

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

2095

2007 SENATE AGRICULTURE

SB 2095

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2095

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 4, 2007

Recorder Job Number: 613

Committee Clerk Signature



Minutes:

**Senator Flakoll-Chairman** opened the hearing on SB 2095, a bill relating to pesticide definitions. All members (7) were present.

**Gerald Thompson** from the ND department of Agriculture, Pesticide Coordinator for the ND Department of Senate Agriculture testified in favor of the bill. See attached testimony.

**Sen. Klein-** Mr. Thompson could you fill us in to as what a restaurant was doing spraying pesticides, were they spraying it on the weeds, the lettuce, the spinach could you tell us?

**Gerald Thompson-** a complaint was called in about a McDonalds restaurant where pesticide had been sprayed and a lady went through the drive through window and complained that they had sprayed pesticides and she got sick from the pesticide application they called us to do the investigation and that's what started this whole process

**Sen. Klein-** and so the applicator at that point was not certified or could the business owner have sprayed that themselves and not been certified?

**Gerald Thompson-** under the present law they would not be able to do that because they would automatically by default be considered a applicator and we are trying to rectify that by introducing this bill

**Sen. Taylor-** just by looking at the definitions I know there's a private applicator and a commercial applicator, is there going to be a public applicator certification process, I mean if they're not using ready to use pesticides are public applicators currently going through a process or will they be?

**Gerald Thompson-** the public applicator definition does exist were asking to change that cause there has been questions weather some people are covered by law, some people aren't covered by law. They would go through a certification process.

**Sen. Behm-** was the chemical that was sprayed at the McDonalds a chemical that was harmful to humans or what was it?

**Gerald Thompson-** It was a chemical mix that was similar to a round up that can be purchased at local facilities some require no mixing.

**Sen. Behm-** I have a hard time believing a person can get sick form round up cause I've used round up many times and I've never gotten sick

**Gerald Thompson-** we've had many people in North Dakota that claim to have gotten sick from pesticides weather it is psychological or physical. We do know there are more people that are more susceptible to different things then others.

**Sen. Wanzek-** originally you said it was a insecticide, why would you spray round up around a McDonalds? Were there weeds growing out of it or something?

**Gerald Thompson-** the lady that called in said it was insecticide but when it was called in and under went an investigation we found out that it was round up.

**Sen. Wanzek-** so would this allow some farmers a private applicators license to be commercially? I mean I know it happens as favors among some farmers.

**Gerald Thompson-** the private applicators definition would be about the same.

**Rep. Frank Wald** testified in favor of the bill, he is from district 37 in Dickinson.

**Rep. Wald-** A friend of mine owns a McDonalds in Dickinson, Williston and Glendive Montana. On a particular morning a janitor applied weed be gone that you would buy at a local hardware store and went out and sprayed dandelions in a rock garden. I have pictures that I could bring in for you to see of the rock garden if you would like. What happened is that the application was made about 10 am, at about noon a lady came through and smelled the residue from the weed be gone outside the premises. She called and it was referred to the state health department and that is the sequence of events. I'm for the bill cause as the law currently stands you cannot go and spray a dandelion in your neighbor's yard. Today that would be illegal. I might suggest that on page 4 of the bill I would like to see the committee amend the bill starting on about line 29 where it says ready to use pesticides, means pesticides applied directly from its original container. I would like to see the bill amended to say or mix not to exceed 1 gallon because you can buy the concentrated stuff and the directions are right on the bottle. You might want to add in a hand held device, cause device is already listed in the bill on page 2 line 8. I think we could simply use the word device and simply add in some language starting on line 24 in subsection 29 or mix not to exceed one gallon in a hand held device, I think that would do it. So that you can buy this stuff at a local facility so that you could buy the stuff and put it in a hand held container and mix it yourself, cause in a original container if you have a sizeable yard that could get kind of expensive and that's my only reason for this suggestion. Cause if the law stays like this the janitor cant go out and spray.

**Sen. Behm-** I think the problem with this is a lot of people don't read the directions with the hand held, that is the only danger I see with this.

**Rep. Wald-** I guess that's a case on individual responsibilities. I hope you could amend the bill that would at least allow at least a 1 gallon hand held container

**Sen. Klein-** you like the bill, we need what we got but you'd sure like that amendment?

**Rep. Wald-** yes.

**Sen. Heckaman-** when you go to buy a container most of them are more than one gallon aren't they? Are you limiting only to one gallon?

**Rep. Wald-** I would have no problem making it up to 3 gallons.

**Sen. Wanzek-** in understand Gerald's testimony, the problem is that they don't have any other designation by default of becoming a commercial applicator. But these individuals if they're going to use a hand held device or ready to use chemical they still would have to follow some type of private applicators ruling? Why should a farmer be responsible and some one else not, these are dangerous chemicals.

**Rep. Wald-** what I'm trying to accomplish here or the department is trying to accomplish is to take care of the home owners and the small commercial-retail stores, McDonalds. To keep up the appearance of their property and to be able to take care of their own weed problems without having to hire a certified commercial applicator. I don't think we need to get in to the farm part of things cause that is thousands of acres so they have a different process.

No oppositions to the bill.

**Sen. Flakoll** asks that **Gerald Thompson** come to the podium to respond to the amendments offered up by **Rep. Wald**.

**Gerald Thompson-** I would be hesitant on using the word hand held device because all the lawn care people use a hand held device that is connected to a 300 gallon.

**Sen. Flakoll-** I think in this case it means cared totally by hand so a self contained unit that you care entirely by hand.

**Gerald Thompson-** I think if it stated one gallon or less that would be ok.

**Sen. Heckaman-** this wouldn't be a commercial this would be a private right? Commercial can already carry that, so we would be putting in a ready to use so that a private could do this, it wouldn't be in the commercial section right?

**Gerald Thompson-** I would just suggest the hand held device not be the wording that we use because that is what commercial places use. A gallon or less wording would probably be ok as far as private workers go.

**Sen. Erbele-** I see the issue as not being the hand held devices as it being able to mix it out of a concentrate, I think we could put the wording in here from its original container or a concentrate bottle, something to that effect. It's a cost effective way to buy this bottle of concentrate and mix your own chemical.

**Gerald Thompson-** I don't have a comment to that.

**Sen. Taylor-** It seems like the private applicators license, like a lot of farmers have to use cause of restricted use pesticides. Are lawn, business owners etc. needing to think about a private applicators license cause I don't know the nature of there chemicals are. Are round up and such even restricted use pesticides is there even a concern about that?

**Gerald Thompson-** they aren't restricted use pesticides, 99% of products that homeowners use are not restricted use products. We do get a lot of complaints between homeowners cause one will spray and it will get on to a neighbors property, that's a whole different issue. What we're trying to do is define weather or not using ready to use pesticides that do not use mixing. If we have a ready to use product then we know what they're using, cause with mixing they may not be mixing it correctly. We would have to see a definition.

**Sen. Wanzek-** as a farmer your required to have a private applicators license not just for restricted use only, I mean if I would use restricted use chemicals I still need a private applicators license would I not?

**Gerald Thompson-** if your only applying general use products like round up you would not need to be certified for a private applicators license.

**Sen. Wanzek-** I guess the concern I would have with the containers is that the ready to use products are mixed to manufacturer labels where the mix your self raise a red flag in my opinion which could cause for ground water contamination by using this product cause it wasn't applied correctly. And I'm still struggling with what's the difference with weather you have 100 people spraying one gallon or one farmer spraying 100 gallons it still should be used properly and mixed properly and there should be some knowledge behind it.

**Sen. Flakoll-** was there a question in there?

**Sen. Wanzek-** am I right?

**Gerald Thompson-** you are right.

**Sen. Klein-** since this is a agency bill I would like to maybe work with **Gerald** and **Rep. Wald** and see if we can come to something to understand it cause right now we're all kind of thinking what if's but if we had something really solid those guys could work with cause they're the ones that really need to apply the law, so I would volunteer to do that if that would be alright?

**Sen. Flakoll-** that will be alright.

**Sen. Flakoll** closed the hearing.



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2095

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 11, 2007

Recorder Job Number: 972

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened committee work relating to SB 2095, relating to pesticide definitions.

Discussion:

**Sen. Klein-** on SB 2095 **Rep. Wald** had a concern about mixing a container of pesticide so his friends wouldn't have to spend a lot of money. I worked with the commissioners office in trying to find some middle ground, the best I could do was I have a amendment and that's the emergency clause. It would only allow that applicators like McDonalds would be able to do the applying themselves now, **Rep. Wald's** concern was that we add a opportunity for him to mix a concentrate but we couldn't come to any good language for that. But by doing the emergency clause they would be able to start spraying weeds by June rather the having to wait until August 1. I would move the emergency clause to SB 2095.

**Sen. Klein** motioned for a Do Pass **Sen. Wanzek** seconded the motion 7 yeas, 0 nays, 0 absent. On roll call vote2 **Sen. Klein** motioned for a Do Pass as amended **Sen. Taylor** seconded the motion 7 yeas, 0 nays, 0 absent. **Sen. Behm** was designated to carry the bill to the floor.

*JH*  
1-12-7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2095

Page 1, line 2, after "definitions" insert "; and to declare an emergency"

Page 5, after line 11, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: Jan 11, 2007  
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2095

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Sen. Klein Seconded By Sen. Wanzek

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman	X		Arthur H. Behm	X	
Terry M. Wanzek-Vice Chairman	X		Joan Heckaman	X	
Robert S. Erbele	X		Ryan M. Taylor	X	
Jerry Klein	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: Jan 11, 2007  
Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2095

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number 78131.0101

Action Taken Do Pass as Amended

Motion Made By Sen. Klein Seconded By Sen. Taylor

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman	X		Arthur H. Behm	X	
Terry M. Wanzek-Vice Chairman	X		Joan Heckaman	X	
Robert S. Erbele	X		Ryan M. Taylor	X	
Jerry Klein	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Behm

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2095: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2095 was placed on the Sixth order on the calendar.**

Page 1, line 2, after "definitions" insert "; and to declare an emergency"

Page 5, after line 11, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2007 HOUSE AGRICULTURE

SB 2095

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2095

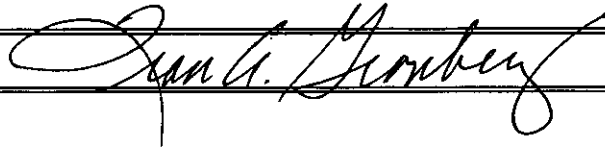
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 2-22-07

Recorder Job Number: 3662

Committee Clerk Signature



Minutes:

**Chairman Johnson** opened the hearing, the roll was taken and a quorum declared.

**Gerald Thompson**, Pesticide Coordinator for the ND Dept of Agriculture, testified in favor of the bill. (testimony attached)

**Rep Wall:** Is there a cost for the training to be certified?

**Thompson:** The certification is for three years and the cost would be about \$20 per year.

This is for employees of a company. If an owner asks an employee to apply the pesticide, they should have some training.

**Chairman Johnson:** It is a very comprehensive test. Do you think you will have a lot of employees interested in taking the test?

**Thompson:** We have a lot of these type of individuals certified now. The law we passed two sessions ago is in place and we've had a lot of people come in since then.

**Rep Froelich:** People are eradicating prairie dogs. Do they fall into any of the categories?

**Thompson:** If they are doing it on a commercial basis, they do need certification. If they are doing it privately with a general use product, they wouldn't need certification.

**Rep Froelich:** So they fall under page 3, line 26 as a pest?

**Thompson:** If you are trying to eradicate prairie dogs because they dig holes, then they become a pest.

There was no opposition to the bill.

**Chairman Johnson:** Closed the hearing on SB2095.

**Rep Onstad made a motion to do pass.**

**Rep Boe seconded the motion.**

**(Yes) 11 (No) 0 (Absent) 2**

**Carrier: Rep Onstad**



Date: 2/2/07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number SB 2095

Action Taken DP

Motion Made By Rep Onstad Seconded By Rep Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe	✓	
Vice Chair Joyce Kingsbury	✓		Rodney Froelich	✓	
Wesley Belter			Phillip Mueller	✓	
Mike Brandenburg			Kenton Onstad	✓	
Craig Headland	✓		Benjamin Vig	✓	
Brenda Heller					
John D Wall	✓				
Gerry Ugem	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep Onstad

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

SB 2095, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2095 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2095

Roger Johnson  
Agriculture Commissioner  
www.agdepartment.com



Phone (701) 328-2231  
Toll Free (800) 242-7535  
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

1.4.07

Testimony of Gerald Thompson  
Pesticide Coordinator  
North Dakota Department of Agriculture  
Senate Bill Number 2095  
Senate Agriculture Committee  
Roosevelt Park Room  
January 4, 2007

Chairman Flakoll and members of the Senate Agriculture Committee,  
I am Gerald Thompson, Pesticide Coordinator for the North Dakota  
Department of Agriculture. I am here in support of Senate Bill  
2095 which will amend and further define the definition of  
Commercial Applicator, Public Applicator and add a definition for  
"Ready-to-Use pesticide" to the North Dakota Century Code Chapter  
4-35.

In 2005, we had a pesticide complaint filed against a ND  
restaurant. During the case review phase, we discovered that the  
current definition appears to be too broad. We consulted with the  
Attorney General's office and their office agreed. The words of  
the "commercial applicator" definition that reads: "for any  
purpose or on any property" means that anyone in ND that uses a  
pesticide and is not certified as a private applicator becomes a

commercial applicator by default. This includes homeowners and anyone else that applies a pesticide.

Under Section one, subsection 6; we would like to clarify the definition of "commercial applicator" to indicate someone that is in the business of applying pesticides for hire or for compensation. The North Dakota Administrative Code 60-03-01-02.8 defines the term "compensation" as "monetary payment for a specific purpose". These are the pesticide applicators that are in the pesticide application business. Their intent is to charge people for their services. These are the applicators that we want to include in the definition as a "commercial applicator".

Under Section 1, subsection 28, we are asking to further define the term "Public Applicator". We are suggesting that employees of businesses that are making pesticide applications at these types of facilities receive some education and training about pesticides before they make applications on hospital grounds, privately held golf courses, nurseries, and greenhouses.

The EPA Worker Protection Program already designates some of these employees as high risk workers and we feel they need to be aware of proper application techniques and the health and safety issues that surround pesticide applications. If these workers are

hired to do pesticide applications as part of their job responsibilities, we feel they should be certified applicators if they are not receiving direct supervision by a certified applicator. Workers that only use "ready-to-use" pesticide products are exempt from these requirements.

Section 29 defines the term "Ready-to-Use Pesticide". This term means a pesticide that is applied directly from its original container, consistent with label directions.

Chairman Flakoll and committee members, we urge a "do pass" on Senate Bill 2095. I would be happy to answer any questions you may have.

Roger Johnson  
Agriculture Commissioner  
www.agdepartment.com

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Phone (701) 328-2231  
Toll Free (800) 242-7535  
Fax (701) 328-4567

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600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

Testimony of Gerald Thompson  
Pesticide Coordinator  
North Dakota Department of Agriculture  
Senate Bill Number 2095  
House Agriculture Committee  
Peace Garden Room  
January 4, 2007

Chairman Johnson and members of the House Agriculture Committee,  
I am Gerald Thompson, Pesticide Coordinator for the North Dakota  
Department of Agriculture. I am here in support of Senate Bill  
2095 which will amend and further clarify the definition of  
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current definition appears to be too broad. We consulted with the  
Attorney General's office and their office agreed. The words of  
the "commercial applicator" definition that reads: "for any  
purpose or on any property" means that anyone in ND that uses a  
pesticide and is not certified as a private applicator becomes a

commercial applicator by default. This includes homeowners and anyone else that applies a pesticide. We do not want to include homeowners into a group that must be certified to purchase and apply a small amount of pesticides per year

Under Section one, subsection 6; we would like to clarify the definition of "commercial applicator" to indicate someone that is in the business of applying pesticides for hire or for compensation. The North Dakota Administrative Code 60-03-01-02.8 defines the term "compensation" as "monetary payment for a specific purpose". These are the pesticide applicators that are in the pesticide application business. Their intent is to charge people for their services. These are the applicators that we want to include in the definition as a "commercial applicator".

Under Section 1, subsection 28, we are asking to further define the term "Public Applicator". We are suggesting that employees of public entities that are making pesticide applications receive some education and training about pesticides before they make applications onto hospital grounds, privately held golf courses, nurseries, and greenhouses. These are the applicators that make applications on areas that many people frequent.



The EPA Worker Protection Program already designates some of these employees as high risk workers and we feel they need to be aware of proper application techniques and the health and safety issues that surround pesticide applications. If these workers are hired to do pesticide applications as part of their job responsibilities, we feel they should be certified applicators if they are not receiving direct supervision by a certified applicator. Workers that only use "ready-to-use" pesticide products are exempt from these requirements.

Section 29 defines the term "Ready-to-Use Pesticide". This term means a pesticide that is applied directly from its original container, consistent with label directions. For workers that use ornamental and turf pesticide products, the primary risk to the user is through exposure to the concentrated pesticide formulations when people are measuring and mixing these products. These "Ready to Use" products are already mixed by the pesticide manufacturer and present a reduced risk of exposure. That is why we have excluded these products from the certification requirements.

Chairman Johnson and committee members, we urge a "do pass" on Senate Bill 2095. I would be happy to answer any questions you may have.