

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Derek Schmidt at 8:30 a.m. on February 17, 2004 in Room 423-S of the Capitol.

All members were present except:

Senator Janis Lee- excused

Senator Robert Tyson- excused

Committee staff present:

Raney Gilliland, Legislative Research

Lisa Montgomery, Office of the Revisor of Statutes

Robert Myers, Committee Secretary

Conferees appearing before the committee:

Ted Lomas - Crop Division Manager, Right Cooperative Association, Wright, Kansas

Doyle Pearl - J.B. Pearl Sales & Service, Inc., St. Marys, Kansas

Doug Wareham - Kansas Agribusiness Retailers Association

Brad Harrelson - Kansas Farm Bureau

Mark Wulfkuhle - Member, Douglas County Farm Bureau

John Heise - President, Kansas Soybean Association

Glen Caldwell - Caldwell Farms, Inc., Garnett, Kansas

Bob Timmons - Kansas Corn Growers Association

John Kabus - County Weed Directors Association of Kansas; Director, Shawnee County Noxious Weed

Brett Myers - Kansas Association of Wheat Growers

Greg Foley - Kansas Department of Agriculture

Others attending:

See Attached List.

SB 464: Concerning application equipment of pesticides.

Chairman Schmidt opened the hearing on **SB 464**.

Ted Lomas appeared before the committee as a proponent of **SB 464**. He expressed to the committee his belief that there exists a large anomaly between the state-licensed commercial applicator and the private individuals who commercially apply pesticides and fertilizers with little or no training. As an example, he gave the following information regarding the nineteen providers of liquid application service in the Ness City area: four are licensed operators, three have liability insurance coverage, and only two have any form of pesticide or fertilizer containment. He proceeded to refer to the law in Kansas which states that any amount of bulk pesticide material over three hundred gallons stored for sixty days or used is required to have pesticide containment, thus pointing out the widespread failure to follow such a law in his example of the Ness City area. Furthermore, he stated that this law is ignored by the Kansas Department of Agriculture in most cases. His overall conclusion was that any person who applies liquid fertilizer or pesticides in Kansas for monetary reward, barter, or trade should be licensed, should operate under the regulations imposed by the Kansas Department of Agriculture, and should be subject to regular inspections by the Kansas Department of Agriculture (Attachment 1).

Doyle Pearl appeared before the committee as a proponent of **SB 464**. He stated that the bill would enable the Kansas Department of Agriculture to educate those involved in the application of agricultural chemicals. In addition, he stated that protecting the environment is the motive for laws, but that they will not be followed as long as chemical applicators are not informed of them. He pointed out the fact that farms are increasing in size, resulting in the presence there of the same commercial applicator equipment used by retail operation a few years ago. He continued by stating that, therefore, it makes sense to develop a plan that will educate farm operations of the laws followed by retail custom applicators. He then expressed his belief that a one-time registration of a self-propelled sprayer would create an avenue for such education (Attachment 2).

Doug Wareham appeared before the committee as a proponent of **SB 464**. He first explained to the

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committee some of the contents of the testimony he had submitted, listing the following: a balloon amendment to the bill, addressing some of the concerns that had been expressed to his department; a sheet containing several photographs of equipment that falls under the Kansas Department of Agriculture's definition of self-propelled application equipment, as proposed in the balloon amendment; a photograph of a fixed facility in North Central Kansas; a photograph of non-fixed bulk product that is delivered to a field for use; and a photograph demonstrating the potential problem of leaks that occur with these facilities. He stated that the bill is proposed in order to address two situations: the increase of farmer-owned application equipment, and thus, the increase of application-for-hire being performed by farmers; secondly, that the type of equipment in question is generally supported by a fixed facility, such as the one shown in the previously-mentioned photograph, or by a bulk product that is delivered to a field for use, as shown in the remaining two photographs mentioned above. He stressed the possibility of environmental contamination in cases of long-term pesticide and fertilizer leaks as being addressed by the proposed bill. Furthermore, he noted the results of an equipment dealer survey performed by the Kansas Agribusiness Retailers Association (KARA), showing that approximately 80-100% of all used application equipment is going directly into farming. He stated that the KARA supports the right of any person who would like to own such application, but that they should have to comply with the law, whether operating as a commercial business or simply storing bulk fertilizers and agricultural chemicals. Mr. Wareham then pointed out that, contained also within his packet of testimony, are comments from 36 different agribusiness retail affiliates. He stressed to the committee the support of the KARA with regard to any effort to educate applicators, and thus achieve compliance. In noting the current budget restraints though, he acknowledged that the resources necessary to achieve such education simply may not exist. He continued by pointing out that contained within his testimony are the Kansas Department of Health and Environment Remediation Statistics from 2003, as well as those of the Kansas Agricultural Remediation Board. In closing, he expressed the desire of the KARA that the committee vote in favor of the bill, and thus support the environment, most importantly water, as well as support providing the Kansas Department of Agriculture with the appropriate means by which to identify and educate applicators ([Attachment 3](#)).

Brad Harrelson appeared before the committee as an opponent of **SB 464**. He suggested that the bill has motives other than the protection of the environment and the regulation and education of operators of application equipment. He expressed that the requirements of this legislation would restrict competition by placing additional burdens on those who currently choose alternatives to traditional custom application services. He pointed out that a number of statutory requirements are already in existence that prescribe who may or may not custom apply agricultural chemicals and what steps must be taken to do so, as well as regulations determining how to store larger quantities of agricultural inputs. Thus, he suggested that the concerns of the proponents of the bill are already being addressed. Furthermore, he noted that Kansas Farm Bureau staff and members have taken part in a number of educational forums, thus questioning the need for a new statutory requirement aimed at registering and educating a group of producers. In closing, he stated that the bill is clearly an attempt to tax independent farmers, as well as add extra, unneeded bureaucracy to an industry that is already highly regulated. Contained within his testimony is a list of questions for the consideration of the committee ([Attachment 4](#)).

Mark Wulfkuhle appeared before the committee as an opponent of **SB 464**. Being both a farmer and a custom applicator, he questioned how the bill would benefit either of his businesses. He noted the already heavy regulation of both of his businesses and the excessive amounts of paperwork that he has to deal with as a result. He stated that the bill would only increase this red tape, as well as increase the fees already paid. He then pointed out the copy of a spray record sheet that he enclosed with his testimony, explaining that such records must be kept of an application for three years. According to him, this regulation plus that proposed by the bill would be impossible for a department (i.e., the Kansas Department of Agriculture) that lacks the resources necessary to police them. In closing, he stated that his perception is that the goal of this proposed bill is to force small farmers to rely solely on custom applicators ([Attachment 5](#)).

John Heise appeared before the committee as an opponent of **SB 464**. He noted that there exists already a roster of more than 17,000 certified private applicators in the state of Kansas, pointing this statistic out as an indicator that Kansas farmers are indeed trained and educated. He further noted that all applicators, including small farmers, are required to use fertilizers and pesticides in accordance with the product label.

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He also stated that there is no need for more laws to regulate small businesses and farms ([Attachment 6](#)).

Glenn Caldwell appeared before the committee as an opponent of **SB 464**. He stated that the registration fee and paperwork proposed by the bill would indeed be a nuisance, but that his opposition was not based on this. Rather, he pointed out his failure to see how Kansas farmers, the environment, or the Kansas Agribusiness Retailers Association (KARA) would benefit from the bill. He expressed his belief that the bill is intended solely to be a means by which the KARA could control what they perceive as farmer competition. His stated belief was that there are already rules in place regulating private applicators, and that efforts should be concentrated on making the best of these existing laws ([Attachment 7](#)).

Bob Timmons appeared before the committee as an opponent of **SB 464**. He started out by stating that the fight surrounding this bill (i.e., between the Kansas Agribusiness Retailers Association [KARA] and the crop producers) was not sought out by producers. Rather, according to him, they were forced into it. He stated that the push by the KARA for this legislation is an attempt to regulate the competition that they perceive as coming from farmers. He expressed his speculation that virtually all people to be affected by the bill are already registered as certified private applicators. Furthermore, he stated his unawareness of any other states having a registration requirement such as the one proposed by the bill. He proposed that the focus should be on encouraging compliance with the laws already in place, instead of creating new bureaucracies and regulations ([Attachment 8](#)).

John Kabus appeared before the committee as an opponent of **SB 464**. He expressed to the committee his belief that the bill indicates an existing dispute between private applicators and commercial applicators. He questioned the need to regulate a pickup truck containing a 200 gallon spray tank in the same manner as large spray equipment would be regulated. He requested of the committee that, if the bill were to be passed, government agencies be exempted from the proposed regulation, due to the fact that the Kansas Department of Agriculture already requires that they pay a fee and apply annually for registration ([Attachment 9](#)).

Brett Myers appeared before the committee as an opponent of **SB 464**. He stated that legislation indeed already exists concerning the issue of pest control and fertilizer application. He pointed out that the Secretary of Agriculture already has the authority to require the registration of and to mark for identification any commercial application equipment. He noted that Kansas Commodity Groups were declined upon volunteering to work together with the proponents of the bill in order to educate farmers on the regulations imposed on applicators. Furthermore, he stated that the bill would create bureaucracy instead of benefit ([Attachment 10](#)).

Greg Foley appeared before the committee in response to a question posed by Chairman Schmidt regarding the point stressed by the opponents of the bill that the majority of those who would be affected are already registered as certified private applicators. He responded that the 17,000 certified private applicators referenced in the opponent's testimony is the known universe of such applicators, but that there are most likely individuals performing application work without a license. He further reported to the committee that in the year 2003 the Kansas Department of Agriculture received 166 complaints regarding pesticide and fertilizer application.

Greg also responded to a question posed by Senator Umbarger regarding whether or not a commercial license is required in cases of bartering. His response was that licensing is required only in cases in which money is exchanged.

Leslie Kaufman of the Kansas Cooperative Council submitted written testimony to the committee as a proponent of **SB 464** ([Attachment 11](#)).

Chris Wilson, Executive Director of the Kansas Agricultural Aviation Association, submitted written testimony to the committee as a proponent of **SB 464** ([Attachment 12](#)).

Frank Shelton of Farmway Co-op Inc. in Beloit, Kansas submitted written testimony to the committee as a proponent of **SB 464** ([Attachment 13](#)).

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Kenlon Johannes, Chief Executive Officer of the Kansas Soybean Association, submitted written testimony to the committee as an opponent of **SB 464** (Attachment 14).

Greg Shelor, President of the Kansas Grain Sorghum Producers Association, submitted written testimony to the committee as an opponent of **SB 464** (Attachment 15).

Steve Baccus, President of Kansas Farm Bureau, submitted written testimony to the committee as an opponent of **SB 464** (Attachment 16).

Ken Rahjes, Assistant Director of Member Services of Kansas Seed Industry Association, submitted written testimony to the committee as an opponent of **SB 464** (Attachment 17).

Greg Foley of the Kansas Department of Agriculture submitted written testimony containing information to assist with the deliberations on **SB 464** (Attachment 18).

The next meeting is scheduled for Wednesday, February 18, 2004.