

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~am~~/p.m. on March 17, 1983 in room 526-S of the Capitol.

All members were present except:

Representatives Barkis, Duncan, Ediger, Peterson, and Whitaker

Committee staff present:

Mark Burghart, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Nedra Spingler, Secretary
Mike Heim, Legislative Research Department, was excused.

Conferees appearing before the committee:

Senator Bob Talkington
Don Jacka, Assistant Secretary, State Board of Agriculture
Jim Floyd, Kansas Agricultural Aviation Association
Mason Flora, Harveyville Seed Company
John Blythe, Kansas Farm Bureau
Mari Peterson, Kansas Natural Resource Council
John Crofoot, Kansas Grain and Feed Dealers Association
Marjorie Van Buren, Office of the Judicial Administrator

The minutes of the meeting of March 14, 1983, were approved.

SB 107 - An act relating to damages from pesticides.

Senator Talkington, sponsor, said he had talked with other conferees and would agree to reinsertion of the deleted language in lines 23, 27, 28, and 29. He noted line 23 regarding civil action was important. If a complaint is not filed, that information can become part of the record for the court. The main purpose of the bill is to allow people 24 months instead of two months to go to court. Senator Talkington believed the fiscal note (Attachment No.1) was incorrect as the fiscal impact would not be that high.

Don Jacka said he had concurred with Senator Talkington. His agency favors reinserting the 60-day filing limit in lines 27-29 which would insure that investigators would get to the site in time. He noted that HB 2144, in another committee, had addressed the spraying problem. He suggested that, if lines 27-29 were reinserted, lines 49-51 of HB 2144 (Attachment No.2) be added to SB 107. This would help county and district attorneys constitutionally. In discussion, it was noted that whether a person files damages or not civil action would be maintained, and all other areas concerned with filings of damages, such as hazardous wastes, have a two-year time span.

Jim Floyd, an aerial applicator, gave a statement (Attachment No.3) opposing the bill. He did not object to reinserting the 60-day limit to support civil action because evidence fades, but expressed concern that cases could be continued for a long period of time.

It was noted that, if the amendment suggested by Mr. Jacka was adopted, the 60-day limit would make no difference.

Mason Flora, owner of Harveyville Seed Company which does aerial spraying, objected to removal of the 60-day limit. If notification of damages is not done immediately, it may be too late to detect or people may claim damages later which may not be related to the spray.

John Blythe questioned if the first 7 words in line 23 should be removed. He supported the 60-day limit being reinserted. He said most farmers who have damages will get an attorney as soon as possible to file a claim, and most are settled out of court. In the interest of gathering evidence, a time restraint is needed.

Mari Peterson gave a statement (Attachment No.4) supporting SB107. She supported the Board of Agriculture's suggested amendment regarding HB 2144.

John Crofoot said a similar bill had been considered 6 years ago when language had been considered carefully. He supported reinsertion of the 60-day limit. He pointed out a key word to the time limit was "discovery".

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 XX a.m./p.m. on March 17, 1983.

A member suggested adding a provision that the applicator as well as the county or district attorney should be notified of damages.

Representative Miller moved to report SB 107 favorable for passage, seconded by Representative Wagnon. Representative Douville made a substitute motion to reinsert the stricken language in lines 27-29 and to add the intent of HB 2144, lines 49-51, seconded by Representative Solbach. In discussion, it was questioned why a 60-day limit should be in the bill if two years are available in which to file a claim. The vote on the substitute motion carried. Representatives Cloud and Patrick voted against the substitute motion. Representative Solbach moved to make provisions apply to herbicide and pesticide applications. Motion failed for lack of a second. Representative Patrick moved to report SB 107, as amended, favorable for passage, seconded by Representative Schweiker. Motion carried.

SB 322 - An act concerning orders and decisions of the KCC.

Marjorie Van Buren supported the bill which would allow certified copies of applications for review orders to the KCC to be hand-delivered. Representative Solbach noted the bill was of a noncontroversial nature and moved to recommend it favorable for passage and placed on the Consent Calendar, seconded by Representative Knopp. Motion carried.

HB 314 - An act relating to statutory construction.

Ms. Van Buren supported the bill, stating it clarified inclusion of the word "seal" by computer systems. Representative Solbach noted this bill also was noncontroversial and moved it be passed and placed on the Consent Calendar, seconded by Representative Patrick. Motion carried.

The meeting was adjourned at 5:00 p.m.

The Honorable Elwaine F. Pomeroy, Chairperson
Committee on Judiciary
Senate Chamber
Third Floor, Statehouse

Dear Senator Pomeroy:

SUBJECT: Fiscal note for Senate Bill No. 107 by Senator
Talkington

In accordance with K.S.A. 75-3715a, the following fiscal note concerning Senate Bill No. 107 is respectfully submitted to your committee.

Senate Bill No. 107 would amend the Kansas Pesticide Law to remove the time limitation of sixty (60) days in which a written statement of pesticide damage must be filed. The bill also would provide that a statement of damages must be filed for either criminal or civil damages. Present law only requires such filing for civil actions. The act would take effect and be in force after its publication in the state statute book.

Senate Bill No. 107 would require an increase in the number of pesticide misuse investigations conducted by the State Board of Agriculture. To address the additional investigations the State Board of Agriculture projects the need for an additional Ecological Specialist.

The fiscal impact of Senate Bill No. 107 would entail an additional \$25,272 salary and fringe benefits for the Ecological Specialist; \$3,270 for additional mileage; \$1,850 for additional subsistence; and \$4,500 for printing and distribution of new complaint forms. The total fiscal impact of this bill would be \$34,892 which would be required to be funded by the State General Fund.

Alan D. Conroy
Alan D. Conroy
Budget Analyst
For the Director of the Budget

ADC:dh

Session of 1983

HOUSE BILL No. 2144

By Representative Grotewiel

1-28

0016 AN ACT relating to the application of pesticides; requiring the
0017 filing of a statement with the secretary of the state board of
0018 agriculture reporting damage to a person or person's property
0019 from pesticide application; amending K.S.A. 2-2457 and re-
0020 pealing the existing section.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 2-2457 is hereby amended to read as fol-
0023 lows: 2-2457. ~~In order to maintain a civil action,~~ A person dam-
0024 aged from pesticide application shall ~~have filed~~ *file* with the
0025 ~~county attorney of the county in which the damage occurred~~
0026 ~~secretary,~~ a written statement, on a form prescribed by the secre-
0027 tary, ~~claiming reporting that he or she~~ *such person or property of*
0028 *such person* has been damaged. Such form shall be filed within
0029 ~~sixty (60)~~ 30 days after the date damage was discovered. *If a*
0030 *growing crop was damaged, the form shall be filed prior to the*
0031 *time that 25% of the crop has been harvested, unless the damage*
0032 *was not then known.* Such statement shall contain, but shall not be
0033 limited to, the name of the person responsible for the application
0034 of ~~said the pesticide and/or~~ *and* the name of the owner or lessee of
0035 the land on which it is alleged that the damage occurred. The
0036 secretary shall prepare a form to be furnished to persons for use in
0037 such cases and such forms shall contain such other requirements
0038 as the secretary may deem proper. ~~A duplicate copy of this~~
0039 ~~statement shall be sent by the county attorney to the secretary.~~
0040 ~~The county attorney~~ *The secretary,* upon receipt of such state-
0041 ment shall notify the licensee and the owner or lessee of the land
0042 or other person who may be charged with the responsibility and
0043 furnish copies of such statements as may be requested. ~~Nothing~~
0044 ~~contained in the provisions of this section shall be deemed to~~

0045 require any county attorney to maintain a civil action for any
0046 person.

0047 *The filing of such report or the failure to file such report need*
0048 *not be alleged in any complaint which might be filed in a court of*
0049 *law. The failure to file the report shall not be considered any bar*
0050 *to the maintenance of any criminal or civil action. The failure to*
0051 *file such a report shall not be a violation of this act.*

0052 Sec. 2. K.S.A. 2-2457 is hereby repealed.

0053 Sec. 3. This act shall take effect and be in force from and after
0054 its publication in the statute book.

Comments for the Kansas House Judiciary Committee Mar. 17, 1985

I am Jim Floyd, an Aerial Applicator from Liberal, Ks. I have in business at Liberal eight years and was a free lance pilot five years before that, working in five states other than Kansas.

In behalf of the Kansas Agricultural Aviation Association, I am here to oppose Senate bill 107. The primary objective of the bill is to remove the sixty day requirement for filing pesticide complaints to maintain a civil action. That sixty day requirement was intentionally put in the law in the first place and has served its purpose well enough over the years that numerous attempts to eliminate the sixty day clause have failed in the House or Senate Agricultural Committee where the technical reasons for its existence are well understood.

Reason number one for the sixty day requirement is to aid enforcement. The notification of the county attorney provides the mechanism through which the Pesticide Law Administrator of the Kansas Board of Agriculture is informed of complaints and/or possible violations, and to a lesser extent serves to notify the landowner and applicator.

The second reason for the sixty day requirement for the filing of pesticide complaints is to, simply put, enhance the gathering of the facts for whatever purpose they may be used, enforcement, defence, or settlement of damages. Most pesticide damages have identifying characteristics and often chemical residue which may be used as evidence in enforcement or civil action for damages. However the residue and the physical characteristics disappear fast, the sooner evidence is gathered the more facts are known. Sixty days is usually too long. Chemicals with a long residue which may cause problems later are already covered by the present law which states that reporting is required within sixty days after the damage is discovered.

It might be said that our Association could be in favor of allowing claims to lag as long as possible since, as evidence fades, enforcement and civil action becomes more difficult to support. In the case of enforcement this could be true because the Pesticide Law Administrators have a good background in the field and generally try to base enforcement actions on facts gathered during the investigation of complaints. What I am afraid of is the nuisance type of lawsuit based more on allegations than fact. Living near the border, I work in both Kansas and Oklahoma and have heard enforcement officials in both states confirm my experience that many of the complaints received are simply without any foundation in fact at all.. It has been to my advantage

in the majority of complaints to get right there and gather the evidence, which usually can convince us all that chemical drift damage did not occur. If it did occur the damage is much easier to recognize and assess when it is fresh than when it is old. Too many factors other than the claim of pesticide damage could be involved which would not be evident several months much less years, later. In todays antipesticide environment, flimsey lawsuits are frightenly successful in court, Our primary defence has to be based on good evidence. I am not afraid of the facts.

The essential point I have to make is that the facts are best gathered earley in pesticide damage cases to best serve justice. Justice would not be best served by lengthening the reporting period as is done in Senate Bill 107.

James R. Floyd



Kansas
Natural
Resource
Council

5130 Mission Road
Shawnee Mission, Ks 66205
913 362-5933

Testimony
before the
House Judiciary Committee

by

Mari Peterson

March 17, 1983

ATTACHMENT # 4

Re: Support for S.B. 107

On behalf of the Kansas Natural Resource Council and the Environmental Lobbying Conference*, I am here to express our support for Senate Bill 107.

The current law unfairly discriminates against farmers and others who experience damage from pesticide spray drift. There are instances in Kansas where persons who have lost property such as gardens or orchards have been unable to have their case heard in court because certain forms had not been filed within the 60-day statute of limitations.

Out of forty states with records of pesticide laws, only one state other than Kansas requires that a pesticide damage report be filed in order to maintain a civil suit.

In Kansas, this pesticide law is the only exemption to the standard two year statute of limitations. It is no wonder an occasional farmer or individual suffering pesticide damage is unaware that certain forms must be filed within 60 days in order to maintain a civil action. This is unduly discriminatory.

Obviously the plaintiff still bears the burden of proof in court, so applicators should find their position relatively unaffected. The

*Includes the Kansas Audubon Council, Kansas Sierra Club, The Land Institute, Kansans for Safe Pest Control, the Kansas Natural Resource Council, and 18 other environmental, energy, and farm organizations which had representatives at the Third Annual Environmental Lobbying Conference.

fact that at least 39 other states operate in a manner similar to what is proposed in S.B. 107 lends credence to the point that applicators will not be harmed by this bill.

Pesticides, if misapplied, do pose dangers to people and their property. Individuals who suffer damage and loss of property must be able to have their case tried in court without having it thrown out because of an unnecessary technicality.