

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Joann Flower at 9:00 a.m. on January 24, 1995, in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Chris Wilson, Kansas Agriculture Aviation Association
Jamie Clover Adams, Kansas Fertilizer & Chemical Association
Forrest St. Aubin, Director, Division of Plant Health, Kansas Department of Agriculture
Vernon McKinzie, Kansas Pest Control Association
Tom Tunnell, Kansas Fertilizer & Chemical Association

Others attending: See attached list

Chairperson Flower asked the committee to review the minutes of January 18 and January 19, 1995. If there were corrections or additions to please contact the committee secretary by 5:00 p.m. today or they would stand approved as presented.

The Chair opened the hearing on **HB 2104**. All committee members were provided a copy of the fiscal note on this bill.

Hearing on HB 2104 - An act concerning pest control; relating to pesticide business services forms

Chris Wilson, Executive Director of the Kansas Agricultural Aviation Association, spoke in support of **HB 2104** which her association had requested. She said the objective of the bill was to clarify language that had caused confusion since its passage in 1989 that required applicators to specify on their statements of service both the rate of application of the pesticide used and the concentration applied. Agricultural pesticide amounts are usually expressed in amount of chemical per acre, while structural pesticide amounts are expressed in percent of concentration. For clarification purposes, her association would like the rate of application expressed according to the EPA rate on the label. Since introduction of this bill, the State Department of Agriculture had suggested alternative language which would better clarify the problem. She supported adopting their language. (Attachment 1)

Jamie Clover Adams, Director of Legislative and Regulatory Affairs, Kansas Fertilizer & Chemical Association, appeared in support of **HB 2104**. Confusion over the present wording in the statutes had been an issue with her department since early 1992. KFCA supported the amendment to make the service statement more user friendly. She supported the technical changes that would clarify the language between structural and agricultural application. (Attachment 2)

Forrest St. Aubin, Director, Division of Plant Health, State Department of Agriculture, testified in support of **HB 2104** in that the present language was inadequate and change was necessary. The department felt the proposed language in **HB 2104** was insufficient. Mr. St. Aubin and the department offered substitute changes to KSA 2-2455 (a) 4 that they felt would better clarify the statute. (Attachment 3)

Vernon McKinzie, Kansas Pest Control Association, which represents structural applicators, appeared in opposition to **HB 2104**. His main concern was that the bill as written would require strict compliance with EPA labeling and wouldn't allow for the use of less pesticide than the label rate specified. He thought separate reporting requirements for structural and agricultural pesticide applications might be a workable compromise. He also suggested the word "pesticide" be used instead of "chemical" as not all chemicals are pesticides. He felt Mr. St. Aubin's suggested language might be acceptable to his group. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on January 24, 1995.

As **HB 2104** was more complicated than anticipated, Chairperson Flower appointed a subcommittee of Representative Lloyd, Representative Weiland, and Representative Sloan to study the issue and report back to the committee with their recommendations. This concluded the hearing on **HB 2104**.

Chairperson Flower advised the committee that they had been invited to tour the Board of Trade in Kansas City on Friday, February 3. Tom Tunnell, Kansas Fertilizer & Chemical Company, gave the members a brief overview of the Board of Trade. He stated that the Kansas City Board of Trade sets the hard red winter wheat price for the world. The committee would be able to observe first hand how the free market system works. They would witness the closing of trade for that day, with the opening and closing being the most exciting with lots of hollering and shouting. He explained that a bus would leave the Capitol about 9:00 a.m. and return at approximately 2:30 p.m. As there seemed to be sufficient interest in the trip, Mr. Tunnell was to proceed with final plans.

The meeting adjourned at 9:45 a.m. The next meeting is scheduled for January 26, 1995.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: January 24, 1995

NAME	REPRESENTING
Rich McKee	KS Livestock Assoc.
Jamie Clover Adams	KS Fertilizer & Chemical Assn
Tom Bruno	Allen & Assoc.
Chris Wilson	KAAA
Jim Alley	Seaboard
Hope Howell	
Tom Burgess	KPCA



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**STATEMENT OF THE
KANSAS AGRICULTURAL AVIATION ASSOCIATION
TO THE HOUSE AGRICULTURE COMMITTEE
REPRESENTATIVE JOANN FLOWER, CHAIR
January 24, 1995**

Madam Chair and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Agricultural Aviation Association (KAAA). Our more than 300 members are involved in the aerial application of crop protection chemicals in Kansas. Thank you for the opportunity to speak in support of H.B. 2104.

We very much appreciate the Committee's introduction of this bill and your staff's work on it. As we indicated on requesting this legislation, it simply would clarify language which has caused confusion since its passage in 1989. At that time, S.B. 3 was passed to establish authority for the creation of pesticide management areas. In conference committee, language was adopted to allow pesticide applicators to apply less than the label rate. This a good environmental practice where efficacy can be achieved at lower rates and is part of the federal law.

Unfortunately when that was done, the language was included in K.S.A. 2-2455(a)(4) which, as current law reads, requires applicators to specify on their statement of service both the rate of application of the

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pesticide used and the concentration applied. Agricultural pesticides have EPA labels which express the amount of chemical in rate per acre, while structural pest control products have labels which express the amount of chemical to be used in terms of percent of concentration.

There has been considerable confusion over the past five years on the part of applicators and agency personnel concerning whether both rate per acre and percent of concentration were required on the statement of service. While most department of agriculture field inspectors have not required both on the statements of service, some have. And an aerial applicator was cited and fined last year for failing to include percent of concentration on his statements. There have been meetings, administrative memos and much discussion, but the situation has not been finally resolved, and we believe it cannot be without clarifying the statute.

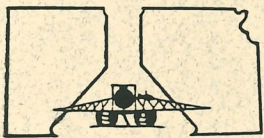
Since the introduction of H.B. 2104, we have talked further with department of agriculture staff and colleagues in other segments of the pesticide industry. Department staff have reviewed with us alternative language for the bill which would further clarify this situation and better accomplish what we hope to do. We would certainly support amending H.B. 2104 to adopt that language.

We are grateful to Secretary Devine and Director St. Aubin for their work on this bill. We respectfully ask that you amend their language into H.B. 2104 and recommend it for passage.

I would be glad to respond to any questions you may have.

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KANSAS FERTILIZER & CHEMICAL ASSOCIATION



KFCA is COMMITTED
TO PROFESSIONAL
DEVELOPMENT AND
BUSINESS VIABILITY FOR
THE PLANT NUTRIENT
AND CROP PROTECTION
INDUSTRY IN KANSAS.

STATEMENT ON

H.B. 2104

TO THE

HOUSE AGRICULTURE COMMITTEE

REP. JOANN FLOWER, CHAIR

JANUARY 24, 1995

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THE KANSAS FERTILIZER AND CHEMICAL ASSOCIATION

..... A VOLUNTARY PROFESSIONAL ASSOCIATION FOR THOSE INVOLVED IN THE PLANT NUTRIENT AND CROP PROTECTION INDUSTRY. KFCA REPRESENTS OUR NEARLY 500 MEMBERS INTERESTS IN LEGISLATIVE MATTERS AT ALL LEVELS OF GOVERNMENT, AS WELL AS PROVIDING EDUCATIONAL OPPORTUNITIES AND BUSINESS SERVICES. THE INDUSTRY IS COMMITTED TO PROFESSIONAL DEVELOPMENT AND BUSINESS VIABILITY FOR THE PLANT NUTRIENT AND CROP PROTECTION RETAIL INDUSTRY.

Madam Chair and members of the committee, I am Jamie Clover Adams, Director of Legislative and Regulatory Affairs for the Kansas Fertilizer and Chemical Association (KFCA). KFCA is the state's trade association for the plant nutrient and crop protection industry. Our nearly 500 members are primarily retailers, but also include distribution firms, manufacturer representatives and others who serve the industry. Our retail members provide agricultural chemical custom application services to farmers and thus deal with the statement of service on a daily basis during the spray season. We are here today to support H.B. 2104.

The portion of the Pest Control Act that sets out the requirements for the statement of service was last amended in 1989. Since that time, KFCA records indicate applicators had and continue to have difficulty understanding and complying with the requirements set out in the statute. In fact, in early 1992, the director of the Plant Health Division at the Board of Agriculture noted he and his field staff had received periodic telephone calls from users experiencing substantial problems complying with the requirements. At that time, the Board of Agriculture stated its intent to make the regulatory language more "user friendly" for both the agency and the industry. Unfortunately, KFCA believes the agency was unable to meaningfully change the regulations because of the strict wording of the statute.

Therefore, KFCA supports the amendment of K.S.A. 4-2455 to make the statement of service more "user friendly" for both the applicator and the farmer. The purpose of the statement is to inform the farmer about what agricultural chemicals are being applied to his or her crops and at what rate. Complicating the matter with information of little or no value to either party serves no purpose.

The portion in question requires the applicator to list pesticide kind, rate of application, concentration and quantity. In the agricultural plant protection industry, application is calibrated at rate per acre. The concentration requirement is more applicable to the structural pest industry. The suggested amendment allows

applicators to list what's relevant to agricultural chemical application and relieves them of the burden of calculating information of questionable value to themselves or their customers without harm to either party.

For these reasons, KFCA urges the committee to favorably report H.B. 2104. I would be glad to respond to any questions you may have.

KANSAS DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT HEALTH

January 24, 1995

TESTIMONY REGARDING HB 2104

Chairman Flower and members of the committee:

The issue at hand concerns language contained within the Kansas Pesticide Law (KSA 2-2438a et. seq.) and found at 2-2455(a)4. The question regards language and information required on statements of service, concerning kind of product, rate of application, concentration and quantity applied.

We do not argue that the present language is adequate; it is not and change is necessary. The manner of change is the point of this discussion.

While the current language is vague, the proposed language is fraught with shortcomings. The proposed language may deprive the customer of knowledge concerning what kind, how much and what strength pesticide has been applied to their property. They have a right to know.

Furthermore, it does not permit the regulating authority to determine if, in fact, the pesticide has been properly applied, nor whether the quantity applied was in accordance with the label. Mere recitation of the labeled directions for use does not meet the needs of environmental or consumer protection.

In discussing statements of service with various pesticide application industries over the past several years, we have made it quite clear that we only require sufficient information to be able to determine that the application was in accordance with the label and that the customers got what they paid for. To that end, if there is sufficient information on the statement of service for the customer or the regulating agency to determine mathematically that the labeled instructions were followed, that is good enough.

Accordingly, the following changes to KSA 2-2455(a)4 are recommended:

- (new) (4) each pesticide applied;
- (new) (5) the rate of application, when applicable;
- (new) (6) the total quantity of each pesticide applied;
- (new) (7) each carrier or diluent mixed with or combined with the pesticide/s applied and the total quantity of each carrier or diluent applied, when applicable;

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- (new) (8) The total area to which the pesticide/s or pesticide tank mix were applied, when applicable;
- (9) the date and location....
- (10) the expiration date....
- (11) the signature of the individual....
- (12) the wind direction....
- (13) that the application was less....
- (b) Whenever the service....etc.

KANSAS

PEST CONTROL ASSOCIATION

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PRESENTED TO:
HOUSE AGRICULTURE COMMITTEE

January 24, 1995
RE: HB 2104

FROM: Vernon McKinzie
Kansas Pest Control Association Govt. Affs. Chm.

Thank you for the opportunity to speak on HB 2104. Our Association represents about 150 member companies who perform nearly a million pesticide applications to structures in Kansas annually.

We oppose the bill because we believe the language will conflict with present language in KSA 2-2470 (1) and (2), KAR 4-13-4 (a) (7) and 4-13-4 (b). It is our concern that the bill as written would require that any and all pesticide applications must be made in strict accordance with the EPA label rates and does not allow any latitude for the applicator to use less than label rates even though such application would be effective and provide less environmental risk.

We also suggest the word "chemical" be changed to "pesticide" since "Pesticide" already appears in the definition section of the statute and "chemical" does not. Also, all chemicals are not always pesticides.

The KPCA understands the delima of the aerial, agricultural and lawn and turf applicators when their label rates are expressed in terms of pounds of active ingredient per acre or square feet and the existing statutes and regulations call for expressing usage rates in terms of specified volumes of percentage concentrations of active ingredients.

We suggest a compromise might be to separate the requirements of reporting rates of application to allow reporting rates per acre or square footage when dealing with aerial, agricultural or lawn and turf applications and percentages of active ingredient and volume when dealing with structural applications. Such a distinction in recordkeeping and reporting already exists in KSA 2-2455(b) which specifically deals with termite control procedures, and KAR 4-13-4 (a)(5), KAR 4-13-4(a)(8), 4-13-4(b)(C & D) which deal with termite control procedures and recording wind direction and velocity as they relate to structural applications.

We would be happy to meet with other interested groups to forge workable language for this bill.

I would respond to questions. Thank you.

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