

Approved February 26, 1986
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:00 a.m./~~p.m.~~ on February 21, 19 86 in room 423-S of the Capitol.

All members were present except: Senator Fred Kerr (excused)

Committee staff present:

Fred Carman - Assistant Revisor of Statutes
Raney Gilliland - Legislative Research Department

Conferees appearing before the committee:

Bill Fuller, Kansas Farm Bureau
Tom Tunnell, Kansas Grain and Feed Dealers Association
Frank McBride, Evans Grain, Salina
Larry O'Connell, Kansas Farmers Service Association
Al Coleman, Mill Mutuals Insurance Company, Kansas City, Kansas
Marvin Webb, State Grain Inspection Department
Kathy Peterson, Committee of Kansas Farm Organizations

Senator Allen called the Committee to order for the hearing on SB 518. He called on Bill Fuller to testify.

Mr. Fuller gave copies of his testimony to the Committee (attachment 1). Mr. Fuller stated our present legislation hinders business in our state; he urged passage of SB 518.

The Chairman thanked Mr. Fuller and called on Tom Tunnell to testify.

Mr. Tunnell handed copies of his testimony to the Committee (attachment 2). Mr. Tunnell stated that cumulative bonding has been a problem in Kansas and urged support for SB 518. He also included amendments within his testimony.

In answer to Committee questions, Mr. Tunnell said the intent of the bill is to make a bonding company only responsible for the amount stated on the bond and that 60 days notice of cancellation is needed so a dealer has time to acquire another bond.

Mr. Tunnell introduced Frank McBride to testify.

Mr. McBride gave copies of his testimony to the Committee (attachment 3). Mr. McBride encouraged support for SB 518 to correct a problem that exists in the grain industry in Kansas today.

The Chairman thanked Mr. McBride. Mr. Tunnell introduced Larry O'Connell to testify.

Mr. O'Connell expressed support for SB 518. Mr. O'Connell explained, because of regulations to follow, there is little profit in the business of selling bonds. He stated that when a bonding company sells a bond they are guaranteeing that that manager will be an honest manager, and that he will be a good manager in the storing of grain and then in the selling of that grain at a profit. Mr. O'Connell said the bonding businesses want to be rid of the cumulative clause and because of that clause bonding companies refuse to sell bonds to some businesses.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 21, 1986

The Chairman thanked Mr. O'Connell and called on Al Coleman to testify.

Mr. Coleman expressed support for SB 518 and the elimination of the cumulative clause. He said he understood the need for a cancellation clause but he would prefer a shorter number of days than 90. He stated he preferred not to write a bond if the situation was bad enough that a letter of credit was needed.

The Chairman thanked Mr. Coleman and called on Marvin Webb to testify.

Mr. Webb handed copies of his testimony to the Committee (attachment 4). Mr. Webb stated that the grain industry is having trouble getting bonds and requested support for this bill which would help a little.

The Chairman thanked Mr. Webb and called on Kathy Peterson to testify.

Ms. Peterson gave copies of her testimony to the Committee (attachment 5). She expressed support and requested Committee support for SB 518 which would limit the liability of the bonding company to only the value of the bond.

The Chairman thanked Ms. Peterson and asked Sam Reda to give a short history of the cumulative clause.

Mr. Reda said Kansas is the only state that has that clause. He said in 1967 a bonding company was required to pay a cumulative amount for the first time. Mr. Reda said he felt this bill would help maybe 10% of businesses in the state that are trying to buy a bond. Mr. Reda expressed need for a 90 day cancellation period.

The Chairman declared the hearing closed on SB 518 and called attention to a request for an amendment to the Kansas Pesticide Law (attachment 6). Senator Gannon moved the Committee introduce this legislation. Senator Arasmith seconded the motion. Motion carried.

The Chairman declared the Committee adjourned at 11:05 a.m.



PUBLIC POLICY STATEMENT

SENATE AGRICULTURE COMMITTEE
Senator Jim Allen, Chairman
February 21, 1986

RE: S.B. 518 - Bringing Kansas into compliance with
all other states concerning grain warehouse bond "stacking"

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division
KANSAS FARM BUREAU

* * * * *

Mr. Chairman and Members of the Committee:

I am Bill Fuller, Assistant Director of the Public Affairs Division of Kansas Farm Bureau. I am speaking on behalf of the farmers and ranchers who are members of Kansas Farm Bureau. We are PROPONENTS of S.B. 518 . . . a bill that brings Kansas into compliance with all other states concerning grain warehouse bond "stacking."

After sitting on your side of the table when S.B. 1, 2, 3, 4, 5, & 6 were approved during the 1983 Session of the Kansas Legislature and after chairing the "Task Force . . . To Reduce Grain Warehouse & Dealer Failures" last winter, it has become apparent Kansas has a unique problem in bonding grain warehouses. Kansas is the only state which has the "cumulative bond" provision.

At first blush, this requirement may appear to provide additional protection to grain producers. However, this would be a hollow claim. Kansas is the only state with this provision . . . and it has only been used once. In the "real world," this requirement is hindering grain warehouses in acquiring bonds . . . a requirement for licensing and doing business. Fewer and fewer bonding companies are willing to write bonds for the grain business in Kansas. As a result, the continued operation of some grain elevators is being threatened. Loss of markets,

*attachment 1
2/21/86 Sen. Ag.*

especially in communities where only one grain elevator now exists can be devastating. Of course, any loss of elevators decreases competition.

In closing, we urge the passage of S.B. 518 in order to protect markets for Kansas grain producers. I will attempt to answer any questions you may have. Thank you!



KANSAS GRAIN & FEED DEALERS

Association

1722 NORTH PLUM, BOX 949

A/C 316 662-7911

HUTCHINSON, KANSAS 67504-0949

STATEMENT OF THE
KANSAS GRAIN AND FEED DEALERS ASSOCIATION
BEFORE THE
SENATE COMMITTEE ON AGRICULTURE
REGARDING SENATE BILL 518

FEBRUARY 21, 1986

Chairman Allen and members of the Committee,

I am Tom R. Tunnell, Executive Vice President of the Kansas Grain and Feed Dealers Association. KGFDA is a non-profit, voluntary organization that has members involved in all phases of grain handling, merchandising and processing. Over 95% of all Kansas state licensed warehouses are KGFDA members.

Senate Bill 518 addresses a problem that has plagued the Kansas grain warehouse industry for many years. That problem relates to the limited number of bonding companies willing to issue warehouse bonds in Kansas. Most bonding companies are unwilling to issue bonds to our grain warehousemen because Kansas statutes, as interpreted by a 1967 Attorney General's opinion, require bonds to be "cumulative" term bonds rather than continuous in form as is the case in all other states. In other words, with cumulative liability as is the case in Kansas, a bonding company writing a \$200,000 bond for five years could possibly be committing itself to a \$1 million loss. In actuality, this situation (where the actual claim exceeded the face amount of the bond) has only occurred once to the best recollection of the Kansas Grain Inspection Department, but because this unlimited exposure exists, bonding companies simply would prefer not writing bonds in our state.

(Continued)



*attachment 2
2/21/86 Sen. Ag.*

If I could call your attention to line 51 through 55 in the Bill, you will note that a statement has been added that would clarify this situation and in fact limit the liability of a bonding company to the amount stated in the bond. In addition, I would like to offer an amendment that could be inserted just ahead of the new language on line 51 that would state, "No bond shall be cancelled by the surety on less than 90 days notice by certified mail to the Kansas Grain Inspection Department and the principal." This additional language would prohibit bonding companies from cancelling bonds at the last minute. The 90 days notice would also help facilitate a smooth transition from one bonding company to another for the licensee and the Grain Inspection Department.

I have with me today to offer further testimony in support of Senate Bill 518, the Chairman of the KGFDA Legislative Committee, Mr. Frank McBride, and Mr. Al Coleman of the Mill Mutuals Insurance Company, who represents one of the major bond underwriters doing business in Kansas today. Also in support of our position, I would like to call your attention to the attachment to my statement which is a copy of a newsletter from the Iowa Grain and Feed Association which illustrates how desperate the bonding environment has become in some other states. You will note that already in Iowa some 57 grain elevators have had their surety bonds cancelled and 21 have actually lost their license because of their inability to secure replacement bonds.

Senate Bill 518 will not solve all our bond problems in Kansas; however, it will remove a thorn that has been in the side of bonding companies for many years and in fact an excuse used for not writing bonds in our state.

In closing, I would like to say that I have discussed Senate Bill 518 with a number of Kansas farm organizations and, to my knowledge, no organization will oppose its passage. In fact, Mr. Ivan Wyatt of the Kansas Farmers Union, who could not be here today asked me to state that his organization has reviewed Senate Bill 518 and feels that this change is necessary at this time. To do otherwise could possibly eliminate a number of grain facilities from doing business in the state and would limit market opportunities for the Kansas producer.

(Continued)

Mr. Chairman, I would be happy to stand for questions now or wait until the conferees with me today have finished their testimony. Thank you.

#



FOR MEMBERS ONLY

BULLETIN #4

PAGE 1

JAN. 29, 1986

Robert L. Skinner, CAE
Executive President

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IGFA / LEGISLATURE TACKLE BONDING CRISIS

At first it was just an isolated problem, but over the past three weeks the commercial bonding situation for Iowa elevators and grain dealers has reached crisis proportions. It is this bonding crisis that has occupied most of the time of your IGFA lobbyists and the House and Senate Ag Committees during the first two weeks of the Legislature.

THE SITUATION - As of this writing some 57 grain elevators have had their surety bonds cancelled by their bonding companies and 21 have had their licenses cancelled as a result of being unable to secure replacement bonds.

IGFA believes that this is the tip of the iceberg - we are getting daily reports of outright cancellations or severely increased collateral requirements. Your Association believes that it is entirely possible that 200-250 additional elevators may receive adverse notices from their bonding companies in the next 60-90 days.

For those firms that are not cancelled outright, we believe that tighter underwriting guidelines will make it extremely difficult to secure a bond. We have been in contact with virtually all companies providing bonds to the Iowa industry and must confirm that

increased underwriting standards will at least require an irrevocable letter of credit from a national bank in the face amount of the bond.

In addition, some sureties will also require:

- * A 50% write-down of physical assets.
- * A 2.5 or 3 to 1 asset to liability ratio.
- * Unqualified certified audits.
- * Blanket personal indemnification agreements in addition to the above.

IGFA has also learned that some major sureties will no longer consider deferred dividends or preferred stock in regional cooperatives as assets in determining the net worth or asset-liability position of local cooperatives.

ACTIONS TO DATE: Your Association has been working very hard to secure action by the General Assembly to head off a major collapse of the Iowa elevator industry.

As you read this, the Governor may well be signing an emergency "stop-gap" bill that will give us some "breathing-room" to come up with a long-term solution to the bonding crisis. This bill (SF-2064) will provide an extra 30 days on your present bond, thus allowing the Iowa Commerce Commission an extra 30 days in their statutory mandate of suspension, revocation and load-out.

The bill also provides that a letter of credit from either a state or national bank can be substituted for the bond. This legislation may be retro-active to January 1, 1986 and will become effective immediately.

THE LONGER-TERM SOLUTION: IGFA supports, and is aiding in the drafting of legislation to replace the current commercial surety system with a "grain indemnity fund". Both the Senate and House Ag. Committees have made this fund a priority and such action has the support of the leadership of both parties in both houses of the legislature.

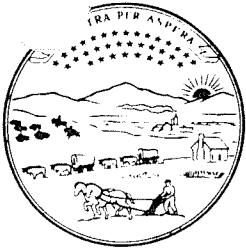
Both indemnity proposals basically follow the outline of the Ohio Grain Indemnity Fund, which calls for a merger of our current two industry code chapters -- 542 - Grain Dealers and 543 - Warehouse -- into one "Iowa Grain Handler" chapter.

The fund would be mandatory for all Iowa-licensed facilities (federal houses will keep their current commercial warehouse bonds). It would be funded by either a fraction of a cent per bushel assessment, replacement of bond premium, or a combination of the two.

The fund is set to "cap" at \$10 million (no assessments would be made after the "cap" is reached) with 100% payout to producers who have grain losses. The proposal may require tighter licensing requirements.

WHAT YOU CAN DO NOW

1. Come to your DISTRICT MEETING (see registration form in this Bulletin) to learn the latest on this critical situation and provide your input.
2. Determine how the new tighter underwriting requirements for commercial bonds would impact on your firm and if you would even qualify for a surety bond.
3. Let IGFA, your state senator and state representative know how you would be affected by tighter bonding requirements...they understand the problem, but need your "grass-roots input."
4. Keep your Association informed of your thoughts....we will try to keep you informed of this fast-moving and changing situation.



STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

420 S.W. 9th
Topeka 66612-1678 913-296-3071

1-800-432-2484
Consumer Assistance
Division calls only

FLETCHER BELL
Commissioner

February 20, 1986

Mr. Sam Reda, Chief
The State of Kansas
Grain Inspection Department
535 Kansas Avenue, 8th Floor
Topeka, KS 66603

Grain Warehouse Bonds

Dear Mr. Reda:

This acknowledges our recent telephone conversation regarding the accumulative effect of the existing Kansas grain warehouse licensing bond provisions and find that the situation has not changed since 1979. That is, the cumulative feature of the Kansas law allowing liability to accumulate from year to year could be eliminated. Surety companies seem to feel that the feature is definitely a deterrent to writing bonds in the state of Kansas.

Further, it seems that once the bond is filed, there is no way the surety can be released of liability until the bonds comes up for renewal and the surety decides not to renew. If this feature of the law were changed, it would relieve present fears that if a warehouse were to develop problems the surety would still be on the bond and further losses could occur.

It is for this reason that I ask you to give serious consideration to the revision suggested above, as well as any other changes that you feel would ease difficulty grain warehouse owners seem to be having in their attempt to secure the bonds required by statute. I appreciate your cooperation and hope that if you have any questions or comments you will not hesitate to contact me.

Very truly yours,

Fletcher Bell
Commissioner of Insurance

Raymond E. Rathert
Fire and Casualty Supervisor

RER:RDH:NR:jbf
4771

STATEMENT OF
THE KANSAS GRAIN & FEED DEALERS ASSOCIATION
BEFORE THE
KANSAS SENATE AGRICULTURE COMMITTEE
BY
FRANK J. McBRIDE

FEBRUARY 21, 1986

Mr. Chairman and Members of the Committee:

My name is Frank J. McBride. I am chairman of the legislative committee of the Kansas Grain and Feed Dealers Association which I represent here today. I am also a member of the Board of Directors and a past president of that association. I have been engaged in the grain business since 1949, the past 32 years of which have been with Evans Grain Company, Salina, Kansas.

I am pleased to have the opportunity to speak today in support of SB-518. I believe that the change it will accomplish is long overdue. In fact, I seriously question whether it was ever the legislative intent of K.S.A. 34-229 to require the penal sums of consecutive bonds to accumulate. In reading K.S.A. 34-229, I can find no reference to the accumulative feature. I therefore believe that the problem arose when the Kansas bond form was prepared, since it is written to cover a licensed period and because a bond must be furnished for each licensed period, rather than on a continuous basis, such as in Nebraska, we have ended up with the accumulative feature. The very fact that the Attorney General was asked to render an opinion in 1967 on this aspect would also substantiate the theory that the original legislative intent was unclear.

But whether or not it was the legislative intent, I must stress that SB-518 is correcting a very serious problem affecting the grain industry in Kansas and ultimately Kansas grain producers. I understand Kansas is the only state having this accumulative feature in its warehouse bonding requirement. All other states, which have grain warehouse licensing

*attachment 3
2/21/86 Sen. Ag.*

agencies, limit total liability to the penal sum of the bond.

I believe you are all aware of the serious problems affecting the insurance industry or more specifically the problems affecting those purchasing insurance today. Since the entire insurance industry has gone through an agonizing period of high claims and low profit margins, insurance premiums have been raised astronomically. In many instances, insurance companies are merely withdrawing from certain markets. In either event, the consumer is suffering from it.

A bond is not an insurance policy. It is merely a guarantee by a corporate surety that a business will meet its obligations as established by law. The company writing the bond must therefore look to the assets of the business for reimbursement of that guarantee if it is used. And since a bond premium is relatively low, the corporate surety must feel adequately secured before issuing the bond. I know from experience that bonding companies require a net worth equal to several times the penal sum of the bond. But going beyond that, I am aware of requirements where an irrevocable letter of credit or even a certificate of deposit equal to the amount of the bond must be pledged before a bond will be written. In the worst case scenario, the bonding company withdraws from writing bonds in Kansas because with the accumulative bond feature there could still be exposure even with a letter of credit or certificate of deposit.

I understand that to the knowledge of the Kansas Grain Inspection Department, the accumulative bond feature has been used only once. We believe the limited additional protection provided by the accumulative feature is too high a price to pay since it is actually jeopardizing the ability to provide the basic bond which the law requires.

I urge each of you to support SB-518. Thank you.

LOIS
COPY
2/21

THE STATE  OF KANSAS

JOHN CARLIN
GOVERNOR
MARVIN R. WEBB
DIRECTOR

GRAIN INSPECTION DEPARTMENT
GENERAL OFFICE

235 S. Topeka, P.O. Box 1918, Topeka, Kansas 66601-1918

INSPECTION POINTS
ATCHISON KANSAS CITY
COLBY SALINA
DODGE CITY TOPEKA
HUTCHINSON WICHITA

INSPECTION DIVISION
PHONE (913) 296-3451

WAREHOUSE DIVISION
PHONE (913) 296-3454

REMARKS FOR THE SENATE AGRICULTURE COMMITTEE

PRESENTED

BY

MARVIN R. WEBB, DIRECTOR

KANSAS STATE GRAIN INSPECTION DEPARTMENT

FRIDAY, FEBRUARY 21, 1986

ROOM 423-S - STATE HOUSE

*attachment 4
2/21/86 Sen. Ag.*

MR. CHAIRMAN ALLEN AND MEMBERS OF THE COMMITTEE.

I APPRECIATE THIS OPPORTUNITY TO SPEAK BRIEFLY TO YOU CONCERNING SENATE BILL 518. IT MAY SEEM A BIT OF IRONY THAT I AM SUPPORTING A CHANGE IN OUR BONDING REQUIREMENTS TO ELIMINATE THE CUMULATIVE FEATURE OF OUR PRESENT BONDING LAW. HOWEVER, WE ARE FINDING THE GRAIN FIRMS ARE EXPERIENCING MUCH GREATER DIFFICULTY IN SECURING THEIR BONDING. THE BONDING FIRMS ARE SCRUTINIZING THE FINANCIAL STATEMENTS MUCH CLOSER AND INCREASING THEIR REQUIREMENTS.

IN 1985, THERE WERE 12 GRAIN FIRMS THAT COULD NOT, OR CHOSE NOT TO MAKE BOND. I SAY THIS BECAUSE THEY DID NOT MEET OUR MINIMUM \$25,000 NET WORTH REQUIREMENT. THERE WERE 12 OTHER GRAIN FIRMS THAT DID NOT RELICENSE FOR VARIOUS REASONS.

IN 1985, WE HAD 42 BONDING COMPANIES LICENSED TO DO BUSINESS IN THE STATE OF KANSAS. IN 1986, WE HAVE 38. HOWEVER, THESE FIGURES DO NOT TELL THE WHOLE STORY. THE IGF BONDING COMPANY OF DES MOINES, IOWA IS STILL IN BUSINESS BUT THEY ARE BEING VERY SELECTIVE IN WRITING BONDING AND ASKING FOR FULL LETTERS OF CREDIT FOR THE AMOUNT OF THE BOND WHICH COULD JEOPARDIZE 42 LOCATIONS IN KANSAS.

WE ARE LIKELY TO SEE A NUMBER OF GRAIN FIRMS THAT DO NOT RELICENSE THIS YEAR DUE TO DIFFICULTY OF BONDING. THE REALLY SAD PART OF THIS IS THOSE FIRMS GOING OUT OF BUSINESS ARE THE SMALLER INDEPENDENT CONCERNS AND ARE AN INTEGRAL PART OF THE GRAIN INDUSTRY.

IN CLOSING, IT SHOULD BE VERY CLEARLY UNDERSTOOD WE DO NOT HAVE ANY

ILLUSION THIS BILL WILL SOLVE OUR BONDING PROBLEMS; HOWEVER, WE DO FEEL IT WILL BE HELPFUL.

I WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Committee of . . .

Kansas Farm Organizations

Kathy Peterson
Legislative Agent
2301 S.W. 33rd Street
Topeka, Kansas 66611
(913) 267-4356

TESTIMONY OF
KATHY PETERSON
COMMITTEE OF KANSAS FARM ORGANIZATIONS
FOR
SENATE AGRICULTURE COMMITTEE
FEBRUARY 21, 1986

Mr. Chairman and members of the Committee, my name is Kathy Peterson, legislative agent for the Committee of Kansas Farm Organizations. As you may know, the CKFO is a coalition of 21 Kansas agricultural organizations which works together to forward the interests and causes of agriculture. Attached is a list of the 21 member organizations.

Mr. Chairman it is the unanimous decision of the CKFO to support Senate Bill 518. Those of us involved in production agriculture understand the current problems grain warehousemen have in obtaining bonds. These problems pose a danger to all of agriculture. Senate Bill 518 goes a long way in addressing and correcting this problem. It merely states that the liability of the bonding company could NOT exceed the value of the bond. This is a fair and reasonable approach to the situation.

Kansas producers rely on the security and protection provided by these bonds. It is therefore in the best interest of agriculture to clarify the current situation by stating in statute that losses beyond the current value of the bond could not be claimed.

Although there has been only one instance since 1966 when the "cumulative bond" allowance has been used, it is a reason often cited by bonding companies for not writing these bonds. Passage of this legislation would eliminate that problem. We therefore urge your favorable consideration of the bill.

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*attachment 5
2/21/86 Sen. Ag.*

*FILED
2/21/86*

Committee of . . .

Kansas Farm Organizations

Kathy Peterson

Legislative Agent
2301 S.W. 33rd Street
Topeka, Kansas 66611
(913) 267-4356

MEMBERSHIP LIST

The Association Milk Producers
Kansas Agri-Women
Kansas Association of Soil Conservation Districts
Kansas Association of Wheat Growers
Kansas Cooperative Council
Kansas Corn Growers Association
Kansas Electric Cooperative
Kansas Ethanol Association
Kansas Farm Bureau
Kansas Fertilizer and Chemical Association
Kansas Grain and Feed Dealers Association
Kansas Livestock Association
Kansas Livestock Marketing Association
Kansas Meat Processors Association
Kansas Pork Producers Council
Kansas Seed Dealers Association
Kansas Sheep Association
Kansas Soybean Association
Kansas State Grange
Mid-America Dairymen
Kansas Veterinary Medical Association

STATE OF KANSAS



STATE BOARD OF AGRICULTURE

109 S.W. 9th
Topeka, Kan. 66612-1280
HARLAND E. PRIDDLE, Secretary

February 19, 1986

Senator Jim Allen
Rural Route 3
Ottawa, Kansas 66067

Dear Senator Allen:

During the last (1985) session of the Legislature, legislation was passed amending the Kansas Pesticide Law to require registration of the majority of pesticide dealers within the state. Final or end users and retailers of "general use pesticides purchased for household use only" were exempted from the registration requirements. This amendment was made to provide state primacy versus US-EPA primacy in the pesticide sales area and to alleviate two (2) primary problems. These problems were as follows:

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 E.P.A. 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.

To date, the federal government has no staff to provide service and information to dealers in the above matter. Yet, if inspectors find a violation of federal statute, the retailer becomes subject to substantial civil fines or penalties.

Recently, some industries (particularly the Kansas Food Dealers Association and Jayhawk Food Dealers Association), have expressed opposition to the statute as written and encouraged introduction of a Bill limiting registration specifically to retailers of restricted use pesticides. This, they contend, was the original intent of the Legislature in passage of the statute. Amendments accomplishing this end are shown as attached. This amendment would exclude from registration most retail dealers currently covered by the statute. Effects of the change would be to allow delivery of restricted use

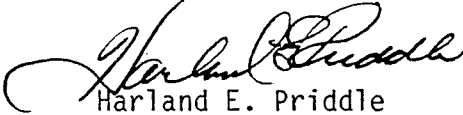
*attachment 6
2/21/86 Sen. Ag.*

pesticides to uncertified persons (problem 1. listed previously) but would leave non-registered dealers unprotected from federal penalties resulting from pesticide cancellations, changes in classification from general to restricted use, and other similar areas.

To reiterate, the amendment attached has been prepared at the request of the two (2) food dealer associations mentioned previously. I believe the Bill, as passed by you previously, is a fair and just attempt at providing an equitable state-wide program of pesticide dealer registration. Nonetheless, we wish to abide by your decision and will make every effort to administer the program efficiently and effectively.

Should you have need for further information relative to this amendment and the Dealer Registration Program, please do not hesitate to contact myself or Jon Flint and Dale Lambley of the Kansas State Board of Agriculture's Plant Health Division staff.

Sincerely,


Harland E. Priddle
Secretary

HEP:DL:bj

Attachment

2-2438a. Definitions. As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

(b) "Board" means the board of agriculture of the state of Kansas.

(c) "Certified applicator" means any individual who is certified under this act to use or supervise the use of any restricted use pesticide which is classified for restricted use by a certified applicator.

(1) "Certified commercial applicator" means a certified applicator, whether or not a private applicator with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided in paragraph (2) of this subsection (c).

(2) "Certified private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of: (A) producing any agricultural commodity, (i) on property owned or rented by such person or such person's employer or, (ii) if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person; or (B) controlling ornamental shrubbery or turf pests on property owned or rented by such person and such property is used as such person's residence.

(d) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

(e) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(f) "Equipment" means any ground, water or aerial apparatus, used to apply any pesticide but shall not include any pressurized hand size household apparatus used to apply any pesticide or any equipment, apparatus or contrivance of which the person who is applying the pesticide is the source of power or energy in making such

(g) "Fungus" means any nonchlorophyll-bearing thallophyte, including, but not limited to, rust, smut, mildew, mold, yeast and bacteria, except those on or in man or other animals and those on or in processed food, beverages or pharmaceuticals.

(h) "General use pesticide" shall mean and include all pesticides which have not been designated, by rule or regulation of the secretary or the board, as being restricted use pesticides.

(i) "Insect" means any small invertebrate animal having the body segmented, belonging to the class insecta and other classes of arthropods, including, but not limited to, beetles, bugs, bees, flies, spiders, mites, ticks and centipedes.

(j) "Nematode" means any unsegmented round worms of the class nematoda, with elongated, fusiform, or saclike bodies covered with cuticle, inhabiting soil, water, plants or plant parts. Such roundworms may also be referred to as nemas or eelworms.

(k) "Person" means any individual, partnership, association of persons, corporation or governmental agency.

(l) "Pest" means, but is not limited to, any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in man or other animals, or which the secretary may declare to be a pest.

(m) "Pesticide" means, but is not limited to, (1) any substance or mixture of substances used to prevent, destroy, control, repel, attract or mitigate any pest and (2) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant.

(n) "Pesticide business" means any individual, partnership, association of persons or corporation which applies pesticides to the property of another for compensation.

(o) "Pesticide dealer" means any person who sells a pesticide to another person for application.

insert "restricted use"

b) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants but shall not include substances insofar as they are used as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments. The term "plant regulator" shall not include any such nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants, and not for pest destruction if such mixtures or soil amendments, in the undiluted packaged concentration are non-toxic and nonpoisonous.

(q) "Restricted use pesticide" shall mean and include all pesticide uses design-

nated as such by rules and regulations of the secretary or the board.

(r) "Secretary" means the secretary of the state board of agriculture.

(s) "Under the supervision of" means, unless otherwise provided by the labeling of the pesticide product, acting under the instructions and control of another person who is available if and when needed, even though such other person is not physically present at the time and place the act is done.

(t) "Weed" means any plant or part thereof which grows where not wanted.

History: L. 1977, ch. 3, § 1; L. 1978, ch. 6, § 1; L. 1984, ch. 1, § 3; L. 1985, ch. 12, § 1; July 1.

2469. Pesticide dealers; registration; exemptions; fee; responsible for employees; denial, suspension or revocation. (a) Each person who is a pesticide dealer shall register with the state board of agriculture. Registration shall be required for each business location distributing pesticides and shall be on a form provided by the secretary. Each registration shall expire on June 30 following issuance unless such registration is renewed annually. A registration fee of \$15 shall accompany the application.

_____ insert "restricted use"

(b) The provisions of this section shall not apply to a licensed pesticide business which sells pesticides only as an integral part of such business' pesticide application service when the pesticides are dispensed only through equipment used for this pesticide application, ~~nor to the sale of general use pesticides purchased for household use only~~, nor to any federal, state, county or municipal agency which provides pesticides only for its own programs nor to any individual who is the final purchaser of a pesticide for application to property or property rights owned, leased, or otherwise acquired by such person.

_____ insert "restricted use"

_____ insert "restricted use"

_____ delete this language

_____ insert "restricted use"

_____ insert "restricted use"

(c) Each registered pesticide dealer is responsible for the acts of each individual employed by such dealer in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The dealer's registration shall be subject to denial, suspension, or revocation after a hearing for any violation of this act whether committed by the dealer or by the dealer's officers, agents or employees.

(d) All fees received under this section shall be remitted to the state treasurer in accordance with K.S.A. 2-2464a and amendments thereto. Upon receipt of each such remittance, the state treasurer shall

deposit the entire amount thereof in the state treasury and such amount shall be credited to the pesticide use fee fund.

History: L. 1985, ch. 12, § 2; July 1.

References to Related Sections:

pesticide dealer defined, see 2-2438a.