

Approved March 5, 1986
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:12 a.m. ~~XXXX~~ on February 26, 19⁸⁶ in room 423-S of the Capito

All members were present ~~except~~:

Committee staff present: Raney Gilliland, Research Department
Fred Carman, Revisor of Statutes Department

Conferees appearing before the committee: Bob Storey, Kansas Termite and Pest Control Assoc.
Paul F. Mages, Kansas Termite and Pest Control Assoc.
Dale Lambley, Kansas State Board of Agriculture
Chris Wilson, Kansas Grain and Feed Dealers Association

Senator Allen called the Committee to order and called attention to Committee minutes.

Senator Kerr made a motion the minutes of the February 20, 21 and 24 Committee meetings be approved. Senator Karr seconded the motion. Motion carried.

The Chairman called on staff to do a review of SB 545.

Mr. Gilliland explained SB 545 amends the Kansas Pesticide Law. With the present law, if the pesticide is used in any way other than is listed on the bottle, it is unlawful. This bill lists 4 exceptions which, if passed, would not be unlawful.

The Chairman next called on Bob Storey to testify.

Mr. Storey stated the purpose of the bill is to make it legal to use an amount less than directed on the label for certain jobs. Mr. Storey introduced Paul Mages to testify.

Mr. Mages gave copies of his testimony to the Committee (attachment 1). Mr. Mages urged the Committee to recommend SB 545 favorable for passage.

The Chairman thanked Mr. Mages and called on Dale Lambley to testify.

Mr. Lambley gave the Committee copies of his testimony (attachment 2). He stated this bill tries to make Kansas Pesticide Laws compatible with federal laws, but he listed some technical concerns with the bill.

The Chairman thanked Mr. Lambley and declared the hearing closed for SB 545. The Chairman announced the hearing for SB 547 would be next and called on Mr. Lambley to testify.

Mr. Lambley handed copies of his testimony to the Committee (attachment 3). Mr. Lambley explained the need and urged the Committee to recommend SB 547 favorably for passage.

The Chairman thanked Mr. Lambley and declared the hearing on SB 547 closed.

The Chairman called the Committees' attention to SB 518 for action, and then ask Chris Wilson to present an amendment for the bill.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:12 a.m./~~pm~~ on February 26, 1986

Ms. Wilson gave copies of the amendment to the Committee (attachment 4). Ms. Wilson stated the changes were in lines 51 thru 55. Ms. Wilson explained the new wording makes the bill call for a continuous bond rather than a cumulative bond, therefore, it is needed to state a cancellation requirement in the bill. The amendment states no bond shall be cancelled on less than 90 days notice. Ms. Wilson stated this 90 days notice before cancellation is preferred to a cumulative clause.

Senator Arasmith made a motion the number "90" be changed to "60" days for cancellation and that an exception be added to the amendment to state that 60 days notice of cancellation is not necessary to cancel a bond when there is nonpayment of premium on the bond; also that the word "certified" be deleted between the words "by" and "mail".

The Chairman announced that since it was 11:00 a.m. discussion of SB 518 would continue at another meeting. He then adjourned the Committee.

KANSAS TERMITE &

PEST CONTROL ASSOCIATION

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February 25, 1986

TO: Senator Jim Allen and members of the Agriculture Committee

FROM: Kansas Termite and Pest Control Association

I am Paul Mages and I represent the Kansas Termite and Pest Control Association, a group of approximately 200 pest control operators in the state. I am present to submit testimony in support of Senate Bill 545. Passage of this bill will allow licensed and certified pest control operators the discretion to apply pesticides at less than the dosage specified on the label. This discretionary use is important, because there are frequently situations encountered where it is important to control a pest infestation, using the least amount of pesticide necessary, and on the other hand, not create a health problem or a contamination hazard. One of the best examples I can site, which pest control operators deal with, on a day to day basis, is in the area of termite control in homes or existing structures. The pesticide label may call for a specified dosage in a particular part of the structure, which if applied in that dosage could likely result in pesticide contamination in the structure, and thereby create a health hazard to the occupants. Under the present regulation we would be violating the label, if we exercised discretion to apply the pesticide at less than the recommended label dosage. Currently, we are faced with either strict adherence to label recommendations, violating the label, or refusing service to our client. We feel this bill offers a solution to this problem. It follows in line with, and is precented by, the Federal E.P.A. regulation 2EE amendment to the Federal Insecticide, Fungicide and Rodenticide Act, which is currently in force.

The licensed certified pesticide applicators of Kansas urge you -- act favorably on, and pass Senate Bill 545.

Paul F. Mages, Chairman
Legislative Committee
Kansas Termite and Pest
Control Association

PFM:mag

attachment 1
2-26-86 Sen. Ag.

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TESTIMONY
SENATE BILL NO. 545

PRESENTED TO
SENATE COMMITTEE ON AGRICULTURE

by

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

February, 1986

attachment 2
2/26/86 Sen. Ag.

SENATE BILL NO. 545

PROPOSED AMENDMENTS TO THE
KANSAS PESTICIDE LAW

February, 1986

Pesticides are necessary tools which are used in agriculture and in the urban environment. The people of Kansas have the right to expect that these tools will be used properly and safely.

Senate Bill 545 amends K.S.A. 2-2453 by changing the language "use pesticides in a manner which is inconsistent with such pesticide's labeling" to "use any registered pesticide in a manner inconsistent with its label, or labeling." The new language and accompanying definition of the term "use inconsistent with its label" parallels the Section 2(ee) definition [7 U.S.C.A. 136 (ee)].

The Board of Agriculture believes that pesticide applicators should be required to demonstrate knowledge of pesticides and competence in their use if they are to be allowed to use these products at rates other than those specified on the manufacturers' registered labels.

Pesticide manufacturers spend millions of dollars in the development of each pesticide product. Extensive studies are conducted to determine the potential hazards a given product may pose to the environment and to the health of the applicator. Field tests are conducted and carefully evaluated to find how much of the pesticide is required to control a particular pest on a given crop or site. The resulting optimum rates are then incorporated into the directions for use which are printed on the product's label.

In many cases, applications of pesticides at less than label rates would prove ineffective in controlling the target pest(s). In agriculture, the result could well be the loss of a valuable crop - a loss that today's farmer

can ill afford to endure. In household pest control, failure to control a termite infestation can result in very extensive structural damage to the customer's residence. The directions for use that are printed on a pesticide product's label represent the best information which is available to the average pesticide applicator. If individuals are to be permitted to apply pesticides at less than label rates, they should first be required to demonstrate their knowledge and competency by taking and passing the pesticide applicator certification examination in the appropriate category.

Items one through four in Section (a) parallel corresponding items in the federal definition with the following exceptions: Where the federal definition uses the term "labeling," this act uses "label or labeling," and the language "or use of a pesticide for agricultural or forestry purposes at a dilution less than label or labeling dosage" found at lines 0041 through 0043 in the bill are a separate proviso within the federal statute.

While the bill purports to make the Kansas Pesticide Law compatible with its federal counterpart, there are some technical concerns with the bill:

1. The terms "registered pesticide", "unreasonable adverse affect on the environment" and "target pest" need to be defined since they are not defined within the pesticide law.
2. By making this amendment solely within K.S.A. 2-2453, this creates an apparent inconsistency with K.S.A. 2-2454 which is a separate set of unlawful acts within the pesticide law.
3. Since the term "use any registered pesticide in a manner inconsistent with its label or labeling" is being defined, the language commencing with the new sentence in line 0024 through the language "...dosage;" would be more appropriately placed within the definition section of the act, K.S.A. 2-2438a.

4. The Secretary cannot make any determinations pursuant to Section (a)(2) of the bill which are less stringent than those made by the administrator of the Environmental Protection Agency pursuant to federal law. Otherwise, the Kansas program would be in jeopardy.

A major concern with this particular bill is that it permits anyone to use a registered pesticide at a dosage, concentration, or frequency less than that specified on the pesticide's label; for the unscrupulous operator, it gives "carte blanche" authority to dilute the pesticide so it is no longer effective and grants a license to perpetrate fraud. This agency's enforcement efforts against these fraudulent operators will be severely hampered by the proposed legislation as written.

This particular problem can be solved by requiring that any usage of pesticides at a dosage, concentration, or frequency less than that specified on the label or labeling be specifically set forth in writing within the contract of the customer or upon written statement of services required by K.S.A. 2-2455. This provides a protection for both the applicator and the customer; for the applicator, the customer knows exactly how the application procedure is deviating from what is prescribed on the label, and for the customer, if the pesticide application does not control the pest, he has a written documentation of the usage used for further evidence should a lawsuit become necessary.

T E S T I M O N Y

SENATE BILL NO. 547

PRESENTED TO

SENATE COMMITTEE ON AGRICULTURE

by

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

February, 1986

attachment 3
2/26/86 Sen. Ag.

SENATE BILL NO. 547

PROPOSED AMENDMENTS TO THE
KANSAS PLANT PEST ACT

February, 1986

1. A complete control program for any pest requires the use of survey and detection, exclusion, eradication and control for the purpose of preventing entry of the pest into the protected area (Kansas). Where exclusion of the pest has failed, immediate steps to eradicate or eliminate the pest before it becomes permanently established in the State are needed.

The Kansas weed protection program currently is dependent on the authority provided by the Kansas Noxious Weed Law. This law does not provide authority in the areas of survey and detection, exclusion, eradication or control of any weeds not yet established or newly established in the state. The Kansas Noxious Weed Law provides only for control or eradication of those weeds which have been declared noxious by legislative action. Since legislative action to declare a weed noxious does not usually occur until after the weed pest has become established in the state, eradication is usually extremely difficult from a biological or an economic standpoint.

Current efforts toward weed control are, therefore, limited to those which are pointed toward long term chemical and biological control as we attempt to suppress the pest to a point where we can live with it.

The Kansas "Plant Pest Act" (K.S.A. 2-2112 et al), on the other hand, provides a complete program for dealing with all plant pests and plant diseases except for non-parasitic weeds. Extension of the "Plant Pest Act" to provide authority for a complete program to deal with all weed pests can be accomplished by amending K.S.A. 2-2113(a) to read as follows:

- (a) "Plant pests" shall include any stage of development of any insect, nematode, arachnid, or any other invertebrate animal, or any bacteria,

fungus, microorganism, virus, weed or parasitic plant, which can injure plants or plant products.

Use of this language would provide for the inclusion of any conceivable organism which might be destructive to crop or ornamental plants as a plant pest.

Actions to deal with pest weeds which would be made possible by this amendment of the "Plant Pest Act" would be:

1. Quarantine of infested areas outside Kansas to prevent the weed pest involved from entering the State.
2. Initiation of eradication measures for a new weed immediately following its initial occurrence in the state. This would be prior to the time legislative action could be taken to declare it a noxious weed.
3. Conducting surveys to detect the area of infestation of existing weed pests and to locate infestations of new weed pests before they can become well established. Any decision regarding steps to deal with a weed pest or any other pest must be based on a thorough knowledge of the pest and its location in the state.
4. Cooperation with USDA in efforts to eradicate and control new weed pests. This would include not only eradication programs but bio-control programs. (We currently do not have authority to participate in such a program under the Noxious Weed Law for any except the declared noxious weeds.)

A number of changes are occurring which make this proposed amendment necessary. One of the primary ones is the shift in national and international trade channels to the shipment of plant products and other items as containerized cargo. Products traveling as containerized cargo are difficult, if not impossible, to inspect at the U.S. ports of entry. Consequently, weed seeds and other pests may not be detected until populations start to develop at

destination. We believe that the time to combat a new and potentially noxious weed is when it is still in the form of a few small clumps alongside the airport runway in Wichita, or a railroad siding in central Kansas. This amendment would provide that opportunity.

2. No increase in personnel or funding is anticipated due to enactment of the proposed changes in the Plant Pest Act. The current plant protection and noxious weed staff members will incorporate this work into their regular work procedure.

Should a future need arise, it is possible that money to supplement and enhance the current plant protection and noxious weed programs might be available from the USDA-APHIS-PPQ under a cooperative agreement arrangement.

SENATE BILL No. 518

By Committee on Agriculture

1-30

0017 AN ACT concerning public warehouse storage of grain; surety
0018 bonds of licensees; limitation of liability on bond; amending
0019 K.S.A. 1985 Supp. 34-229 and repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1985 Supp. 34-229 is hereby amended to
0022 read as follows: 34-229. (a) Every applicant for a public ware-
0023 house license shall promptly, upon notification by the director of
0024 the amount of bond required, file with the director a bond with
0025 good corporate surety qualified under the laws of the state of
0026 Kansas in a sum computed by adding together: (1) The amount,
0027 up to \$200,000, obtained by multiplying the closing cash grain
0028 price per bushel, less \$.25, of No. 2 hard ordinary wheat in
0029 Kansas City on the first Monday in April of each year times .15%
0030 of the warehouse capacity; and (2) the amount obtained by
0031 multiplying that cash grain price per bushel less \$.25 times 1% of
0032 the warehouse capacity in excess of that capacity used to com-
0033 pute the first \$200,000 of the amount of the bond. In no event
0034 shall the bond be for an amount less than \$10,000.

0035 (b) If an applicant for a license or a licensee at any time does
0036 not have the total net worth required by K.S.A. 34-228 and
0037 amendments thereto, an amount equal to the deficiency shall be
0038 added to the amount of the bond required by subsection (a).

0039 (c) The bond shall be in favor of the state of Kansas for the
0040 benefit of all persons interested, their legal representatives,
0041 attorneys or assigns and shall be conditioned on the faithful
0042 performance of all the licensee's duties as a public warehouse-
0043 man and such additional obligations as assumed by the ware-
0044 houseman under contracts with a federal agency relating to
0045 storage of grain in each warehouse. Any person injured by the

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0046 breach of any obligation of the warehouseman may commence
0047 suit on the bond in any court of competent jurisdiction to recover
0048 damages that the person has sustained, but any suit commenced
0049 shall either be a class action or shall join as parties plaintiff or
0050 parties defendant or other persons who may be affected by such
0051 suit on the bond.

0052 *The liability of the surety on the bond shall not*
0053 *accumulate for each successive license period the bond covers.*
0054 *The total liability of the surety shall be limited to the amount*
0055 *stated on the bond or as charged by an appropriate rider or*
endorsement to the bond.

0056 (d) If a person applies for licenses for two or more separate
0057 public warehouses in this state, the person may give a single
0058 bond covering all the applications, and the amount of the bond
0059 shall be the total amounts which would be required for the
0060 applications if separate bonds were given. In computing the
0061 amount of the single bond the warehouseman may add together
0062 the capacity of all warehouses to be covered by the bond and use
0063 the aggregate capacity for the purpose of computing the bond. If
0064 a warehouseman elects to provide a single bond for a number of
0065 warehouses, the total assets of all the warehouses shall be sub-
0066 ject to liabilities of each individual warehouse.

0067 (e) Whenever the director determines that any bond given by
0068 any warehouseman is inadequate and insufficient security
0069 against any loss that might arise under the terms of the bond, the
0070 director shall require any additional bond that the director con-
0071 siders necessary to provide adequate security. If the director
0072 considers the financial condition of the surety upon any ware-
0073 houseman and the warehouseman's bond to be impaired, the
0074 director shall require any substituted or additional bond that the
0075 director considers necessary.

0076 (f) In all actions hereafter commenced in which judgment is
0077 rendered against any surety company on any surety bond fur-
0078 nished under the provisions of this section, if it appears from the
0079 evidence that the surety company has refused without just cause
0080 to pay the loss upon demand, the court shall allow the plaintiff a
0081 reasonable sum as attorney fees to be recovered and collected as
0082 a part of the costs. When a tender is made by the surety company

0083 before the commencement of the action in which judgment is
0084 rendered and the amount recovered is not in excess of the
0085 tender, no such costs shall be allowed.

0086 (g) Each licensed public warehouseman shall obtain a certif-
0087 icate setting forth the amount and terms of the bond filed with
0088 the director pursuant to this section, the name of the corporate
0089 surety therefor and such other information as the director may
0090 prescribe by rules and regulations. The certificate of bond infor-
0091 mation shall be posted in a conspicuous place in the office room
0092 of the licensed warehouse, adjacent to the license posted as
0093 required by K.S.A. 34-230 and amendments thereto, at all times
0094 during the operation of the warehouse.

0095 (h) Transaction of any public warehouse business at any
0096 public warehouse without having the certificate of bond infor-
0097 mation displayed in the office room of the public warehouse as
0098 required by this section is a class C misdemeanor.

0099 Sec. 2. K.S.A. 1985 Supp. 34-229 is hereby repealed.

0100 Sec. 3. This act shall take effect and be in force from and
0101 after its publication in the statute book.

No bond shall be cancelled by the surety on less than
90 days notice by certified mail to the Director and
the principal. The liability of the surety on the
bond shall ^{may} not accumulate for each successive license
period the bond covers. The total liability of the
surety shall be limited to the amount stated on the bond
or as ^{on} charged by an appropriate rider or endoresement to
the bond.