not work. I have someone from the Agr. Dept. discuss the details.

JEFF OLSON: PROGRAM MANAGER PLANT INDUSTRIES NDDA Please see printed testimony. I am also passing out testimony for Andrew A Thostenson who is absent today.

Page 2
House Agriculture Committee
Bill/Resolution Number SB 2419
Hearing Date 3--09--01

I URGE A DO PASS ON THIS BILL.

REPRESENTATIVE PIETSCH: With this law in place, you come over and spray someone's territory and the drift comes on me. My recourse now is the person who is drifted on is civil action. Is that correct. Just being certified, that dose not give that air applicator any protection from damage that they might do in a civil action.

JEFF: No it dose not give you any protection whatsoever. It gives us no enforcement ability either. Unless ofcourse if they applied it in an inappropriate way.

GARY KNUTSON: ND AGR. ASSOCIATION. From day on this is a very difficult issue and obviously within the association. We want to promote stewardship with use of the pesticide products and the application and the responsibility through out the system. Financially for the small applicator this is very expensive. A lot of the larger applicators will have this insurance. Do we totally want to start over or dose the legislature want to carry an unworkable law on the books to expedite. We do need a group to study it. In civil action you have to have a worth of \$100,000.00.

MERLIN MICHAELS: I am here to represent the ND WHEAT CONTROL ASSOCIATION. We are in favor of a study to see if something can be done. We do know that there is a problem out there.

STEVE STREGIE: ND GRAIN DEALERS. Keep current law in place. Something is better then nothing. Take line 11 and 12 out of SB 2419.

RENNER: MOST COMPLAINTS ARE FROM AERIAL APPLICATORS. THE FARMER THAT OWNS THE LAND AND HIRES THE APPLICATOR HAS FARM LIABILITY THAT WILL COVER THE DRIFT.

Page 3

House Agriculture Committee

Bill/Resolution Number SB 2419

Hearing Date 3--09--01

REPRESENTATIVE BERG: The issue that four years ago what that they were going to require all applicants to buy insurance to cover drift protection. Everyone. If there was a law they would go to the farm owner and work out a settlement. I very supportive of eliminating burdens on our ND applicators and I think removing this would eliminate a burden. Having said that I think that I think that this was kind of a way of slicing that pie that these people could easily show that they had a net-worth of one hundred thousand. These claims that we are talking about are 3 or 4 hundred claim. I don't know who would be in the business that would not have that kind of equity. I believe in the study. I don't think it is quite solved yet. I am concerned about just eliminating this boom and we have fly by night operators come in and create huge problems so we go back to where we were with the crops we had four years ago.

JEFF OLSON: You are correct. I can see both ways. An administrative hearing cost as to enforcement where I am required to have a hearing cost 1,000.00. There has to be an administrative hearing before I can suspend. One third of applicators are out of compliance even after we send out warning letters. I have no problem with leaving the Bill in place but I would like something in place as far as the enforcement responsibility. We don't have money in the Agr. Department just to enforce this, particularly section of the law. That is where the problem comes in. Lets look at the existing amendment before moving ahead with this, we have no problem with that.

JEFF OLSON: I will have to get together with the attorney general etc. and see if we can put something together, for the committee to take a look at.

BERG: If there is a road block talk to me.

CHAIRMAN NICHOLAS: ANY ADDITION TESTIMONY ON 2419?

Page 4

House Agriculture Committee

Bill/Resolution Number SB 2419

Hearing Date 3--09--01

WE WILL CLOSE ON SB 2419.

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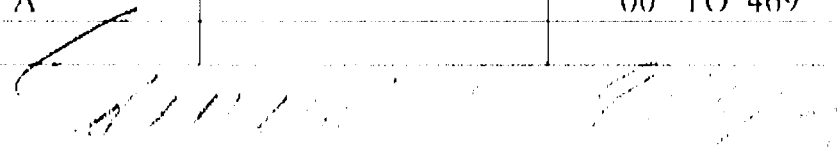
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. S B 2419

House Agriculture Committee

Conference Committee

Hearing Date 3--16--01

Tape Number	Side A	Side B	Meter #
TWO	A		5000 TO END
THREE	A		00 TO 469
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: WE WILL OPEN THE HEARING ON 2419.

REPRESENTATIVE BERG: BASICALLY THIS ISSUE IS AN OLD FRIEND OF THIS COMMITTEE. WHAT HAS HAPPENED IN THE PAST WE HAVE HAD CERTAIN PERIODS OF TIME WHERE WE NEED A LOT OF COMMERCIAL SPRAYERS AND IN THE VALLEY THEY BROUGHT A LOT OF OUT OF STATE SPRAYERS IN; THEY HIT IT HARD FOR TWO OR THREE WEEK; THEY HAVE PROBLEMS WITH SOME OF THOSE OUT OF STATE SPRAYERS BECAUSE THEY LEFT THE STATE; THERE WAS OVER SPRAY; MANY PROBLEMS; SO LEGISLATION CAME IN TO REQUIRE ALL SPRAYERS TO HAVE OVER SPRAY INSURANCE, DRIFT INSURANCE, WHICH WAS NOT POSSIBLE SO WE ENDED UP SAYING WE WANTED A SPRAYER TO HAVE A FINANCIAL NET WORTH SO SOMEONE COULD SUE THEM. WHAT THE BILL DID WAS TAKE THAT SECTION OUT. WITH THE AMENDMENTS IT WILL LEAVE THAT

Page 2

House Agriculture Committee

Bill/Resolution Number SB 2419

Hearing Date 3--16--01

SECTION IN AND I THINK IT IS A \$100,000.00 DOLLARS EQUITY THEY NEED TO HAVE. FOR THE SPRAYERS THAT HAVE BEEN AROUND FOR TWENTY YEARS, THIS IS NOT CAUSING THEM TO GO OUT AND GET A BOND OR BUY INSURANCE. WE JUST WANT TO MAKE SURE THAT THERE ARE ENOUGH ASSETS SO THAT SOMEONE COULD SUE YOU IF YOU HAVE A PROBLEM. THE AMENDMENTS TWEET THE EXISTING STATUE. RATHER THEN ANNUALLY PROVE THAT YOU HAVE THE NET WORTH OF ONE HUNDRED THOUSAND, YOU WOULD PROVE IT ONE TIME AND IF THERE WAS A PROBLEM THEY COULD ASK YOU TO RE-SUBMIT YOUR WORTH SO THAT YOU COULD COVER A DRIFT SITUATION. THE OTHER ISSUE IS THAT IN THE STATUE THEY HAVE THE RIGHT TO REVOKE SOMEONE'S LICENSE. WHEN YOU REVOKE A LICENSE THERE IS A PROCESS YOU GO THROUGH, IT TAKE 30 TO 90 DAYS TO REVOKE A LICENSE, SO WHAT THEY WANT TO DO IS CHANGE IT SO THAT THEY CAN SUSPEND A LICENSE SO THAT THEY CAN SUP PENDING THAT PERSON FROM SPRAYING. IN ESSENCE IT WOULD TAKE THEM OUT OF THE SPRAYING SEASON. THAT IS WHAT THE AMENDMENTS DO WHEN WE GET THEM. PLEASE SEE AMENDMENTS.

JEFF KNUTSON: PLEASE SEE AMENDMENTS AS TO JEFF KNUTSON

TESTIMONY. THIS AMENDMENT GIVE THE AGR. COMMISSIONER PERMISSION TO AUTOMATICALLY SUSPEND THE LICENSE.

REPRESENTATIVE BERG: DO WE STILL NEED THE LEGISLATIVE STUDY

JEFF KNUTSON: BILL MIGHT NOT BE PERFECT. IT IS A COMPROMISE

Page 3
House Agriculture Committee
Bill/Resolution Number SB 2419
Hearing Date 3--16--01

REPRESENTATIVE RENNER: HOW ABOUT A LETTER OF CREDIT. GO TO THE BANK AND GET IT.

JEFF KNUTSON: I THINK THE MAJORITY HAVE AN INSURANCE POLICY.

CHAIRMAN NICHOLAS: ANY MORE DISCUSSION? O.K. THE CHAIR WILL ENTERTAIN A MOTION FOR DO PASS AS AMENDED.

REPRESENTATIVE BERG MADE A MOTION FOR A DO PASS AS AMENDED AND REPRESENTATIVE LEMIEUX SECONDED.

CHAIRMAN NICHOLAS: ANY OTHER QUESTIONS? THE CLERK WILL TAKE THE ROLL. THERE WERE *****14 YES*****0 NO*****1 ABSENT*****

THE BILL WAS CARRIED BY REPRESENTATIVE RENNER:

WE WILL CLOSE THE HEARING ON SB 2419.

PROPOSED AMENDMENTS TO SB2419:

On line 1 replace the word "repeal" with "amend".

Delete lines 11 and 12.

On line 10, after the period insert:

SECTION 2. AMENDMENT. Section 4-35-09.1 is amended and reenacted as follows:

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator must furnish proof of financial responsibility on demand to the commissioner of agriculture as provided in this section. Minimum financial responsibility must be ~~demonstrated annually~~ maintained in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner must immediately ~~request the suspension of~~ suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder must demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.

2. This section does not apply to:

a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.

b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal

