

Approved February 12, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Lloyd D. Polson at
Chairperson

9:00 a.m. ~~p.m.~~ on January 28, 1986 in room 423-S of the Capitol.

All members were present except: Representative Long who was excused.

Committee staff present:

Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Don Jacka, Assistant Secretary, State Board of Agriculture, Topeka
Dave McFarlane, Kansas Agricultural Aviation Association, Baldwin City

The Chairman announced the materials requested from the State Grain Inspection Department on their Contract Sampling Program, and the Outline of Agency Report-1986 requested from the Animal Health Department are in the Committee folders.

Chairman Polson introduced Lois Schlickau, Haven, Kanas, a new member of the Kansas State Board of Agriculture. He noted she is the first woman to serve on the Board.

Hearing on H.B. 2646 - Requirement of notice to county attorney prior to action for damages under pesticide law repealed.

Raney Gilliland reviewed H.B. 2646 for the Committee. He explained this bill would repeal K.S.A. 2-2457 of the Kansas Pesticide Law, Attachment I. He stated the Supreme Court has ruled that K.S.A. 2-2457 restricts a person's ability to maintain a civil action, and was a violation of due process and equal protection clauses of the 14th amendment to the constitution of the United States and the Kansas Bill of Rights.

Don Jacka recommended passage of H.B. 2646, and to insure effacacy of pesticide residue evidence in cases of suspected pesticide misuse, the law should urge notification of the Secretary of Agriculture in all occasions of pesticide misuse, Attachment II.

Mr. Jacka said the law should not relate to the reporting of a civil action or a criminal action, but just require the reporting.

David McFarlane testified he is an aerial applicator and he and the Kansas Aerial Applicators are opposed to H.B. 2646. He stated without being notified in a timely manner of suspected pesticide damage, an applicator would not have an opportunity to collect physical evidence to defend himself. If H.B. 2646 passes repealing K.S.A. 2-2457 it would increase the cost of doing business as a pesticide applicator through defenseless lawsuits and increased liability insurance premiums, Attachment III.

A Committee member asked Mr. McFarlane if it would be acceptable to the Kansas Agricultural Aviation Association instead of repealing K.S.A. 2-2457, to add a clause stating if there is no form filed within 60 days, an action could still be maintained, but there would be a rebuttal of presumption that no damage occurred unless a notice was filed within 60 days. Mr. McFarlane said it would probably be acceptable with his association. It was further suggested the report be made to the Secretary of the State Board of Agriculture instead of to the County Attorney.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S, Statehouse, at 9:00 a.m./~~pm~~ on January 28, 1986

After Committee discussion the Chairman appointed a subcommittee to study the amendments and changes proposed to K.S.A. 2-2457. The Chairman appointed Representative Clifford Campbell, Chairman, and Representative Solbach and Representative Sallee and requested a report from the subcommittee the week of February 10-14.

The Chairman adjourned the meeting at 9:45 a.m.

The next meeting of the Committee will be at 9:00 a.m., Thursday, January 30, 1986 in Room 423-S.

ministration of this act or any rule or regulation adopted hereunder by the board.

(e) The secretary shall require certified commercial applicators who are not employed by or otherwise acting for a business licensee to maintain records concerning applications of restricted use pesticides. The secretary shall specify by rules and regulations the information to be contained in such records, which shall be maintained for three (3) years from the date of application of the pesticide concerned. Such records shall be open to inspection by the secretary or his or her authorized representative during normal business hours, and copies shall be furnished to the secretary or his or her authorized representative upon request.

History: L. 1976, ch. 1, § 18; L. 1977, ch. 3, § 11; Oct. 21.

2-2456. Registration and marking of equipment. (a) The secretary may, at his or her discretion, require the registration of any equipment used in the commercial application of pesticides, and any equipment required to be so registered may be marked for identification in a manner prescribed by the secretary. Unannounced inspections may be made without charge to determine if the equipment is properly calibrated and maintained in conformance with laws and rules and regulations, and the secretary may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by rules and regulations.

(b) The secretary may, in his or her discretion, require that any car, truck or other vehicle used for the purpose of applying pesticides or transporting pesticide application equipment or personnel to an application site be marked for identification purposes in a location and manner as the secretary shall prescribe: *Provided*, That such application is for the purpose of controlling pests in the categories of either (1) ornamental and turf pest control, or (2) industrial, institutional, structural and health related pest control.

History: L. 1976, ch. 1, § 19; Oct. 21, 1977.

2-2457. Action for damages; filing of statement; limitations. In order to maintain a civil action, a person damaged from pesticide application shall have filed with the

county attorney of the county in which the damage occurred, a written statement, on a form prescribed by the secretary, claiming that he or she has been damaged. Such form shall be filed within sixty (60) days after the date damage was discovered. Such statement shall contain, but shall not be limited to, the name of the person responsible for the application of said pesticide and/or the name of the owner or lessee of the land on which it is alleged that the damage occurred. The secretary shall prepare a form to be furnished to persons for use in such cases and such forms shall contain such other requirements as the secretary may deem proper. A duplicate copy of this statement shall be sent by the county attorney to the secretary. The county attorney, upon receipt of such statement shall notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility and furnish copies of such statements as may be requested. Nothing contained in the provisions of this section shall be deemed to require any county attorney to maintain a civil action for any person.

History: L. 1976, ch. 1, § 20; Oct. 21, 1977.

2-2458. Pesticide advisory board; membership; terms; vacancies; powers and duties; meetings; quorum; compensation and allowances. (a) There is hereby created a pesticide advisory board which shall consist of the following members: (1) The secretary of health and environment; (2) the executive director of the state water resources board; (3) the director of the fish and game commission; (4) the director of the state geological survey of Kansas; (5) the secretary of the state board of agriculture; (6) the executive secretary of the state conservation commission; (7) the livestock commissioner of the animal health department; (8) the director of the biological survey of Kansas; (9) the director of extension of Kansas state university of agriculture and applied science; (10) the director of the agricultural experiment station; (11) one member appointed by the speaker of the house of representatives; (12) one member appointed by the president of the senate; (13) one member licensed under the provisions of this act to operate ground equipment appointed by the governor; (14) one member licensed under the provisions

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1/28/86 Hs. ASB
Attachment I

TESTIMONY PRESENTED TO
HOUSE COMMITTEE ON AGRICULTURE AND
SMALL BUSINESS

PRESENTED BY
DON JACKA, ASSISTANT SECRETARY
STATE BOARD OF AGRICULTURE

JANUARY 30, 1986

1/28/86 Hs. ASB
Attachment II

THANK YOU CHAIRMAN POLSON AND MEMBERS OF THE COMMITTEE FOR THIS OPPORTUNITY TO APPEAR AND PROVIDE TESTIMONY ON HOUSE BILL 2646. MY NAME IS DON JACKA, ASSISTANT SECRETARY OF AGRICULTURE. ACCOMPANYING ME TODAY IS MR. DALE LAMBLEY, DIRECTOR FO THE PLANT HEALTH DIVISION OF THE STATE BOARD OF AGRICULTURE AND MR. KEN WILKE, THE AGENCY'S CHIEF COUNSEL.

HOUSE BILL 2646 WOULD REPEAL K.S.A. 2-2457 OF THE PRESENT KANSAS PESTICIDE LAW. THIS STATUTE PROVIDED THAT IN ORDER TO MAINTAIN A CIVIL ACTION, A STATEMENT OF DAMAGES, RESULTING FROM A PESTICIDE MISAPPLICATION, BE FILED WITH THE SECRETARY OF AGRICULTURE WITHIN 60 DAYS OF THE DATE THAT THE DAMAGE WAS DISCOVERED. THE INTENT OF THIS SECTION WAS TO ESTABLISH A PROCEDURE BY WHICH INVESTIGATION OF A PROPOSED MISUSE OF PESTICIDES COULD BE CONDUCTED BY THIS AGENCY IN A TIMELY ENOUGH FASHION TO PRESERVE EVIDENCE OF PESTICIDE RESIDUES BEFORE THEY DECOMPOSE.

DURING 1985 THE KANSAS SUPREME COURT IN TWO SEPARATE CASES (BARR VS TERMINEX INTERNATIONAL, INC. 237 Ks. 83 AND ERNEST VS FALER 237 Ks. 125) RULED THAT THIS SECTION OF THE KANSAS PESTICIDE LAW WAS UNCONSTITUTIONAL IN THAT THE SPECIAL FILING REQUIREMENTS CREATED AN IMPROPER STATUTE OF LIMITATIONS WHICH VIOLATED THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION.

THUS, HOUSE BILL 2646 IS BEFORE THIS COMMITTEE. IN LIGHT OF THESE COURT RULINGS ITS PASSAGE SEEMS APPROPRIATE. HOWEVER, TO INSURE EFFACACY OF PESTICIDE RESIDUE EVIDENCE IN CASES OF SUSPECTED PESTICIDE MISUSE, THIS LAW SHOULD URGE NOTIFICATION OF THE SECRETARY OF AGRICULTURE IN ALL OCCASIONS OF PESTICIDE MISUSE. IT IS THE OPINION OF THE BOARD OF AGRICULTURE THAT SUCH REPORTING SHOULD BE CONTAINED IN THIS STATUTE. IF SUCH REPORTING WOULD NOT BECOME A LIMITING FACTOR TO THE CRIMINAL OR CIVIL LITIGATION THE DECISIONS OF THE KANSAS SUPREME COURT WOULD BE HONORED.

STATEMENT OF
DAVID MCFARLANE
MEMBER OF THE
KANSAS AGRICULTURAL AVIATION ASSOCIATION
HOUSE BILL 2646
JANUARY 28, 1986

Members of the House Agriculture and Small Business Committee:

My name is David McFarlane, I am an aerial applicator from Baldwin City, Kansas and a member of the Kansas Agricultural Aviation Association. Kansas Aerial Applicators and I are opposed to HB 2646. We as aerial applicators deal with living property such as crops, trees and insects. Living things are subject to change in a short period of time due to changes in their environment. Most pesticides we apply are subject to changes in a short period of time due to sunlight, rain and natural chemical breakdowns. In order to determine the cause of a loss or damage to a living thing, time is very important. Every day that goes by after damage is noticed, physical evidence of what caused the damage gets weaker and could eventually become nonexistent. Without being notified in a timely manner of suspected damage, an applicator would not have an opportunity to collect physical evidence to defend himself.

Last year I experienced a good example of the importance of being able to collect evidence and evaluate suspected damage at the proper time. A landowner informed me that all of his walnut trees were dying near a field I had sprayed several weeks before. The landowner was demanding payment for damages. After close examination of the trees and surrounding area, evidence was collected that showed the damage to have been caused by a severe insect infestation and no traces of pesticide were found. The landowner was then satisfied that I was not responsible for the damages. If I would not have been notified until six months or a year later of the damaged trees there would have been very little if any physical evidence left to defend myself with and in all probability, I would have had to pay for the walnut trees.

Being able to collect evidence at the proper time is also important in determining the extent of damage. How would it be possible to reach a fair value of damage to a crop if we were notified of the damage after the crop was harvested? The right to collect timely evidence of environmental growing conditions as the crop matures seems only but fair.

If HB 2646 passes repealing K.S.A. 2-2457 it will increase the cost of doing business as a Pesticide Applicator by making us subject to defenseless lawsuits and needlessly raise liability insurance premiums. These needless costs would be passed onto our customers, the Kansas farmers and ranchers. Notification within 60 days of discovery of damage symptoms isn't a lot to ask when we have so much at stake.

1/28/86 Hs. ASB

Attachment III