Senators:

I write in opposition to Senate Bill 2134.

I am a co-owner and President of Browning's Honey Co., Inc. in Jamestown. My operation employs about 50 people, and up to 60 during harvest. We keep over 22,000 hives of bees in the state from April-October. These hives are located on over 600 private land sites, across 8 counties. Approximately 90% of these locations are within ¼ mile of a county road and would become illegal if this law was to pass. This law would be unnavigable for my business, which could not replace and relocate these locations on legal sites under this law. The sheer amount of private land that this law would impact might well be millions of acres state-wide. Under this law, many landowners, and even beekeepers alike, who have bees on their land, would be unable to keep bees on that land in accordance with this law. In practicality, most of the land that is accessible to vehicles and equipment used to move and maintain hives around the state is within a ¼ mile of roads, and therefore would be unusable under this law.

The beekeeping industry is an important part of North Dakota's Agricultural Economy. The State is the number 1 honey producing state, producing over 40 million pounds per year at a value of over $100 Million in honey receipts alone (current market value). The apiary locations here in North Dakota are also crucial to the health and development of the pollination service that these same hives perform here in North Dakota, which boosts the yield and quality of crops like canola, sunflowers, soybeans, and others. Also, some 90 pollinator dependent crops around the country benefit from pollination services provided by these same bees that were raised during the summer in North Dakota. The North Dakota beehive count is over 800,000, which are kept at over 20,000 locations, by about 400 beekeepers/beekeeping operations. Many of these operations are the largest employers in the towns they are based in. These beekeeping businesses employee literally thousands of people state-wide.

This law would do little to nothing in terms of keeping honey bees from visiting and crossing roads. Honey bees will fly more than 2 miles from their hive to collect pollen and nectar. Thus, moving hives back ¼ mile or (1380 feet) from the road will not keep bees from being around or crossing roads where they may be encountered by travelers of all sorts. These same travelers might also encounter wild bees, butterflies, birds, deer, cattle (the state is open range), and a whole host of other potential wildlife or livestock that will not be impacted by this law. Foraging honey bees are not defensive, meaning they are not defending their hive, and therefore very unlikely to sting. Bees are defensive within about 50 feet of their hives. My operation uses a 100 foot rule for placement of hives in proximity to busy roads, mostly to protect the bees.

Managing over 600 locations each year means that my business does receive complaints, but not about being too close to roadways. We get calls from farmers who must spray insecticides and need us to protect our bees. We get calls about bees visiting water sources at the home, or maybe the livestock tank. We get calls about swarms landing in the tree in the yard. But, in the last 20

years, I cannot remember getting a complaint about bees being located too close to a road, 100 feet has always been our minimum, and it seems to have been enough.

The North Dakota State Constitution contains *Article XI, section 29, which is known as "The Right to Farm". The Right to Farm provides protection for agriculture from laws like Senate Bill 2134. It reads: **"The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state. No law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production, and ranching practices."**

One of the major reason this section was adopted was to prevent laws and lawsuits that claim agriculture is a nuisance. The Century Code further defines agriculture practices and production intended to be protected from nuisance laws. (*Century code 42-04), bees are specifically mentioned as a farming and livestock practice to be protected- *"The types of production that receive protection include the commercial production of plants and animals, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production, as well as the disposal of those products by "marketing or other means."*[ii]

If this law was passed it would effectively remove the rights of farmers, property owners, and beekeepers who wish to have bees on lands that would be deemed ineligible based on the language of this bill. Further, farmers whose lands do not extend beyond ¼ mile from a roadway will in effect, no longer have the ability to grow crops that need honey bees for pollination.

As an additional consequence, the nature and effect of this law would likely constitute an illegal taking without just compensation, which is prohibited by the U.S. constitution. Beekeepers and landowners whose operations were impacted by this law would certainly, immediately file lawsuits against the State of North Dakota.

For the forementioned reasons, I urge the committee not to recommend adoption of this bill.

Sincerely,

Zac Browning

***ND Constitution Article XI, Section 29**
The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state. No law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production, and ranching practices.

***ND Century Code**
CHAPTER 42-04
AGRICULTURAL OPERATIONS AS NUISANCES
42-04-01. Agricultural operation defined. As used in this chapter, "agricultural operation" means the science and art of producing plants and animals useful to people, by a

corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or
limited liability company, a partnership, or a proprietorship, and includes the preparation of these
products for people's use and the disposal of these products by marketing or other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

42-04-02. Agricultural operation deemed not nuisance. An agricultural operation is
not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began, except that the provisions of this section shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation.

42-04-03. Recovery for water pollution, condition, or overflow. The provisions of
section 42-04-02 shall not affect or defeat the right of any person to recover damages for any injury or damage sustained by the person on account of any pollution of or change in the condition of the waters of any stream or on account of any overflow of lands of any such person.

42-04-04. Effect on local ordinances. Any ordinance or resolution of any unit of local
government that makes the operation of any agricultural operation a nuisance or provides for the
abatement thereof as a nuisance under the circumstances set forth in this chapter is void, except that the provisions of this section shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation or from an agricultural operation located within the corporate limits of any city as of July 1, 1981.

42-04-05. Effect on contracts. This chapter shall not be construed to invalidate any
contracts made prior to the enactment of this chapter, but, insofar as contracts are concerned, it
is only applicable to contracts and agreements to be made on or after July 1, 1981.