

Approved March 28, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

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

9:00 a.m. ~~xxx~~ on March 21, 1986 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Frances Kastner, Kansas Food Dealers
Dale Lambley, Division of Plant Health, Kansas State Board of Agriculture
Marsha Marshall, Kansas Natural Resource Council
Malcolm Moore, Sierra Club

The Chairman appointed a subcommittee consisting of Representative C. Campbell, Chairman, Representative Sallee and Representative Solbach on S.B. 403. He requested they make a report to the Committee on Friday, March 28, 1986.

The Chairman explained that it was not possible to have H.B. 3042 removed from the Committee by Ways and Means, however, Ways and Means Committee has introduced another bill, at the request of the State Grain Inspection Department, concerning factor only determination fees, and it will be referred to this Committee for consideration.

Norman Furse reported on the definition of consumer, which not only covers individuals, but also sole proprietors, such as farmers.

The Committee considered S.B. 544-Agriculture equipment dealership act.

Representative Apt made a motion to amend S.B. 544 in line 89 to change the word "with" to "without" and in line 100 after the word "commencement" to change "or" to "of". Representative Eckert seconded the motion, and the motion passed.

Representative Sallee moved and Representative Buehler seconded to report S.B. 544 favorably, as amended. The motion passed.

Hearing on S.B. 687 - An act concerning restricted use pesticides requiring only those that sell restricted use pesticides to register with the State Board of Agriculture.

Raney Gilliland reported this bill would exempt dealers selling general use pesticides from registering and paying a registration fee of \$15.00. The effective date has been changed from June 30 to publication in the Kansas Register.

Frances Kastner testified in support of S.B. 687. She estimated approximately 2,000 grocers and others who do not sell restricted use pesticides would be paying registration fees if this bill does not pass, Attachment I.

Dale Lambley testified that the amendments to the law made by this bill drops a portion of the protection offered to retailers and the State Board of Agriculture is concerned that retailers will unknowingly violate the law and be subjected to substantial federal fines, Attachment II.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,

room 423-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 21, 1986

In response to questions from the Committee concerning registration of grocery stores selling household pesticides, Mr. Lambley distributed Attachment III which defined household pesticides, which would be exempt under this bill.

Marsha Marshall testified in opposition to S.B. 687. She stated, however, if the bill passes, the State Board of Agriculture should be required to inform all registered pesticide dealers of changes in applicable EPA rules and regulations, Attachment IV.

Malcolm Moore informed the Committee the Sierra Club is opposed to S.B. 687. If a business is excluded from registering, it might not be notified if a pesticide was cancelled or reclassified as a restricted use pesticide, and if all pesticide dealers in the state are registered, the EPA or the Board of Agriculture can contact them when pesticides are reclassified or discontinued, Attachment V.

In answer to a question from the Committee, Mr. Lambley stated they are budgeted on the estimate that there are 9,000 dealers. They estimate there are 400 to 450 restricted use pesticide dealers. They have registered about 1,300 to date.

The hearing on S.B. 687 was closed.

Representative Buehler moved and Representative Roenbaugh seconded to pass S.B. 687 favorably.

Representative Eckert made a substitute motion to report this bill favorably and that it be placed on the consent calendar. Representative Sallee seconded the motion.

Representative Solbach indicated this bill would subject people to possible fines and could see no reason to pass this piece of legislation. A vote was taken and the substitute motion passed.

Representative Roenbaugh moved to approve the Committee minutes of March 4 and March 5, 1986. The motion passed.

The Committee meeting was adjourned at 10:00 a.m.



Kansas Food Dealers' Association, Inc.

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HOUSE AGRICULTURAL & SMALL BUSINESS COMMITTEE

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SB 687

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DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership includes manufacturers, distributors and retailers of food products throughout Kansas.

We asked the Chairman of this Committee, as well as the Chairman of the Senate Agriculture Committee to correct what we saw as a misinterpretation of the Legislative intent of SB 331 passed in 1985.

Under SB 331 all our grocers who sold products other than flea collars, insect repellents and a limited number of products used strictly INSIDE the house would be subject to paying a \$15 annual registration fee. Under SB 331 some 9,000 retailers, including about 2,000 grocers and others who did NOT sell RESTRICTED USE PESTICIDES, would be paying fees providing about \$135,000 in annual fees, as estimated by the State Board of Agriculture.

We have informed our members that the \$15 fee currently being collected by the State Board of Agriculture is owed under the interpretation through Administrative Rules and Regulations adopted in 1985. However, passage of SB 687 in the present form provides that only those sellers of RESTRICTED USE PESTICIDES will be registered in 1986 and future years.

We believe the actual intent of this Committee and the entire legislature in 1985, was to register Restricted Use Pesticide Dealers and to permit a farmer's wife, for example, to pick up a restricted use pesticide products for the farmer to apply.

We asked that those selling only GENERAL USE PESTICIDES NOT HAVE TO PAY THAT ANNUAL REGISTRATION FEE, and this request is being fulfilled in SB 687 by making the effective date publication in the Kansas Register.

We ask for your support of SB 687 and I will be happy to answer any questions you may have.

3-21-86 Hs. A.S.B.
Attachment I

T E S T I M O N Y

Senate Bill 687

PRESENTED TO

HOUSE COMMITTEE ON AGRICULTURE & SMALL BUSINESS

by

Dale Lambley, Director
Kansas State Board of Agriculture
Division of Plant Health

March 21, 1986

3-21-86 Hs. A.S.B.
Attachment II

During the 1985 Session of the Legislature, legislation was passed amending the Kansas Pesticide Law to require registration of the majority of persons performing retail sales of pesticides. Final or end users and retailers of general use pesticides purchased for household use only were exempted from registration. This amendment was made to provide state primacy versus Federal Environmental Protection Agency primacy in the pesticide sales area in order to alleviate two primary problems:

1. To allow retail dealers to sell or deliver restricted use pesticides to uncertified persons for delivery and use by certified applicators. Numerous Kansas pesticide dealers, particularly in the agricultural areas, had been subjected to substantial EPA civil penalties for allowing wives, sons, hired hands, and others to pick up restricted use pesticides for delivery to certified farmers.
2. To allow development of a listing of pesticide dealers and creation of an information system whereby retail businesses could be informed of pesticide cancellations, suspensions, stop-sale notices, and changes in classification (general use to restricted use). Retailers could then take action to bring their pesticide sales into compliance with federal law. This would prevent their having to face civil fines just as the dealers of restricted use pesticide had been.

In total, the bill was designed as a balanced attempt to enforce the law while providing protection to the many retailers selling pesticides within the state and to the general public.

Senate Bill 687 would exclude from registration all retail pesticide dealers not selling restricted use pesticides. Effects of this change requiring registration only of restricted use pesticide dealers would still

allow delivery of restricted use pesticides to uncertified persons (which addresses problem 1, above), but would strip protection from non-registered retailers and leave them open to federal-levied penalties resulting from the Environmental Protection Agency's changes or bans on the sales of certain pesticides (problem 2, above). Unless addressed, we believe this situation will become a reality to the retailers in our state due to the State's or anyone else's inability to notify non-registered dealers of these changes.

A specific example relates to a marketplace inspection performed this week. A small seed store in Decatur county was found to have seven (7) five- (5) pound bags of improperly labeled (misbranded) Toxaphene product on the shelves available for retail sale to the public. This product, which was a general use pesticide prior to December 31, 1983, was not to be sold after December 31, 1983 at which time its reclassification as a restricted use product went into effect. Any sales after this date could result in enforcement actions being taken at the federal level (i.e. civil fines). Additional misbranded products on hand at this outlet consisted of DDT and Lindane products. These and other banned products are found in all types of retail outlet stores throughout the state. This indicates that the information necessary to make retailers aware of these changes is not being made available.

As an example of dealers needing to know the status of chemicals they deal in, a recent report from Food Chemical News, Inc. of Washington, D. C. states that in 1987 the Environmental Protection Agency "expects to conduct 330 reviews of new chemicals and biochemical/microbial agents, 4,650 reviews of old chemicals, 10,000 amended registration reviews, and 300 new use reviews. This is essentially the same level of reviews expected in 1986." As stated earlier, the products being reviewed are not those already restricted, but those classified as general use.

For these reasons, the Kansas State Board of Agriculture believes that the current law best serves the needs of the State's retail community. The amendments made by this particular bill (Senate Bill 687) drops a portion of the protection offered to these retailers. We are highly concerned that these persons will unknowingly violate the law and be subjected to substantial federal fines.

Kansas State Board of Agriculture
Plant Health Division

PESTICIDE DEALER REGISTRATION

Policy #1. Delineation of Household Products Definition

The following products shall be considered as household pesticides:

1. Products labeled for direct applications to the human body (i.e. insect and mite repellants, lice control products);
2. Products labeled for direct application to domestic pets (i.e. flea and tick collars, dusts, shampoos);
3. Ready-to-use general use products which are applied undiluted and are for domestic use (i.e. disinfectants, pressurized "Raid" and similar products, cleansers, swimming pool chemicals, mothballs, fish (aquarium) and bird pest pesticides, indoor plant insecticides, fungicides and miticides) also, diluted cleansers, disinfectants, and deodorizers for household use (examples: Pinesol, Lysol cleaner, Clorox);
4. Rat and mouse baits designed for domestic use;
5. Products having the terminology "For Household Use."

Products labeled "for sale to and use by commercial applicators"; "for industrial use"; "not for retail sale"; "for commercial use"; and similar terminology such as "commercial pesticide"; "service products"; etc., including commercial disinfectants and cleaners such as those retailed by janitorial suppliers for use in hospitals, schools, nursing homes, and similar institutions shall not be considered as "household use" products.

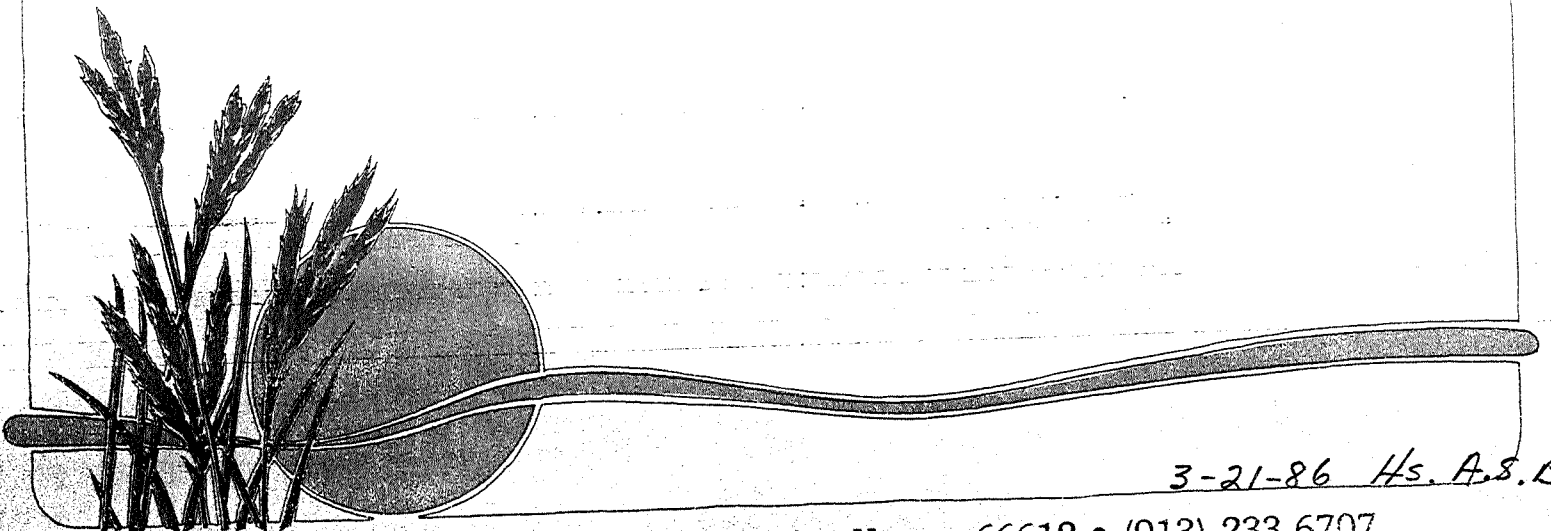
3-21-86 Hs. ASB
Attachment III

Kansas Natural Resource Council

Testimony before the
House Agriculture and Small Business Committee
Concerning SB 687

Presented by Marsha Marshall

March 21, 1986



1516 Topeka Avenue • Topeka, Kansas 66612 • (913) 233-6707

3-21-86 Hs. A.S.B.

Attachment IV

My name is Marsha Marshall, and I represent the Kansas Natural Resource Council, a non-profit, public interest organization which promotes sustainable natural resource policies and practices.

KNRC strongly opposes SB 687. All pesticides, whether restricted use or unclassified, are dangerous and potentially damaging to humans and to the environment. These chemicals attack the biological systems of pests we seek to eliminate. We spare those same biological systems. No legislation should ever limit a person's ability to gain information about the safe use of these poisons. Neither should any legislation hamper the legal requirements of people who sell pesticides to provide such information. This bill does both.

The bill's attempt to save some dealers from a \$15 registration fee makes these people potentially liable for fines of up to \$5000 for violating federal regulations. Worse, the bill makes dealers of unclassified pesticides vulnerable to crippling lawsuits that could involve hundreds of thousands of dollars. For example, a dealer who sells unclassified pesticides, having no knowledge about periodic changes in EPA rules and regulations, might sell a cancelled product to a customer, making the dealer liable for a maximum \$5000 fine under current law. If the customer suffers from health effects as a result of use of this illegally sold chemical he might be persuaded to sue the dealer.

Periodic EPA orders reclassify pesticides as restricted, require different labeling, or cancel certain products altogether, making them illegal to sell. Information about these rules changes is not getting to many dealers in Kansas. According to both the State Board of Agriculture and the Region VII office of EPA, dealers are regularly found in violation of federal regulations--cancelled products such as lindane and toxaphene are still being found on shelves in Kansas. Most of these people do not know they are selling illegal pesticides. They are, nevertheless liable for fines.

Last year, this legislature passed a law that moves a long way toward providing dealers with information about often-changing EPA rules and regulations. Region VII EPA, as a matter of practice, informs the state Board of Agriculture of these changes. They do not inform the regional offices of the FDA.

We propose that if you amend this law at all, that you require the Board of Agriculture to inform all registered pesticides dealers of changes in applicable EPA rules and regulations. The assurance of getting information would certainly be worth a \$15 registration fee.

There is growing interest, both nationally and in Kansas, in knowing about chemicals that are used and stored in our environment. This interest is evidenced in the increasing number of states, over half, which have enacted public right to know laws. In right to know hearings in before the Federal and State

Affairs committee earlier this session, conferees agreed that a right to know law will be enacted in Kansas in the near future. HB 687 is out of step with the interest in providing information about chemicals, because it limits rather than facilitates the public's ability to know about pesticides. The public includes dealers who sell unclassified pesticides. They have not only the right, but the obligation to know about the pesticide products they sell.

We urge you to report SB 687 adversely.



SIERRA CLUB

Kansas Chapter

HOUSE AGRICULTURE COMMITTEE

LLOYD FOLSON, CHAIRMAN

March 21, 1986

My name is Malcolm Moore and I represent the Kansas Chapter of the Sierra Club.

We oppose Senate Bill 687 because it allows stores to sell pesticides without being registered with the State Board of Agriculture. If a business is excluded from registering it might not be notified if a pesticide were cancelled or reclassified as a restricted use pesticide. Then the store would be liable to penalties or civil fines. For the registration fee of \$15.00 it is hard to believe any dealer would want to be out of compliance.

If all pesticide dealers in the state are registered the EPA or the Board of Agriculture can contact them when pesticides are reclassified or discontinued. Pesticide dealers are virtually assured of being in compliance when they are registered. This seems like very cheap insurance.

If some dealers are registered and others aren't this would create a double standard that would penalize the agricultural dealers and the farmers themselves.

Atch. V
Ms. ASB 3-21-86