

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2139

2007 SENATE AGRICULTURE

SB 2139

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2139

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1343

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened the hearing on SB 2139, relating to require the legislative council to study laws relating to agriculture. All members (7) were present.

**Sen. Flakoll**, from district 44, spoke in favor of the bill. See attached testimony.

**Sen. Wanzek**- so what you are saying is that this bill is not meant to address and create big and clean up the language by providing a more easy to follow law?

**Sen. Flakoll**- yes it does help in that effect.

**Anita Thomas**, legal counsel at legislative counsel, testified in favor of the bill.

**Anita Thomas**- what happens in a title rewrite is that everything gets put on the table and the roll of the committee is not to rewrite and second guess questions, but to ask if it is still relevant to how business is conducted today. Is it clear, does it tell those administering the law what they must do and how they must do it. Title 4 is the main Ag title, we also have animal and livestock laws on 36 and so on. You have the opportunity to make the agriculture title have a much clearer, much more precise, much better reorganized statement of the law.

**Sen. Taylor**- how do you make the law if that really belongs in agriculture or the health department and you wouldn't duplicate it in both I wouldn't think, but there is still going to be some haggling on for what goes were?

**Anita Thomas-** your talking about a rewrite?

**Sen. Taylor-** yes.

**Anita Thomas-** what would happen on the rewrite I would point out to the committee that this would be a new step, and then the committee would take testimony, talk about weather or not it should be in one place or the other, what the advantages and disadvantages are. The interim committee is very involved in all the decisions and all of the placements and that stuff that we deal with on the rewrite.

**Ken Junkert,** testified on behalf of Roger Johnson in favor of the bill. See attached testimony.

**Sen. Behm-** are they going to remove any laws for dairy?

**Ken Junkert-** I would leave that up to legislator, I know there has been a lot of attention paid to dairy laws starting from 1993.

**Wade Moser,** ND stockmens association testified in favor of the bill.

**Wade Moser-** I think we are in favor of this bill we just have some questions on a few things to get some clarification.

**Sandy Clark,** ND farm bureau testified in favor of the bill.

**Sandy Clark-** just wanted the committee to know that we are in support of this bill

No oppositions to the bill.

**Sen. Flakoll** closed the hearing.

**Sen. Wanzek** motioned for a Do Pass, Sen. Klein seconded the motion. **Sen. Flakoll** was designated to carry the bill to the floor. 7 yeas, 0 nays, 0 absent.

Date: Jan 18, 2007  
 Roll Call Vote #: 1

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2139**

Senate Agriculture Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Wanzek Seconded By Klein

| 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   |    |                |     |    |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Flakoll

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

**REPORT OF STANDING COMMITTEE**

**SB 2139: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS**  
**(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2139 was placed on the**  
**Eleventh order on the calendar.**

2007 HOUSE AGRICULTURE

SB 2139

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No SB 2139

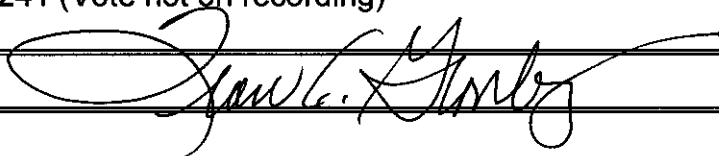
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-2-07

Recorder Job Number: 4241 (Vote not on recording)

Committee Clerk Signature



Minutes:

**Chairman Johnson** opened the hearing on SB 2139

**Senator Tim Flakoll, Dist 44, Chair, Senate Ag Committee:** (testimony attached)

**Rep Belter:** Did you say that you repealed the chicken branding law? Why not the horse branding law too?

**Flakoll:** We're working on that.

**Anita Thomas, Legislative Council Staff:** We need to go through and decide what is still needed or what still fits. It is a chance to organize items and put them in a reasonable order. We can decide relevance, whether it is duplicative, clear, etc. We can give due notice to citizens. This would be similar to the Education study. That took 2 sessions.

**Rep Belter:** Couldn't the rewrite be the responsibility of the ND Commissioner of Ag?

**Thomas:** For a rewrite everything goes on the table. It is an incredible amount of work.

**Rep Mueller:** Is there a lot of time and staff involved for the Ag rewrite?

**Thomas:** It is every bit as bit as the education rewrite. It involved 10 meetings and a lot of staff time. We do not have time to do it during the Legislative session.

**Rep Brandenburg:** I helped with the education rewrite. It took a lot of time and work. But maybe this is something that needs to be done.



**Jeff Weispfenning, Department of Ag, (testimony attached)**

There was no opposition

**Chairman Johnson** closed the hearing.

**Rep Kingsbury** moved a Do Pass motion

**Rep Heller** seconded the motion

**(Yes) 10 (No) 3 (Absent) 0**

**Carrier: Rep Headland**

Date: 3/2/07  
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 2139

Action Taken Do Pass

Motion Made By Rep Kingsbury Seconded By Rep Heller

| 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 Uglen                | ✓   |    |                 |     |    |
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Total (Yes) 10 No 3

Absent 0

Floor Assignment Rep Kingsbury

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

**REPORT OF STANDING COMMITTEE**

**SB 2139: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO PASS**  
(10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2139 was placed on the  
Fourteenth order on the calendar.

2007 TESTIMONY

SB 2139

**SB 2139**  
**Senator Tim Flakoll**

**Chairman Wanzek and members of the Senate Agriculture committee. For the record I am Senator Tim Flakoll from District 44.**

**SB 2139 is a simple to read bill that can help to mitigate future problems for this committee, Legislative Council, the Agriculture Commissioner's office, State Seed Department and a laundry list of benefactors.**

**It is essentially a technical rewrite that requires the Legislative Council to assign a committee to study the laws related to Agriculture during the upcoming interim.**

**Please note that this is bill not a resolution and the bill uses the language "shall study" so if the bill is passed intact it will be a required study. For those not familiar with the interim study process if a resolution has the wording "shall consider studying" or "shall study" our fellow Legislators who are elected to serve on the Legislative Council have the option to study the issue or to not study it.**

**When a bill has the wording “shall study” it means that the Legislative Council does not have the option, they must study the issue(s).**

**The full execution of this bill will require the interim committee, in conjunction with legal counsel from the Legislative Council (likely Anita Thomas) to work on the issues contained in the bill.**

**It will require us to make recommendations for a bill draft for the 2009 session that will result in the elimination of provisions that are irrelevant or duplicative, to clarify provisions that are inconsistent or unclear in their intent and direction and to have them all pulled together in a logical manner in Section 4 of the Code book.**

**It might be helpful here to give you examples of the problem. Next week we will hear a number of bills in this committee many of them over numerous sections rather than just having them all collected in one Section that is specifically intended for agriculture.**

**Examples:**

**SB 2288 – covers sections of chapter: 4, 6, 39 and 57**

**SB 2323 – deals with chapter 19**

**SB 2247 – deals with chapter 60**

**SB 2277 – deals with chapter 28**

**SB 2278 – deals with chapters 11, 23 and 58**

**SB 2285 – deals with chapter 35**

**So you can see the magnitude of the problem.**

**Relate that to what we do in Education my other committee. Everything we deal with in our Education committee can be found in Chapter 15 of the law so you only need to grab one book to read about all education laws of our state.**

**Clarity of our laws is important in how the courts interpret the laws of this state (see example).**

**SB 2139 is not intended to make any “changes” to existing law. It is not and I repeat not the big truck backed up where everyone who has an interest in agriculture gets a chance to throw in items from their wish lists.**

**That concludes my testimony. I would be happy to stand for any questions.**



North Dakota Supreme Court Calendar ◀▲□/?

State v. Zahn - Appellant Brief

IN THE SUPREME COURT

IN THE STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA

SUPREME COURT NO. 20060045,

20060046 & 20060047

APPELLEE, DISTRICT COURT NO. 04-K-00162,

05-K-00142 & 05-K-0033

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-V-

WAYN ZAHN,  
APPELLANT.

Appeal from the District Court, Southeast Judicial District, Dickey  
County, North Dakota

The Honorable John Greenwood Presiding

BRIEF FOR APPELLANT

NEMEC LAW OFFICE  
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Bar Id No. 06155

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| As a matter of law an application for an order of protection must be served with a copy of the order prior to prosecution for alleged violations thereof, as such the conviction of judgment should be reversed because the defendant was never served with a copy of the application. |       |
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STATEMENT OF ISSUES

I. WHETHER THE EVIDENCE SUPPORTS JUDGMENT OF CONVICTION UPON VIOLATION OF A PROTECTION ORDER WHEN THE STATE FAILED TO PROVE THAT THE DEFENDANT WAS SERVED A COPY OF THE APPLICATION FOR THE TEMPORARY ORDER OF PROTECTION ALONG

## WITH SERVICE OF THE ORDER?

## II. WHETHER THE EVIDENCE VIEWED IN A LIGHT MOST FAVORABLE TO THE VERDICT SUPPORTS A JUDGMENT OF CONVICTION ON THE CHARGE OF RECKLESS ENDANGERMENT?

## STATEMENT OF THE CASE

This is an appeal taken from Judgment of Conviction January 31, 2006, arising out of a criminal action filed against Wayne Zahn, defendant, in District Court, Dickey County, North Dakota. Appendix p. 31. Wayne Zahn was convicted upon the following charges and sentenced as follows:

On the charge of Reckless Endangerment in Violation of NDCC Section 12.1-17-03 a Class C Felony, to five (5) with the Department of Corrections (DOC), with credit for 369 days served; and to pay court administrative fees of \$400.00, an I.D./Facility improvement fee of \$100.00, and victim witness fee for the benefit of the Keddish House in the amount of \$25.00. Appendix p. 28-29.

On the charge of Violation of a Protection Order in violation NDCC Section 14-07.1-06, a Class A Misdemeanor, one (1) year with the DOC, to be served concurrently with the sentence upon the Reckless Endangerment; and to pay a victim witness fee for the benefit of the Keddish House in the amount of \$25.00. Appendix p. 29.

On Count I of the charge of Violation of a Protection Order in violation NDCC Section 14-07.1-06, a Class C Felony, to five (5) years with the DOC, with two (2) years suspended, to be served consecutively with the sentence upon Reckless Endangerment; supervised probation for the balance of the suspended sentence; and to pay court administrative fees of \$400.00, an I.D./Facility improvement fee of \$100.00, and victim witness fee for the benefit of the Keddish House in the amount of \$25.00. Appendix p. 29.

On Count II the charge of Violation of a Protection Order in violation NDCC Section 14-07.1-06, a Class C Felony, to five (5) years with the DOC, with five (5) years suspended, to be served concurrently with the sentence upon Reckless Endangerment; supervised probation for the balance of the suspended sentence; and to pay court administrative fees of \$400.00, an I.D./Facility improvement fee of \$100.00, and victim witness fee for the benefit of the Keddish House in the amount of \$25.00. Appendix p. 29.

On Count III of the charge of Violation of a Protection Order in violation NDCC Section 14-07.1-06, a Class C Felony, to five (5) years with the DOC, with five (5) years suspended, to be served concurrently with the sentence upon Reckless Endangerment;

supervised probation for the balance of the suspended sentence; and to pay court administrative fees of \$400.00, an I.D./Facility improvement fee of \$100.00, and victim witness fee for the benefit of the Keddish House in the amount of \$25.00. Appendix p. 29.

On Count IV of the charge of Violation of a Protection Order in violation NDCC Section 14-07.1-06, a Class C Felony, to five (5) years with the DOC, with five (5) years suspended, to be served concurrently with the sentence upon Reckless Endangerment; supervised probation for the balance of the suspended sentence; and to pay court administrative fees of \$400.00, an I.D./Facility improvement fee of \$100.00, and victim witness fee for the benefit of the Keddish House in the amount of \$25.00. Appendix p. 29-30.

On Count V of the charge of Violation of a Protection Order in violation NDCC Section 14-07.1-06, a Class C Felony, to five (5) years with the DOC, with five (5) years suspended, to be served concurrently with the sentence upon Reckless Endangerment; supervised probation for the balance of the suspended sentence; and to pay court administrative fees of \$400.00, an I.D./Facility improvement fee of \$100.00, and victim witness fee for the benefit of the Keddish House in the amount of \$25.00. Appendix p. 30.

On Count VI of the charge of Violation of a Protection Order in violation NDCC Section 14-07.1-06, a Class C Felony, to five (5) years with the DOC, with five (5) years suspended, to be served concurrently with the sentence upon Reckless Endangerment; supervised probation for the balance of the suspended sentence; and to pay court administrative fees of \$400.00, an I.D./Facility improvement fee of \$100.00, and victim witness fee for the benefit of the Keddish House in the amount of \$25.00. Appendix p. 30.

On February 19, 2006, Wayne Zahn appealed his conviction. Appendix p. 31. Wayne Zahn was appointed counsel, Russell J. Myhre to represent him on this appeal. September, 11, 2006, TaLisa A. Nemecek upon leave of this Court, entered appearance on behalf of Zahn in substitution of Myhre with leave to file a substitute brief and appendix. Supreme Court docket No. 26.

Wayne Zahn, on the appeal filed herein challenges the sufficiency of the evidence in light of the verdict. Wayne Zahn contends that while numerous issues substantially affected his right to a fair trial the record has not been fully developed through post conviction proceedings or through habeas corpus proceedings to ensure a meaningful review of those issues. As such the issues set forth on this direct appeal are limited in scope, reserving all other issues for consideration on a collateral challenge in order to fully develop the issues to ensure meaningful redress.

#### STATEMENT OF FACTS

The facts relevant to the first issue set forth herein are as follows. On September 14, 2004 Judge Goodman, the Presiding Judge in Dickey County issued an Ex Parte Temporary Protection Order (TPO) against Wayne Zahn based on petition filed by Doug Zahn, Wayne Zahn's brother. Appendix p. 17-21. On September 18, 2004 Wayne Zahn was served a copy of the TPO. Transcript p. 219. The Temporary Protection Order was not served with a copy of the Application. Transcript. p. 219-220. On October 5, 2006, a copy of an Amended Temporary Protection Order (Amended TPO) issued by Judge Goodman, was served upon Wayne Zahn by law enforcement. Transcript p. 186-187. This Amended TPO restricted Wayne Zahn by increasing the number of feet in which Wayne Zahn was previously ordered to stay away from Doug and specifically referenced a parcel of pastureland owned by Doug Zahn not referenced in the initial TPO. Appendix p. 22-27. The Amended TPO was not served with a copy of the Application. Transcript p. 186-187. Between December, 2004 and January, 2005, Wayne Zahn made several telephone calls to the residence of Doug Zahn in violation of the Amended TPO as alleged in the complaints against him. Appendix p. 7-9.

The facts relevant to the issue set forth in the second issue are as follows. Wayne and Doug Zahn, brothers, have been on the "outs" with each other for years, and that after years of feuding upon the crest of their latest tiff, Doug drafted and signed a Complaint that set this case in motion. Transcript p. 246; Appendix p. 6. On the Complaint filed by Doug, Doug alleged that Wayne Zahn committed the act of Reckless Endangerment in violation of §12.1-17-03, by firing a rifle in his immediate direction. Appendix p. 6. Judge Goodman, on the Complaint, without any other supporting evidence executed a Warrant for the Arrest of Wayne Zahn, with a cash bond set at \$10,000.00. Appendix p. 16.

The State's case in chief was upon the testimony of Doug Zahn. Transcript. p. 243. Doug Zahn alleged that his brother fired a weapon at him in the month of June. Transcript p. 252-255. However, he did not see his brother fire a weapon. Transcript p. 253-255. He did not see a weapon. Transcript p. 253-255. He testified that he heard a whistle noise over head, and then rifle rapport. Transcript p. 253-255. He testified that when he heard these sounds his brother Wayne Zahn was in his pick up with Ellen Harrison approximately 200 yards away from him, and that he saw them drive away after the noise. Transcript p. 253-255. Doug Zahn never cited this alleged June gun shot incident in his August Petition for a TOP or the Amended Petition for a TOP. Appendix p. 17-27. The only witness to the alleged gun firing incident was Doug Zahn, and he didn't even see a thing. Transcript p. 252-255.

#### ARGUMENT

The defendant, Wayne Zahn timely appealed the final judgment of conviction arising out of the district court. N.D.R.Crim.P. 37(b); N.D.R.App.P. 4(b). The district court had jurisdiction under N.D.C.C. § 27-05-06. This Court has appellate jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. § 29-28-06(1),(2)&(4). The defendant, Wayne Zahn appeals from a final judgment of conviction as a matter of right pursuant to N.D.C.C. § 29-28-03 and N.D.C.C. § 29-28-06.

I.

As a matter of law, prior to imposing criminal penalties for alleged acts in violation of an Order for Protection, the individual whom the Order of Protection is directed must first be served with a copy of the Application filed by the petitioner as well as the Order granting the protection sought.

Section 14-07.1-03 of the North Dakota Century Code sets forth the requirements relating to service of a Temporary Order of Protection (TOP). Section 14-07.1-03 provides:

1. If an application under section 14-07.1-02 alleges an immediate and present danger of domestic violence to the applicant, based upon an allegation of a recent incident of actual domestic violence, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
3. Unless otherwise terminated by the court, an ex parte temporary protection order remains in effect until an order issued under section 14-07.1-02 is served.
4. A full hearing as provided by section 14-07.1-02 must be set for not later than fourteen days from the issuance of the temporary order. The respondent must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.

N.D.C.C. § 14-07.1-03(1),(3)&(4)(emphasis added).

The language contained in § 14-07.1-03 unambiguously mandates service of a copy of the Application for an Order of Protection along with the Order of Protection. Wayne Zahn asserts that as a matter of law it must be strictly adhered to in order to establish the proof of "service" required under Section 14-07.1-06 prior to the imposition of the criminal penalties pursuant to Section 14-07.1-06. Section 14-07.1-06 sets forth limitations on imposing criminal liability for violations of orders of protection granted under Sections 14-07.1-02 or 14-07.1-03 of this chapter, it provides:

Whenever a protection order is granted under section 14-07.1-02 or

14-07.1-03 and the respondent or individual to be restrained has been served a copy of the order, the first violation of any order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of any protection order is a class C felony. For purposes of this section, "first violation" means the first time any order is violated and a second or subsequent violation of any protection order includes two or more violations of protection orders.

N.D.C.C. §14-07.1-06 (emphasis added).

In order to give meaning to the phrase, "along with a copy of the application" contained in Section 14-07.1-03, construction of the language in Section 14-07.1-06 requires an interpretation of the phrase "has been served a copy of the order" to mean service in compliance with 14-07.1-03. A contrary construction would render the phrase "along with a copy of the application" in Section 14-07.1-03 mere surplusage.

Construction of a criminal statute is a question of law, fully reviewable by this Court. Our primary goal in interpreting statutes is to ascertain the Legislature's intentions. In ascertaining legislative intent, we first look to the statutory language and give the language its plain, ordinary and commonly understood meaning. We interpret statutes to give meaning and effect to every word, phrase, and sentence, and do not adopt a construction which would render part of the statute mere surplusage. When a statute's language is ambiguous because it is susceptible to differing but rational meanings, we may consider extrinsic aids, including legislative history, along with the language of the statute, to ascertain the Legislature's intent. We construe ambiguous criminal statutes against the government and in favor of the defendant.

State v. Laib, 2002 ND 95, ¶ 13, 644 N.W.2d 878 (citations omitted).

Section 14-07.1-03(4) unambiguously requires service of "a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing. N.D.C.C. § 14-07.1-03(4)(emphasis added).

The language contained in Section 14-07.1-06 is ambiguous with respect to the service requirements when read in conjunction with N.D.C.C. § 14-07.1-03(4). While § 14-07.1-06 does not specifically require service of the order in compliance with § 14-07.1-03(4), a construction to that end fails to give any meaning to the language contained in § 14-07.1-03(4) with respect to service of the Application, a construction to that end would make mere surplusage of the Legislature's chosen words.

Also, in support of a construction requiring service of the Application along with the Order, in this case, service of process is an element or prerequisite to imposing criminal sanctions thereunder, a burden of proof on the State. The burden to be borne by the State in proving the elements of this offense requires proof that a protection order was granted under section 14-07.1-02 or 14-07.1-03; that the individual to be restrained was served a copy of the order; and that the individual violated a provision of the order. § 14-07.1-06

The service mechanism under this chapter is the manner in which an individual is notified that "laws" have been implemented by way of an order directed at the individual and that the individual is required to comply therewith. The Application for an Order of Protection sets forth the specific allegations made by the applicant and provides the individual whom the Order is directed against with the underlying history or background giving rise to the Order. The defendant asserts that the Application is really the legislative history behind the law imposed by way of the Order and is an essential part thereof. As such, the service of process requirements under N.D.C.C. § 14-07.1-03(4) must be strictly adhered to in order to establish the proof of service required under Section 14-07.1-06 of the North Dakota Century Code.

Because un-contradicted evidence at trial established that the Application was not served, there is no factual dispute. In applying a construction requiring compliance with the service requirements under N.D.C.C. § 14-07.1-03(4), mandating service of a copy of the Application in conjunction with the Order, a finding that the evidence is insufficient to support the verdict is warranted. State v. Raulston, 475 N.W.2d 127, 128 (N.D. 1991)(To successfully challenge the sufficiency of the evidence on appeal, a defendant must convince us that the evidence, when viewed in the light most favorable to the verdict, permits no reasonable inference of guilt."); State v. Schill, 406 N.W.2d 660 at 660 (N.D. 1987)(A verdict for conviction "rests upon insufficient evidence only when no rational fact finder could have found the defendant guilty beyond a reasonable doubt")

Wayne Zahn was not served with a copy the Application. Accordingly, the process did not comply with law. While Wayne Zahn does not deny service of the amended TPO, service of the Application was not made upon him as required under N.D.C.C. § 14-07.1-03(4). Because Section 14-07.1-03(4) requires service of the Application along with an Order of Protection, and because service is an essential requirement of the proof necessary prior to the imposition of criminal liability pursuant to 14-07.1-06, and because the State failed to establish that a copy of the Application had in fact been served with the Order, the District Court's Judgment of Conviction should be reversed.

## II.

The evidence is insufficient to sustain the conviction against the defendant on the charge of Reckless Endangerment. Wayne Zahn asserts that "no rational fact finder could have found [him] guilty beyond a reasonable doubt." State v. Schill, 406 N.W.2d 660 at 660 (N.D. 1987).

The evidence produced in this case establishes that Wayne and Doug Zahn, brothers, have been on the "outs" with each other for years. Transcript p. 246. That after years of feuding and on the crest of their latest tiff, Doug drafted and signed the Complaint that set this case in motion. Transcript p. 252-255 Doug Zahn was the sole complainant on the Complaint filed against Wayne Zahn. Appendix p. 6. On the Complaint filed by Doug, Doug alleged that Wayne Zahn committed the act of Reckless Endangerment in violation of §12.1-17-03, a Class C Felony by firing a rifle in his immediate direction. On the Complaint alone, Judge Goodman issued a Warrant for the Arrest of Wayne Zahn, with a cash bond set at \$10,000.00. Appendix p. 16.

While contradicting testimony is par for the course at trial, the fact that the victim, Doug Zahn, was the sole complainant and that he filed the Complaint over two months after the alleged incident occurred. Appendix p. 6. Additionally, the fact that prior to filing the Complaint alleging Reckless Endangerment, Doug Zahn petitioned for a TOP, in which he failed to include any mention of his allegation regarding the alleged gun shot incident two months earlier. Appendix p. 17-21.

It is significant that Doug Zahn alleged that his brother fired a weapon at him in the month of June, yet his Application for an Order of Protection filed in August did not include this factor at all. It is highly suspect that an individual seeking an Order of Protection would forget the inclusion or intentionally exclude facts involving the use of a firearm by the respondent against the petitioner.

Doug Zahn testified that he heard what he described to be a gun shot. He did not see a rifle, nor did he see Wayne Zahn or Ellen Harrison point a firearm in his direction. Transcript p. 252-255. He heard a whistle and what he thought to be gun rapport, that is all. Transcript p. 252-255. At the time he alleged this to have occurred Wayne and Ellen were at an Auction Sale.

These factors give rise to substantial doubt in light of the evidence as a whole. Even when viewed in a light most favorable to the verdict, no rational fact finder could have rendered a verdict against Wayne Zahn on these facts, thus the verdict should be reversed. State v. Bastien, 436 N.W.2d 229 (N.D. 1989); State v. Voeller, 356 N.W.2d 115, 117 (N.D. 1984).



### CONCLUSION

The Judgment of Conviction against Wayne Zahn must be reversed because the evidence was insufficient to support the verdict on the charge(s) of Violating a Protection Order as no copy of the Application for the TOP was served with the TOP. The Verdict against Wayne Zahn on the charge of Reckless Endangerment should be reversed because the evidence presented is clearly insufficient to support the verdict.

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Roger Johnson  
Agriculture Commissioner  
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Bismarck, ND 58505-0020

**Testimony of  
Agriculture Commissioner Roger Johnson  
SB2139  
Senate Agriculture Committee  
Roosevelt Park Room  
January 18, 2006  
9:00 AM**

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Chairman Flakoll and members of the Senate Agriculture Committee. I am here to testify in support of SB2139, which would provide a comprehensive review of North Dakota state law related to agriculture.

Most of the agricultural statutes have been amended and amended again over time. Unfortunately these changes are often done under the pressures of legislative deadlines, and, because of these pressures, the changes are not necessarily made in the context of the entire chapter of the Century Code in which the changes are being made. The result is sometimes conflicting or confusing language.

To the best of my knowledge, the only section of agricultural code that has received a comprehensive review in recent sessions is the dairy law, North Dakota Century Code

Chapter 4-30, which was rewritten by Agriculture Department staff with the changes presented to the 1993 Legislature for approval.

I believe such a study is overdue, and it would provide a much-needed, thorough review and simplification of the existing law. I support this legislation, and my staff is ready to assist you in any way that you determine. Thank you; are there any questions?

Roger Johnson  
Agriculture Commissioner  
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600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

**Testimony of  
Agriculture Commissioner Roger Johnson  
SB2139  
House Agriculture Committee  
Peace Garden Room  
March 2, 2007**

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Chairman Johnson and members of the House Agriculture Committee. I am here to testify in support of SB2139, which would provide a comprehensive review of North Dakota state law related to agriculture.

Most of the agricultural statutes have been amended and amended again over time. Unfortunately these changes are often done under the pressures of legislative deadlines, and, because of these pressures, the changes are not necessarily made in the context of the entire chapter of the Century Code in which the changes are being made. The result is sometimes conflicting or confusing language.

To the best of my knowledge, the only section of agricultural code relating to our agency that has received a comprehensive review in recent sessions is the dairy law, North Dakota Century Code Chapter 4-30, which was rewritten by Agriculture Department staff with the changes presented to the 1993 Legislature for approval.

I believe such a study is overdue, and it would provide a much-needed, thorough review and simplification of the existing law. I support this legislation, and my staff is ready to assist you in any way that you determine. Thank you; are there any questions?

|   |                      |
|---|----------------------|
| <u>4-27</u> Dairy Promotion Commission          | <u>Wayne Carlson</u> |
| <u>4-28</u> North Dakota State Wheat Commission | <u>Sara Wagner</u>   |
| <u>4-30</u> Dairy Products Regulations          | <u>Wayne Carlson</u> |
| <u>4-32</u> Interstate Pest Control Compact     | <u>Dave Nelson</u>   |
| <u>4-33</u> Plant Pests                         | <u>Dave Nelson</u>   |
| <u>4-35</u> Pesticide Act                       | <u>Jeff Olson</u>    |
| <u>4-35.1</u> Chemigation Regulation            | <u>Jeff Olson</u>    |
| <u>4-37</u> Agriculture In The Classroom        | <u>Ken Junkert</u>   |
| <u>4-38</u> Organic Foods Standards             | <u>Ken Junkert</u>   |
| <u>4-39</u> Cultivated Ginseng                  | <u>Dave Nelson</u>   |
| <u>4-40</u> Crop Protection Products            | <u>Jim Gray</u>      |
| <u>4-41</u> Industrial Hemp                     | <u>John Leppert</u>  |

## Title 6 Banks &amp; Banking

|   |                        |
|---|------------------------|
| <u>6-09.10</u> Assistance for Financially Distressed Farmers & Small Business Persons | <u>Tom Silbernagel</u> |
|---|------------------------|

## Title 19 Food, Drugs, Oils &amp; Compounds

|  |                     |
|--|---------------------|
| <u>19-13.1</u> North Dakota Commercial Feed Law      | <u>Garry Wagner</u> |
| <u>19-14</u> Livestock Medicines                     | <u>Garry Wagner</u> |
| <u>19-18</u> Insecticides, Fungicides & Rodenticides | <u>Jim Gray</u>     |
| <u>19-20.1</u> Fertilizer & Soil Conditioner Law     | <u>Garry Wagner</u> |
| <u>19-20.2</u> Anhydrous Ammonia Facilities          | <u>Garry Wagner</u> |

## Title 36 Livestock

|   |                      |
|---|----------------------|
| <u>36-01</u> State Board of Animal Health | <u>Susan Keller</u>  |
| <u>36-04</u> Livestock Dealers            | <u>Wayne Carlson</u> |
| <u>36-05</u> Livestock Auction Markets    | <u>Wayne Carlson</u> |

|  |                              |
|--|------------------------------|
| <u>36-05.1</u> Satellite Video Livestock Auction Markets | <u>Wayne Carlson</u>         |
| <u>36-07</u> Rendering Plants                            | <u>Susan Keller</u>          |
| <u>36-14</u> Contagious & Infectious diseases General    | <u>Susan Keller</u>          |
| <u>36-14.1</u> Hog Cholera                               | <u>Susan Keller</u>          |
| <u>36-15</u> Bovine Tuberculosis & Brucellosis           | <u>Susan Keller</u>          |
| <u>36-21</u> General provisions                          | <u>Susan Keller</u>          |
| <u>36-21.1</u> Humane Treatment of Animals               | <u>Susan Keller</u>          |
| <u>36-22</u> Estray Inspection                           | <u>Susan Keller</u>          |
| <u>36-24</u> Meat Inspection                             | <u>Andrea Grondahl</u>       |
| <u>36-25</u> Farmed Elk                                  | <u>Susan Keller</u>          |
| Title 61 Waters  |                              |
| <u>61-31</u> Waterbank Program                           | <u>Judy Carlson</u>          |
| Title 63 Weeds   |                              |
| <u>63-1.1</u> Noxious Weed Control                       | <u>Rachel Seifert-Spilde</u> |

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**SB 2139**  
**Senator Tim Flakoll**

Chairman Johnson and committee members, for the record I am Senator Tim Flakoll from District 44. I have served as Chair of the Senate Agriculture committee for the past three sessions and it is in that role that I came to realize the need for this bill.

SB 2139 is a simple to read bill that can help to mitigate future problems for this committee, Legislative Council, the Agriculture Commissioner's office, State Seed Department and a laundry list of benefactors. Clarity of our laws is also very important in how the courts interpret the laws of this state

The bill is essentially a technical rewrite that requires the Legislative Council to assign a committee to study the laws related to Agriculture during the upcoming interim.

Please note that this is bill not a resolution and the bill uses the language "shall study" so if the bill is passed intact it will be a required study. For those not familiar with the interim study process if a resolution has the wording "shall consider studying" or "shall study" our fellow Legislators who are elected to serve on the Legislative Council have the option to study the issue or to not study it.

When a bill has the wording "shall study" it means that the Legislative Council does not have the option, they must study the issue(s). I hope you agree that the importance of agriculture in this state merits the full force of our intentions to clean up, study issues and to provide greater clarity on issues surrounding agriculture.

The full execution of this bill will require the interim committee, in conjunction with legal counsel from the Legislative Council, likely Anita Thomas who will testify after me to work on the issues contained in the bill.

It will require us to make recommendations for a bill draft for the 2009 session that will result in the elimination of provisions that are irrelevant or duplicative, to clarify provisions that are inconsistent or unclear in their intent and direction and to have them all pulled together in a logical manner as appropriate in Section 4 of the Code book.

It might be helpful here to give you one example of a symptom of the magnitude of the problem. During a one week period, the Senate Agriculture committee heard five bills in our committee that were spread across eleven Titles rather than just having them all collected in Title 4.

Those agriculture bills on that single week were found in Titles: 4, 6, 11, 19, 23, 28, 35, 39 and 57, 58 and 60

During testimony we also learned that the last rewrite of any kind in the agriculture section was 50 years ago in 1957 (before I was born) when a section of dairy law was rewritten. That was at a time when many people milked cows by hand and a 40 horsepower tractor was the norm.

That is probably why we had a bill last session to repeal the chicken branding law that was on the books.

Relate that to what we do in Education, the other committee that I serve on. Everything we deal with in our Education committee can be found in Title 15 of the law so you only need to grab one book to read about all education laws of our state.

SB 2139 is not intended to make any "changes" to existing law. It is not and I repeat not the BIG TRUCK backed up where everyone who has an interest in agriculture gets a chance to throw in items from their wish lists.

With your support we will be able to get a much clearer, more concise, and better organized restatement of the law. Mr. Chairman that concludes my testimony and I would be happy to stand for any questions you may have.



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## AGENCY OVERVIEW

00602 DEPARTMENT OF AGRICULTURE

Version 2007B0100602

Page 1 of 5

Date: 3/1/2007

Time: 16:38:23

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## AGENCY STATUTORY AUTHORITY

North Dakota Century Code Chapters 4-01, 4-05.1, 4-09, 4-10.1, 4-10.2, 4-10.3, 4-10.4, 4-10.5, 4-10.6, 4-10.7, 4-12.1, 4-12.2, 4-13.1, 4-13.2, 4-14, 4-14.1, 4-14.2, 4-21.1, 4-27, 4-28, 4-30, 4-32, 4-33, 4-35, 4-35.1, 4-37, 4-38, 4-40, 4-41, 19-13.1, 19-14, 19-18, 19-20.1, 19-20.2, 36-01, 36-04, 36-05, 36-05.1, 36-07, 36-14, 36-14.1, 36-15, 36-21.1, 36-24, and 63-01.1.

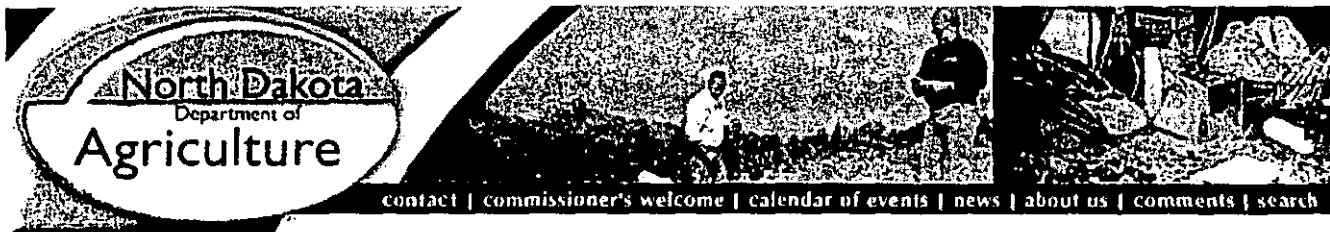
## AGENCY DESCRIPTION

A constitutional office, the agriculture commissioner is charged with a wide range of responsibilities, including regulatory duties and the dissemination of information concerning agriculture to the governor, the Legislature and the public. The agriculture commissioner is a leader in formulating policies affecting the direction of agriculture in the state and is an advocate for farmers' needs and interests at the state and national levels. Responsibilities defined in Century Code include serving on numerous boards and commissions, most notably the State Industrial Commission and the Tax Equalization Board; promoting improved marketing conditions for North Dakota agricultural products; promoting turkey and turkey products through an assessment on turkeys; regulating dairy and poultry products; licensing livestock auction markets and livestock dealers; protecting the health of domestic animals through prevention, control and eradication of dangerous, contagious and infectious diseases; licensing and inspecting rendering plants; cooperating with the U.S. Department of Agriculture to reduce wildlife damage to property; administering the dairy pollution prevention program; enforcing state laws regarding humane treatment of animals; directing the agricultural mediation program; administering the noxious weed law; controlling bee diseases and licensing beekeepers; developing, supervising and participating in programs to protect plants from insects and disease; inspecting and licensing nurseries and certifying nursery stock; administering and enforcing state pesticide laws; developing, supervising and participating in programs to protect the environment from pesticide contamination; administering the state waterbank program; registering, licensing, inspecting and analyzing commercial feeds, fertilizers, livestock medicines and pesticides to ensure the validity of claims made for these products; licensing anhydrous ammonia storage facilities and enforcing safety standards for the storage and handling of anhydrous ammonia; and administering Project Safe Send.

## AGENCY MISSION STATEMENT

The North Dakota Department of Agriculture fosters the long-term wellbeing of North Dakota by promoting a healthy economic, environmental and social climate for agriculture and the rural community through leadership, advocacy, education, regulation and other services. To carry out its mandate, the Department of Agriculture is committed to the following responsibilities:

- Serving as an advocate for family farmers and ranchers and for rural North Dakota
- Providing services that ensure safe, high quality and marketable agricultural products



marketing  
ag mediation service  
board of animal health  
animal import permits  
livestock industries  
plant industries  
pesticides

laws  
forms  
services  
employment  
publications  
agricultural links

## ND Dept of Agriculture Century Code

| ND Century Code/Name  | Person Responsible       |
|---|--------------------------|
| Title 4 Agriculture   |                          |
| <u>4-01</u> Commissioner of Agriculture                                 | <u>Roger Johnson</u>     |
| <u>4-02.1</u> State Fair Association                                    | <u>Chuck Fleming</u>     |
| <u>4-05.1</u> Agricultural Experiment Station and Agricultural Research | <u>Jeff Weispfenning</u> |
| <u>4-09</u> State Seed Department                                       | <u>Jeff Weispfenning</u> |
| <u>4-09-20.2</u> Seed Arbitration Board                                 | <u>Tom Silbernagel</u>   |
| <u>4-10.1</u> Potato Industry Promotion                                 | <u>Chuck Fleming</u>     |
| <u>4-10.2</u> Oilseed Industry Promotion                                | <u>Sara Wagner</u>       |
| <u>4-10.3</u> Edible Bean Industry Promotion                            | <u>Chuck Fleming</u>     |
| <u>4-10.4</u> Barley  | <u>Chuck Fleming</u>     |
| <u>4-10.5</u> Soybean Council   | <u>Chuck Fleming</u>     |
| <u>4-10.6</u> Corn Industry Promotion                                   | <u>Bobbi Talmadge</u>    |
| <u>4-10.7</u> Dry Pea & Lentil Council                                  | <u>Chuck Fleming</u>     |
| <u>4-12.1</u> ND Honey Promotion Act                                    | <u>Sara Wagner</u>       |
| <u>4-12.2</u> Beekeeping  | <u>Judy Carlson</u>      |
| <u>4-13.1</u> Turkey Promotion Fund                                     | <u>Sara Wagner</u>       |
| <u>4-13.2</u> Poultry Division  | <u>Wayne Carlson</u>     |
| <u>4-14</u> Unfair Discrimination in Purchase of Farm Products          | <u>Jeff Weispfenning</u> |
| <u>4-14.1</u> Agriculturally Derived Fuel Tax Fund                      | <u>Jeff Weispfenning</u> |
| <u>4-14.2</u> Northern Crops Institute                                  | <u>Jeff Olson</u>        |
| <u>4-21.1</u> Nurseries & Nursery Stock                                 | <u>Dave Nelson</u>       |