

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2228

2007 SENATE AGRICULTURE

SB 2228

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2228

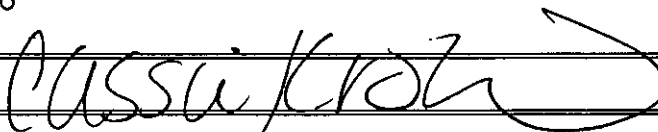
Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3196

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the hearing on SB 2228, a bill relating to reports of loss incurred through pesticide application, Members (6) were present, 1 absent- **Sen. Heckaman**.

Gerald Thompson, pesticide enforcement coordinator for the ND department of Ag, testified in favor of the bill. See attached testimony.

Sen. Klein- I think that everyone in the audience understands that the bill in the book is no longer the bill that was introduced, I passed out the amendments to everyone and they are really the bill now. See attached amendments.

Miles Benz, rancher, testified in favor of the bill.

Miles Benz- I farm and ranch south of Steele, I am here to support the bill. (gave personal experience that he had with spraying, time 10:56-16:07)

Sen. Behm- were you still charged for the application?

Miles Benz- yes, plus interest at 18%.

Sen. Klein- do you think that in the amendments there is a 60 period to fill do you think that 30 days would work, how quickly did you realize you had trouble?

Miles Benz- I think any notice would be ok as long as you were aware of it, I wasn't aware of any notice that needed to be filed. I noticed with my crop within a week.

Sen. Taylor- I was wondering about the other provision of knowing that 10% of your crop is damaged, you obviously knew you had a severe loss?

Miles Benz- yes.

Sen. Behm- did you try and contact the chemical company, would they give you any help?

Miles Benz- I contacted them right away and that is when I was informed to contact the applicator.

Sen. Wanzek- do you know how it applies to misapplication of a neighboring farmer? Would this law apply to that or does it only apply to licensed applicators?

Miles Benz- I think you could work out a deal with the farmer, I am not sure how that would work.

Sen. Wanzek- do you still do business with this applicator?

Miles Benz- no.

Cindy Schreiber-Beck, executive director of the ND agricultural aviation association, testified in favor of the bill. See attached testimony.

Sen. Taylor- on the desire to go to three days, are we always going to know a loss within 3 days?

Cindy Schreiber-Beck- it isn't from the date of application that the notification occurs, it is from the date that you observe there may or may not be damage.

Sen. Klein- from the point I notice damage, is that where the 3 day thing comes into place? Who would know when the 3 days started?

Cindy Schreiber-Beck- that is what we have to come up with, we are not sure either. The quicker the applicator would receive the notification the quicker they may be able to resolve the

issued that is why we were thinking the 3 days.

Sen. Klein- so what I am hearing then is that 60 is way to long and that maybe 3 is a bit short. You talk about the certified notification the reason being?

Cindy Schreiber-Beck- to protect the grower to show that he had put out a application.

Joe Killoran, from Tower City, ND, testified in favor of the bill.

Joe Killoran- I am here to stand in support of this bill. The time is currently set at 60 days, that should probably be changed but it does take a lot of time to go in and verify what actually happened to the crop and who was at fault. I would agree with shortening the time up and limiting it to finding a third party or professional to come out there and do some documentation that there is a claim. That way you would have the documentation that there is a problem and that would allow you more time to go back in and figure out where the damage did come from.

The other issue that I wanted to talk about was the 10% damage to the field. I disagree with that because I think in some cases some farmers don't realize that they have a damage problem in the field until they are out there harvesting and if the damage was over on one side of the field and they happen to start on the other side of the field and work their way across 40-50% of the crop before they notice the damage. I would suggest that the bill be changed to the claim against any unharvested crop. Those are the only changes that I had to the bill.

Dan Wogsland, NDGGA, testified in favor of the bill.

Dan Wogsland- I think that these are good amendments and something that needs to be changed in the state of ND. I have serious reservations about a 3 day time frame, presently we have a 60 day time frame within the law, I seriously question whether a 3 day time frame is a good idea for producers. I would hope that the committee would take a look at that, perhaps the 30 days is a reasonable alternative. We support the bill.

Sen. Klein- are we going beyond reasonable if we were to eliminate any percentage?

Dan Wogsland- I think that the 10% is reasonable.

Gary Knudson, NDAA, testified in favor of the bill.

Gary Knudson- I would like to thank the committee on the amendments that they have come up with on this bill. There are things to clean up I think that we have made some excellent strides, I guess I am wanting to ask if we need some time to agree on final language or such. Are you going to vote on it today I guess is my question.

Sen. Flakoll- the bill will be out of the committee by tomorrow at noon one way or another.

Sen. Klein- I would certainly be able to work with the groups to try to work something else for today.

Sen. Wanzek- could we possibly word the 10%, that the 10% be the damaged portion of the field?

Gary Knudson- my point would be that the claim is only going to be good for those on harvest day cause that is all they could prove anyway. I think we should be able to get a number worked out there beyond harvested acreage.

No opposition to the bill.

Sen. Flakoll closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2228

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3221

Committee Clerk Signature

Cassia Krow

Minutes:

Sen. Flakoll opened discussion on SB 2228.

Sen. Klein- during the discussion there were a couple of issues that were brought forward, they came up with some amendments. (went over proposed amendments with committee)

Sen. Flakoll closed discussion.

Sen. Klein motioned to move amendements 70703.0102 and was seconded by **Sen. Taylor**, roll call vote 1: 6 yea, 0 nay, 1 absent.

Sen. Klein motioned for a do pass as amended and was seconded by **Sen. Erbele**, roll call vote 2: 6 yea, 0 nay, 1 absent.

Sen. Klein was designated to carry the bill to the floor.

February 6, 2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2228

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to notification of alleged pesticide damage; and to repeal sections 4-35-21, 4-35-21.1, and 4-35-21.2, of the North Dakota Century Code, relating to reports of loss resulting from pesticide application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Pesticide application - Property damage - Notification of applicator.

1. a. Before a person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of a pesticide, the person shall notify the pesticide applicator of the alleged loss within the earlier of:
 - (1) Sixty days from the date the person first knew or should have known of the alleged damage; or
 - (2) Before ten percent of the crop or field allegedly damaged is harvested or destroyed.
- b. Subdivision a does not apply if the person seeking reimbursement for property damage was the applicator of the pesticide.
2. Upon notifying the applicator as required under subsection 1, the person seeking reimbursement for property damage shall permit the applicator and up to four representatives of the applicator to enter the person's property for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator.

SECTION 2. REPEAL. Sections 4-35-21, 4-35-21.1, and 4-35-21.2 of the North Dakota Century Code are repealed."

Renumber accordingly

JB
2-8-7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2228

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BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Pesticide application - Alleged property damage - Notification of applicator.

1. a. Before a person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of a pesticide, the person shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:
 - (1) Twenty-eight days from the date the person first knew or should have known of the alleged damage; or
 - (2) Before twenty percent of the crop or field allegedly damaged is harvested or destroyed.
- b. Subdivision a does not apply if the person seeking reimbursement for property damage was the applicator of the pesticide.
2. Upon notifying the applicator as required under subsection 1, the person seeking reimbursement for the alleged property damage shall permit the applicator and up to four representatives of the applicator to enter the person's property for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator.

SECTION 2. REPEAL. Sections 4-35-21, 4-35-21.1, and 4-35-21.2 of the North Dakota Century Code are repealed.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: Feb 8, 2007
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2228

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass adopt amendments

Motion Made By Klein Seconded By Taylor

70703-0102

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

Date: Feb 8, 2007
Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2228

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Klein Seconded By Erbele

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment Sen. Klein

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

REPORT OF STANDING COMMITTEE

SB 2228: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2228 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to notification of alleged pesticide damage; to repeal sections 4-35-21, 4-35-21.1, and 4-35-21.2 of the North Dakota Century Code, relating to reports of loss resulting from pesticide application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Pesticide application - Alleged property damage - Notification of applicator.

1. a. Before a person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of a pesticide, the person shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:
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SECTION 2. REPEAL. Sections 4-35-21, 4-35-21.1, and 4-35-21.2 of the North Dakota Century Code are repealed.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2007 HOUSE AGRICULTURE

SB 2228

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SSB 2228

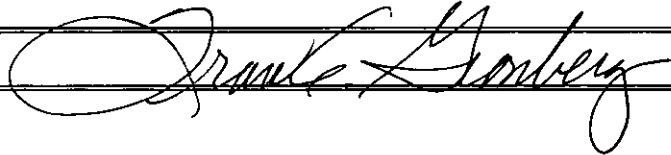
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-8-07 am

Recorder Job Number: 4699

Committee Clerk Signature



Minutes:

Chairman Johnson opened the hearing on SB 2228.

Jim Gray, Pesticide, Feed, and Fertilizer Team Leader: (testimony attached)

Rep Boe: The 28 days from the first knew or should have known - how are we going to define that?

Gray: It's a nebulous term. I don't know. It was in the existing century code.

Rep Mueller: If roundup got on my sunflowers and I didn't pick up on it in 28 days and report it, I have no legal recourse to go after the pesticide applicator?

Gray: The way this bill would read - yes.

Rep Vig: Rep Mueller mentioned an herbicide. This says pesticide.

Gray: Pesticide includes all chemicals.

Rep Onstad: Going back to the 28 days - that would be the 28 days not from the day of application, but 28 days from when you recognize damage has been done.

Gray: That is correct.

Senator Klein, Dist 14: This started in my district with one of my constituents. The engrossed bill is a hog house. Everyone concerned is on board and agreed that this is a bill that is acceptable to everyone.

Joe Killoran, Buffalo, ND owns and operates Maple Valley Ag Chemical: (testimony attached)

Rep Mueller: Have you found that sometimes an application of a chemical that drifted over on to someone else's in a fairly watered down form takes a fair amount of time for the damage to be identified?

Killoran: Yes, it does take some time for the damage to show up and that's why we ask for 28 days. 60 days is too long.

Rep Mueller: "Or should have known", I'm having trouble with that in terms of the time line. That's leaving things wide open it seems to me because could you go back and say you should have known this 29 days ago. Do you see the point I'm trying to make? How as a producer am I going to deal with that issue?

Killoran: I agree and disagree. The reason that I wanted to leave that in there is to give the farmer and producer plenty of time.

Froelich: I'm fuzzy on this - who's going to know if I sat on it?

Killoran: Most likely someone will talk to someone and that would be the date to use. It's giving the farmer a lot of leeway.

Rep Boe: What if my neighbor has a custom applicator and won't tell me who it was? Can I get by by sending the landowner the notice?

Killoran: The way it's written - no. You would have to come in and notify the applicator or suspected applicator. Hopefully your neighbor would not withhold that information from you. There are different ways to find out who did the application. There are records taken.

Brian Rau, Farmer/Commercial Applicator, Representing the ND Agricultural Aviation Association: (testimony attached)

Rep Boe: When I hire an applicator I am jointly liable? So if someone sends me the notification within 28 days that would suffice for both of us?

Rau: I really can't comment on that situation. It is my understanding that both people are responsible, but how that would test this law, I can't say that that is true. The Dept of Ag can figure that out because they have enforcement procedures.

Rep Headland: If I hire a custom applicator and there is drift on my neighbor's field, am I responsible? I need some clarification on that. I don't believe that's the case.

Rau: I'm not an attorney. That's just my understanding.

Rep Headland: Have you ever had an instance where you've gone to the farmer who's hired you to spray his field to help you?

Rau: Yes, that's a good example of why you need to get a look at the field. It is my understanding that if that applicator doesn't step up to the plate and take care of it, it is a possibility that you would be liable. Again, I am not an attorney.

John Fluth, Jamestown, Great Plains Claims: I support the bill. As it's written now it's a nightmare. They use the 28 days because (1) chemicals break down soon after it's put down and (2) testing is very expensive. At the University of Montana, just to test one sample is \$450 and you have to send it overnight by bus or truck and you can't send it by air if you use dry ice. I do see a problem with page 1, line 11.

Rep Brandenburg: Who do you work for?

Fluth: I work for anyone. I am an independent.

Rep Brandenburg: What we're trying to do with this bill is make it possible to get to the problem sooner.

Rep Onstad: If a farmer doesn't know what is going to be seed the next year, the chemical could have a carryover. If the carryover affected it because he has half emergents, at that point he would still have the 28 days?

Fluth: That's the way I interpret it, but I'm not an attorney.

Merlin Leithold, ND Wheat Association: We're in support of this bill. It protects us and the landowner.

Kent Albers, ND Ag Coalition: (testimony attached)

Chairman Johnson closed the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2228

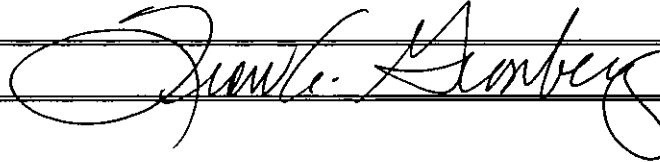
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-8-07

Recorder Job Number: 4720

Committee Clerk Signature



Minutes:

Chairman Johnson reopened the hearing on SB 2228:

Rep Froelich: I have a problem with this bill. Before we can file a civil action, we have to go through this whole process. I'm not so sure that the courts will even take a good look at it.

And line 13 - my biggest concern is "should have known". That leaves the door wide open for an attorney.

Rep Belter: Did you say that we have to notify the state? It doesn't say the state.

Rep Boe: I think he said is are we as the state stepping into something that we shouldn't be.

Rep Kingsbury: People that have contact me felt that this really simplifies things so that you didn't have the state stepping in.

Rep Boe: I think that after the testimony, we aren't sure who should be responsible - who gets the letter?

Chairman Johnson: Would you like to address the question?

Jim Gray: First of all, the place we are right now with the report of loss form, does involve the government. This is one step closer to getting the government out of civil matters. The question was does the landowner share liability with the applicator? The term liability has

some legal baggage. According to law, from an enforcement point of view, that I as a landowner hire an applicator, I as the landowner am responsible for the applicator's actions. They are a contract worker for me. I am viewed as a business owner. As far as civil damages and bringing damages into a court, I can't answer that.

Rep Mueller: Does the department or agency need to stay in the loop for knowledge?

Gray: There are two processes here. The enforcement process is one and civil damage is the other. The report of loss form as it is now does not initiate an enforcement procedure. The individual needs to file a formal complaint with the office. The odds are that the Dept of Ag wouldn't be notified if it can be settled between two parties. Ideally, I agree with Rep. Froelich, we don't want the government involved with any of this. It's a civil matter between two parties.

Rep Onstad: Our other concern was in lines 13 and 14 "the 28 days that should have known". Is this the best language?

Gray: "Should have known" is in the existing law. Some of the applicators felt that that was needed to provide them with some leeway.

Rep Kingsbury: How did you arrive at 28 days?

Gray: It is a sufficient time for both parties.

Rep Mueller: The growers - who were they and how were they represented?

Gray: They were primarily the ND Grain Growers and their leadership.

Rep Belter: Having experience - this isn't a bad bill. There are protections here too. With everyone on board and agreeing to this bill, it seems like this could be a good bill.

Chairman Johnson: Usually you know who is doing what in a 20 mile radius.

Rep Wall: A 28 day window could be a protection for the farmer - correct?

Gray: Could be. Too long is not good.

Rep Belter made a Do Pass motion

Rep Kingsbury seconded the motion

(yes) 7 (no) 4 (absent) 2

Carrier: Rep Belter

Date:
Roll Call Vote #:

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

House _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number 8B 2228

Action Taken No Pass

Motion Made By Belter Seconded By Kingsbury

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	✓				

Total (Yes) 7 No 4

Absent 2

Floor Assignment Rep Belter

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

REPORT OF STANDING COMMITTEE (410)
March 8, 2007 3:43 p.m.

Module No: HR-44-4793
Carrier: Belter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2228, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman)
recommends **DO PASS** (7 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2228 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2228

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

**Testimony of Gerald Thompson
Pesticide Enforcement Coordinator
Senate Bill 2228
Senate Agriculture Committee
Roosevelt Park Room
February 8, 2007**

Chairman Flakoll and members of the Senate Agriculture Committee, I am Gerald Thompson, Pesticide Enforcement Coordinator for the North Dakota Department of Agriculture. I am here in support of the proposed amendments to Senate Bill 2228 which will amend Sections 4-35-21, and repeal Sections 4-35-21.1, and 4-35-21.2. of the Century Code. This amendment will repeal a very confusing part of the Century Code and remove state government involvement in civil matters between parties involved in pesticide damage claims.

N.D.C.C. 4-35-21.1 and 4-35.21.2 currently require that any person alleging property damage from a pesticide application file a Verified Report of Loss with the North Dakota Department of Agriculture. This filing reserves their right to seek civil damages from the pesticide applicator anytime in the future. If the claimant fails to file the Verified Report of Loss within 60 days of knowing of the alleged damage or before 50% of the damaged field is harvested, the claimant is barred from seeking civil damages.

If the claimant speaks with the applicator and the applicator fails to tell the grower of the Report of Loss filing requirement, , the 60-day restriction does not apply. However, the 50% harvest restriction still does apply.

As it was originally introduced, SB 2228 would make it clear that both the 60-day time limit and 50% harvest restriction do not apply if the applicator or applicator's agent fails to inform the claimant of the Verified Report of Loss filing requirement. This proposed amendment goes much further and entirely eliminates the Verified Report of Loss requirement. The Department supports this change.

Once a pesticide application is made and a third party approaches the pesticide applicator or the property operator alleging that damage has occurred from the pesticide application, the current law requires the applicator to inform the third party about the Report of Loss requirement. Failure to do so could result in a monetary fine and/or loss of the applicator's certification, if they are a certified applicator. This notification requirement applies to anyone that makes a pesticide application in the State of ND, not just commercial applicators.

Section 4-35-21.1, indicates that no civil action may be filed concerning alleged property damage from a pesticide application before a Verified Report of Loss has been properly served on the pesticide applicator and the operator of the land.

As you have likely gathered, the Verified Report of Loss process is very confusing. In addition, the general public is largely unaware of the requirement that a Verified Report of Loss form must be filed to reserve their right to seek civil damages in the future.

Furthermore, the Department expends a significant amount of resources explaining the Verified Report of Loss process to applicators and growers, sending out the forms to interested parties, ensuring proper service, recording and filing the forms. However, the Department does nothing with the forms since they are independent of the process we use to investigate pesticide misuse under the Department's pesticide regulatory authority.

When I visit with pesticide applicators that are aware of the filing requirements, they feel they are at a definite disadvantage from the very beginning of the present claim process. Applicators say the very name of the document, "Verified Report of Loss" indicates that damage has already occurred and has been verified before the document is filed. That is the reason we recommend changing the name of the new Section in the amendment to "Notification of Alleged Pesticide Damage" or some title that would use the term "alleged"

The current law also requires that our Department work with these parties to ensure that proper legal service is made by the parties filing the Report of Loss. As we said before, this "Service" must be filed within 60 days of the time that the property owner alleging damage "knew or should have known" that the property damage occurred or before 50% of the crop is harvested.

As an agency, we have been battling this issue for a number of years. I have personally been dealing with these filing requirements for thirteen years. Some days, I spend my entire day working with these documents and people wanting to know, "what do I do now?" and other telephone calls associated with alleged pesticide damage issues. Other people in the Department also spend a considerable amount of their time working with these documents. Current law requires us to ensure that the documents are properly processed, meet the filing requirements and that people have proper "Service" of the documents.

For most of these documents that are filed, we struggle to get these documents filed in the proper manner. For most of the filings, we need to make follow-up telephone calls or send letters to the people who are filing these documents. As a general observation, they do not understand the Proof of Service concept so we need to follow up with most of these people several times.

Once they are completed, we send them a letter and place the documents in a file cabinet and maintain the filed documents for five years. In the thirteen years that I have been working with these documents, I can only recall a few requests for copies of the Report of Loss documents. We basically file them and forget them. After five years, we shred them.

The amended Senate Bill 2228 changes the process and places the responsibility on the applicators and the producers to settle their claims without getting the government involved in the process. The persons alleging damage must contact the applicators to settle their claims and if they cannot work out the matter, it becomes a civil matter between the two parties.

Mr. Chairman and members of the committee, we think the amended SB 2228 is good legislation and we urge a "Do Pass" on this amendment. I would be happy to answer any questions.

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

Dear Claimant:

Enclosed are the following forms and information:

1. Admission of Service (2 copies)
2. Affidavit of Service by Mail (2 copies)
3. Copy of applicable state law
4. Documentation for pesticide damage (yellow page)
5. Verified Report of Loss (VROL)

The completed VROL must be filed / served with the following:

See bottom of VROL to determine who gets which copy.

1. The Commissioner of Agriculture (Canary – 2nd page)
2. Applicator or operator allegedly responsible (White – top page)
3. Person hiring/contracting work if not yourself (Pink – 3rd page)
4. Claimant (Goldenrod – 4th page)

The VROL form must be filed with the Commissioner prior to the time when 50% of the crop is harvested or within 60 days from the date the claimant knew or reasonably should have known of such loss. If, however, the applicator does not inform the claimant of the legal requirements for the claimant to file a Verified Report of Loss, the 60 day limitation does not apply.

The VROL form must be given to the applicator/operator and the person who hired the applicator (if there is one). There must be proof that the VROL was given to the appropriate parties. Proof that the VROL was properly served can be shown by one of three (3) methods.

1. The VROL can be given to the applicator and the person who hired him if they will sign the Admission of Service form. You must make three copies of the Admission of Service after it is signed and include a copy with the VROL sent to the Commissioner and a copy with each VROL given to the applicator and the person who hired him. A copy of the Admission of Service must be given with each copy of the VROL. The original Admission of Service should be kept by the claimant to be filed by him with his copy of the VROL if he has to sue the applicator.

2. The VROL can be sent to the applicator and the person who hired him by using the Affidavit of Service by Mail. Fill out that form according the instructions printed on the form and

send it out as directed. Again, make three copies and keep the original for yourself, the claimant. A copy should be attached to each VROL as mailed.

3. If necessary, you can have the Sheriff of the county in which the applicator and the person who hired him reside, serve the appropriate copy of the VROL on them. The Sheriff will fill out his own Proof of Service form and give it to you for filing with your form if necessary. He should also give you a copy of his service form to file with the copy sent to the Commissioner.

Remember, the canary colored copy of the VROL along with whatever method you use to show the VROL was served upon the applicator and the person who hired him MUST be mailed to the Department of Agriculture within the specified time period.

The filing of the VROL is required by state law, a copy of which is enclosed, prior to any civil action proceedings (lawsuit) regarding a pesticide loss. This is merely a reporting procedure. It does not mean you must take civil action. It just gives you the legal right to do so. If you do not file the VROL form, you may not have the right to pursue a civil action.

If you have any questions, please call or write to:

Department of Agriculture
Pesticide Division
600 E. Blvd., Dept. 602
Bismarck ND 58505-0020
(701) 328-4922 or 1-800-242-7535

4-35-21. Reports of pesticide accidents or loss.

1. The board shall, by regulation, require the reporting to the commissioner of agriculture of pesticide accidents.
2. Any person claiming damages from a pesticide application inflicting damage on property, except where the claimant was the operator or applicator of the pesticide, shall report the loss in accordance with this chapter. Where damage is alleged to have occurred and the claimant has filed a report of loss in accordance with this chapter, the claimant shall permit the commissioner, the applicator, and the applicator's representatives to observe, during reasonable hours, the lands or property alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands automatically bars the claim against the applicator. The number of applicator's representatives who may make an observation under this subsection may be limited by the board.
3. An applicator shall inform any person employing him to apply to land any pesticide of the reporting requirements of this chapter.

4-35-21.1 Reports of loss through pesticide application required.

1. No civil action may be commenced arising out of the application of any pesticide by any applicator inflicting damage on property unless, within sixty days from the date the claimant knew or reasonably should have known of the damage:
 - a. The claimant has served the applicator allegedly responsible for damage with a verified report of loss;
 - b. If the claimant is someone other than the person employing the applicator alleged to be responsible for the damage, the claimant has served the person who employed the applicator allegedly responsible for the damage with a verified report of loss; and
 - c. The claimant has mailed or delivered to the commissioner of agriculture a verified report of loss together with proof of service of the report required by subdivision a and the report required by subdivision b, if applicable.
2. Notwithstanding the provisions of subsection 1, if damage is alleged to have occurred to growing crops, the report must be filed prior to the time fifty percent of the field is harvested or within sixty days from the date the claimant knew or reasonably should have known, whichever occurs first.
3. The applicator must provide anyone who alleges damage with information of this section for filing a verified report and that timely filing of a report is a prerequisite to any civil action. Failure to provide such information, in addition to the penalties of this chapter, may be grounds for revocation of the applicator's certification and, in addition, the sixty-day limitation of this section does not apply.

4. No verified report of loss is required when the claimant was the operator or applicator of the herbicide, insecticide, fungicide, or agricultural chemical.

4-35-21.1. Contents of verified report of damage.

Any verified report of the loss arising out of the application of any pesticide by any applicator required by this chapter, must include, so far as known to the claimant: the name and address of the claimant, the type, kind, and location of property allegedly injured or damaged, the date the alleged injury occurred, the name of applicator allegedly responsible for the loss or damage, and if the claimant is not the same person for whom the work was done, the name of the owner or occupant of the property for whom the applicator was rendering labor or services.

4-35-22. Subpoenas.

The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications and sales in the state in any hearing affecting the authority or privilege granted by a certification issued under the provisions of this chapter.

4-35-23. Penalties:

1. Any registrant; applicator, other than a private applicator; wholesale dealer; retailer; or other distributor who knowingly violates any provision of this chapter shall be guilty of a class A misdemeanor.
2. Any private applicator or other person not included in subsection 1 who knowingly violates any provision of this chapter shall be guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
4. In addition to the criminal sanctions which may be imposed pursuant to subsections 1 and 2, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner of agriculture through an administrative hearing pursuant to chapter 28-32.

Documentation For Suspected Herbicide Drift Damage

Alan G. Dexter
Extension Sugarbeet Specialist
North Dakota State University and the University of Minnesota

Herbicide drift to non-target plants can cause damage sufficient to result in a significant monetary loss. If compensation for the loss will be pursued then one should demonstrate that the damage was caused by a herbicide, establish the source of the drift, and establish the amount of loss caused by the damage. Additional information on control of spray drift and field investigation of crop injury can be found in NDSU Extension Circulars W-253, the North Dakota Weed Control Guide, and A-657, Herbicide Spray Drift.

The following information should be collected and document the drift incident.

1. Record all possible information related to the suspected drift such as:
 - a. Date of herbicide application.
 - b. Herbicide name, herbicide rate, and herbicide information.
 - c. Date damage was first observed.
 - d. Wind direction, speed, and temperature during application.
 - e. Shifts in wind direction and temperature change after application.
 - f. Type of applicator, boom height, nozzle type, spray pressure, nozzle orientation, gallons per acre applied.
 - g. Crop and herbicide history of the damaged field.

2. Consider all possible causes for observed injury symptoms.
 - a. Consider diseases, insects, nutrient deficiencies, herbicide residue (carryover), and growing conditions.
 - b. Assistance with identification of injury symptoms can be obtained from the local county extension agent, commodity agriculturalists, crop consultants, or plant diagnostic laboratories. Samples taken from the field should be well preserved and should represent a range from no injury to the most severe injury. Addresses are:

Plant Diagnostic Laboratory 701/231-7854
North Dakota State University
Box 5012
Fargo, ND 58105-5012

Plant Disease Clinic 612/625-1275
Department of Plant Pathology
495 Borlaug Hall, University of Minnesota
1991 Upper Buford Circle
St. Paul, MN 55108-6030.



- c. Consider that the drift may have come from other than the closest field or from more than one field. Drift can move one mile or more under some conditions.
 - d. Look for injured weeds between the damaged field and the suspected source of drift and document symptoms by species.
 - e. Plant tissues and soil can be analyzed for herbicide residues. A list of private laboratories is provided in Circular W-253, the annual North Dakota Weed Control Guide. Also, the NDSU Plant Diagnostic Laboratory offers a soil test for the presence of Pursuit or Raptor and a plant tissue test to determine exposure to Roundup. However, laboratory tests may not provide a definitive answer since some herbicides damage plants at levels lower than detection limits, some herbicides are degraded rapidly in plants and soil, and a single analysis can search for only one herbicide. Thus, soil and tissue analysis can be costly and may not provide useful information for determining the drift source or the amount of yield loss that will be caused by the drift.
3. Make a map of the area.
 - a. Show the relationship of the damaged field to the surrounding fields and indicate crops, herbicide use, and dates of herbicide use around the damaged field.
 - b. Show patterns of injury in the field and indicate severity of injury in various areas. Patterns of injury may help identify the source of drift.
 4. Take a large number of quality photographs.
 - a. Photograph typical injury symptoms of tops and roots of crop and weeds.
 - b. Photographs should include closeups of affected portions of plants to clearly illustrate the symptoms. Comparison of non-affected plants to affected plants often is useful.
 - c. Aerial photos may be helpful to indicate the pattern, extent, and severity of damage.
 - d. Record dates pictures were taken.
 5. The first visual evaluation of crop damage from spray drift often results in an overestimation of the actual damage. Crops frequently recover and yield better than expected. Visual evaluations of crop damage taken too soon after the injury has occurred can be misleading. The actual extent of crop injury and the proportion of the plants which will die from the injury often can not be accurately assessed until 10 to 20 days after the damage has occurred.
 6. Yield loss estimates are needed to establish the extent of the loss.
 - a. Visual estimates of yield loss are not reliable.
 - b. Yield from a damaged-area of the field should be compared to yield from an undamaged area.
 - c. The comparison should be within the same field because yield comparisons between fields or between years are not reliable.
 7. Promptly contact all parties suspected of being involved in the drift incident and all involved insurance companies so they can visit the field and substantiate that information collected is accurate and came from the damaged field.
 8. North Dakota law requires that a "Report of Loss" form and a "Proof of Service" form must be completed and filed with the Commissioner of Agriculture, the applicator, and the person contracting the work within 60 days from the occurrence of herbicide drift damage and prior to the time when 50 percent of the crop is harvested. Failure to file the forms can result in loss of the right to pursue court action to recover damages. Forms can be obtained from the North Dakota Department of Agriculture, 600 E. Boulevard, Bismarck, ND 58505-20020. Telephone: (800) 242-7535 or (701) 328-2231.
 9. Minnesota law encourages, but does not require, that herbicide drift damage be reported to the Commissioner of Agriculture. A "Request for Inspection" should be obtained from the Commissioner of Agriculture and should detail names and addresses of the person owning the damaged plants, the person for whom the application was done, and the applicator. The date of application and a description of the damage also should be included. The "Request" should be submitted as soon as possible after the damage has occurred. An agent of the Commissioner of Agriculture can inspect the alleged damages if a timely "Request" is submitted. "Request for Inspection" forms can be obtained from the Minnesota Department of Agriculture, Agronomy Services Division, Telephone: (612) 296-6121.



WC-751

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This publication will be made available in alternative formats for people with disabilities upon request, 701/231-7861.

1M-4-01



**PROOF OF SERVICE - RELATING TO REPORT OF LOSS
AFFIDAVIT OF SERVICE BY MAIL**
NORTH DAKOTA DEPARTMENT OF AGRICULTURE
SFN 18546B (5-04)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA

COUNTY OF ^① _____

^② _____, being first duly sworn, deposes and says that on the
^③ _____ day of ^③ _____, 20^③ _____, he/she served the attached Verified Report
of Loss by placing a true and correct copy thereof in an envelope

^④ addressed to: _____ ^④

and depositing the same with postage prepaid in the United States mail at

^⑤ _____, North Dakota.
(City)

^⑥
(Signature of Person Mailing)

Subscribed and sworn to before me this ^⑦ _____ day of ^⑦ _____, 20^⑦ _____.

NOTARY PUBLIC (Seal)
My Commission Expires ^⑦ _____

AFFIDAVIT OF SERVICE BY MAIL - This form can be used when you want to serve the papers by mail. To use Service by Mail you must:

1. **SEND IT BY CERTIFIED MAIL**
2. **REQUEST A RETURN RECEIPT (GREEN CARD)** - make a copy of front and back and send to us with our copy of the Verified Report of Loss (VROL)
3. **SPECIFY RESTRICTED DELIVERY ONLY**

- ① County where mailed.
- ② Person who is filing claim.
- ③ Put in day, month and year of mailing.
- ④ Put in name and address, including zip code, of person you are making claim against. This could be the applicator or the farmer/employer, or both, on the same form.
- ⑤ City in which you mail the forms. Please note that if you serve two people on the same form, they must both be mailed in the same city at the same time.
- ⑥ Person who is filing claim must sign here before a Notary Public.
- ⑦ Information the Notary Public must fill out.



**PROOF OF SERVICE - RELATING TO REPORT OF LOSS
AFFIDAVIT OF SERVICE BY MAIL**
NORTH DAKOTA DEPARTMENT OF AGRICULTURE
SFN 18546B (5-04)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA

COUNTY OF ^① _____

^② _____, being first duly sworn, deposes and says that on the
^③ _____ day of ^③ _____, 20^③ _____, he/she served the attached Verified Report
of Loss by placing a true and correct copy thereof in an envelope

^④ addressed to: _____ ^④

and depositing the same with postage prepaid in the United States mail at

^⑤ _____, North Dakota.
(City)

^⑥ _____
(Signature of Person Mailing)

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(Seal)

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- ⑥ Person who is filing claim must sign here before a Notary Public.
- ⑦ Information the Notary Public must fill out.



PROOF OF SERVICE - RELATING TO REPORT OF LOSS
 NORTH DAKOTA DEPARTMENT OF AGRICULTURE
 SFN 18546A (5-04)

State Of North Dakota
 Department Of Agriculture
 600 E Boulevard Ave - Dept 602
 Bismarck, ND 58505-0020
 Ph. 701-328-2231/800-242-7535

This form of service can be used when you and the applicator and the farmer/employer are cooperating.

THIS FORM IS FOR ADMITTING YOU HAVE RECEIVED A COPY OF THE VERIFIED REPORT OF LOSS. YOU ARE NOT ADMITTING THE CLAIMS IN THAT FORM.

ADMISSION OF SERVICE

Name of Person Admitting Service

①

I, the above named individual, hereby admit due and personal service of a true and correct copy of the attached
 Verified Report of Loss at _____, North Dakota, this _____ day
 of _____ 20 ____.

Signature of Person Admitting Service

④

ADMISSION OF SERVICE

Name and address of person you are giving a correct copy of VROL. This may be the applicator or the farmer/employer or both. Both may be served on one form if both names and addresses appear in ① and both signatures are in ④. Both parties to be served must be in the same place at the same time or two of these forms must be used.

- ② Put in the name of the town or nearest town to where this admission took place.
- ③ In the spaces marked ③, put in the day, month and year the form was signed.
- ④ In ④, have the person receiving a copy of VROL sign his name. If the applicator and farmer/employer are both on one form, have both of them sign in ④. They must sign on same day - if that is not possible, use two separate forms.



VERIFIED REPORT OF LOSS
NORTH DAKOTA DEPARTMENT OF AGRICULTURE
PESTICIDE DIVISION
 SFN 4115 (5-02)

North Dakota Department of Agriculture
 Pesticide Division
 600 East Boulevard - Dept 602
 Bismarck, ND 58505-0020
 (701) 328-2231

STATE OF NORTH DAKOTA)
)ss
 NTY OF _____)

Name of Claimant	Telephone Number
------------------	------------------

The above named claimant, being first duly sworn, states he/she has an interest in the property described below, and along with those interested with him/her in ownership of the property has sustained a loss through the use or application of any herbicide, insecticide, fungicide, or agricultural chemical by any applicator or operator as said terms are used in Chapter 4-35-21.1 of the NDCC.

In accordance with the provisions of Chapter 4-35-21.2 the following information is being submitted:

Address of Claimant	City	County	State	Zip Code
Type, Kind, and Location of Property Insured or Damaged (Describe the Damage)				
Description of Property				
Estimated Number of Acres Damaged (growing crops)			Date Damage Occurred	
Name of Operator or Applicator Allegedly Responsible for Such Loss or Damage		<input type="checkbox"/> Ground Application	<input type="checkbox"/> Private Applicator	
		<input type="checkbox"/> Aerial Application	<input type="checkbox"/> Commercial Applicator	
Address	City	State	Zip Code	
Name of Owner or Occupant of the Property for Whom Such Operator or Applicator was Rendering Service				
Address	City	State	Zip Code	

This report of loss is being filed with the State of North Dakota Agriculture Commissioner, Bismarck, North Dakota, with copies thereof being served upon the operator or applicator above noted and the person for whom such work was done.

The claimant in accordance with the provisions of said statute does hereby state that he/she has read, now subscribes to this report, knows the contents thereof and that the same is true to the best of his/her knowledge, information and belief.

Subscribed and sworn to me this _____ day of _____ 20 ____.

 Signed by Complainant

 Notary Public

My Commission Expires _____

Notary Public of _____ County

ALL COPIES MUST BE SIGNED AND NOTARIZED

White - Applicator

Canary - Commissioner of Agriculture

Pink - Owner or Occupant Who Contracted Service

Goldenrod - Claimant

Testimony from North Dakota Agricultural Aviation Association
Senate Agriculture Committee
Re: Proposed Amendments to Senate Bill No. 2228

2-8-07

Honorable Senators Flakoll, Wanzek, Behm, Erbele, Heckaman, Klein and Taylor:

Thank you for the opportunity to address the Committee regarding the proposed amendments to SB2228. The North Dakota Agricultural Aviation Association represents over sixty percent of the aerial sprayers located within the state. I am Cindy Schreiber-Beck, Executive Director of the Association, from Wahpeton. Also representing the interests of the NDAAA are President Greg Troftgruben, Buxton and Vice-President Tim McPherson, Page.

The Proposed Amendments to SB2228 offered by Senator Klein resolves a number of issues with the "Proof of Loss" section that have existed for years. Working with the Department of Agriculture and additional interested parties, a win-win solution is in the works.

Concerns by the NDAAA at this point include the following:

1. Keeping the term "alleged damage" consistent throughout (1. a. last line)
2. Change the notification from 60 days to a maximum of 3 days after the alleged damage was observed in order to complete a timely assessment of the alleged damage (if samples need to be taken and analyzed, etc) and if actual loss, to mitigate the loss (if occurred early in the season would be the possibility of replanting). (1. a. (1) first line)

The language in the proposed amendment is reasonable for all parties – growers, applicators and the Department of Agriculture. The proposal to repeal sections 4-35-21.1 and 4-35-21.2, both of which presented issues for all parties, and replace 4-35-21 with a new chapter provides a practical set of rules to follow in the event of alleged pesticide damage.

Please support the Proposed Amendment to SB2228 with consideration of the changes requested by the NDAAA. And, please do not support the original Senate Bill 2228.

Thank you.

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

**Testimony of Jim Gray
Pesticide, Feed, and Fertilizer Team Leader
Senate Bill 2228
House Agriculture Committee
Peace Garden Room
March 8, 2007**

Chairman Johnson and members of the House Agriculture Committee, I am Jim Gray, Pesticide, Feed, and Fertilizer Team Leader for the North Dakota Department of Agriculture. I am here in support Senate Bill 2228 as amended. This bill will amend Sections 4-35-21, and repeal Sections 4-35-21.1, and 4-35-21.2. of the Century Code. This amendment will repeal a confusing part of the Century Code and remove state government involvement in civil matters between parties involved in pesticide damage claims.

Every year, there are reports of damage arising from pesticide use. The most common type of damage is pesticide injury to crops arising from pesticide drift or misapplication. The Department investigates these reports of misuse whenever we receive a complaint or if we conclude that the alleged misuse has the potential to pose a significant risk to health and safety. However, the Department's investigation is focused on determining whether anything illegal occurred, not necessarily on helping the complainant recover damages. To recover damages, the complainant needs to reach an amicable settlement with the applicator or seek civil damages in a

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court. Please note that this bill deals with issues surrounding how an applicator can recover damages, and this process is independent of the investigative process that the Department uses under its pesticide enforcement authority.

N.D.C.C. 4-35-21.1 and 4-35.21.2 currently require that any person alleging property damage from a pesticide application file a Verified Report of Loss with the North Dakota Department of Agriculture to reserve the right to seek civil damages from the pesticide applicator anytime in the future. If the claimant fails to file the Verified Report of Loss within 60 days of knowing of the alleged damage or before 50% of the allegedly damaged field is harvested, the claimant is barred from seeking civil damages.

However, if the applicator fails to inform the claimant of the Report of Loss process, the 60-day restriction does not apply. However, the 50% harvest restriction still does apply. As it was originally introduced, SB 2228 would make it clear that both the 60-day time limit and 50% harvest restriction do not apply if the applicator or applicator's agent fails to inform the claimant of the Verified Report of Loss requirement. This proposed amendment goes much further and entirely eliminates the Verified Report of Loss requirement. The Department supports this change.

Once a pesticide application is made and a third party approaches the pesticide applicator or the property operator alleging that damage has occurred from the pesticide application, the current law requires the applicator to inform the third party about the Report of Loss requirement. Failure to do so could result in a monetary fine and/or loss of the applicator's certification, if they are a certified applicator.

Section 4-35-21.1, indicates that no civil action may be filed concerning alleged property damage from a pesticide application before a Verified Report of Loss has been properly served on the pesticide applicator and the operator of the land.

The current law also requires that our Department work with these parties to ensure that proper service is made by the parties filing the Report of Loss. This "Service" must be filed within 60 days of the time that the property owner alleging damage "knew or should have known" that the property damage occurred or before 50% of the crop is harvested.

As you have likely gathered, the Verified Report of Loss process is very confusing. In addition, the general public is largely unaware of the requirement that a Verified Report of Loss form must be filed with the Department to reserve their right to seek civil damages in the future.

Furthermore, the Department expends a significant amount of resources explaining the Verified Report of Loss process to applicators and growers, sending out the forms to interested parties, ensuring proper service, and filing the forms. However, the Department does nothing with the forms since they are independent of the process we use to investigate pesticide misuse under the Department's pesticide regulatory authority.

As an agency, we have been battling this issue for a number of years. Some days, Department pesticide staff members spend their entire day working with these documents and people wanting to know, "what do I do now?" and other telephone calls associated with these issues. For most of these documents that are filed, we make several telephone calls or send letters to people who are filing these documents. Usually, we need to follow up with the people several times. Once they are completed, we place them in a file cabinet and maintain the filed documents for five years.

However, we receive very few requests for copies of these documents. We basically file them and forget them. After five years, we shred them.

When I talk with applicators that are aware of the filing requirements, they express a concern that they are at a definite disadvantage from the very beginning of the present claim process.

Applicators say the very name of the document, "Verified Report of Loss" indicates that damage has already occurred and has been verified before the document is filed.

In recent conversations with aerial applicators, it was stressed that most pesticide applicators simply want two things: A) timely notification when there is an alleged pesticide so that the applicator can gather samples and observe the site while evidence is still fresh and symptoms are still visible, and B) access to the site upon request so that they can make their own observations and gather samples. Amended SB 2228 meets both those needs.

The amended Senate Bill 2228 places the responsibility on the applicators and the producers to settle their claims without getting the government involved in the process. The persons alleging damage must contact the applicators to settle their claims and if they cannot work out the matter, it becomes a civil matter between the two parties.

Mr. Chairman and members of the committee, I urge a "Do Pass" on amended SB 2228. I would be happy to answer any questions.

~~Committee~~ Chairman Johnson
House Ag. Committee
Members of the ~~Ag~~ committee

My name is Joe Killoran; I reside in Buffalo North Dakota. I own and operate a retail chemical business in Cass County by the name of Maple Valley Ag Chemical. I also manage Maple Valley Ag Products which is a retail fertilizer company and I have a one third ownership in Pak Ag Services which is a custom application business that custom applies chemical and fertilizer and custom harvests crops for local producers. I also am a member of the board of directors for the North Dakota Ag Association.

I agree with the Engrossed Senate Bill number 2228.

The current century code that this bill would be replacing is cumbersome and it involves the Department of Ag and burdens them with a lot of unnecessary work and extra expense. The current century code requires 60 days from the date of first becoming aware of the potential damage to the date of notification to the party that could be responsible. I feel the Senate bill number 2228 will help in all areas of concern. The number of days were shortened to 28 for the simple reason of not letting the problem get to far gone so there would be a chance of fact finding. If we let the time go to long there is less of a chance for recovery of some of the loss, plus very little chance of actually finding out if the damage was actually caused by the accused or if someone or something else caused it.

I once investigated a claim that originally was thought to be caused by a grower who farmed the land across from his neighbor's trees. The neighbor thought that the damage was caused by spray drift from the farmer's sprayer, but after checking the trees for damage and coming back a week later we discovered the only trees affected were the elm trees. Later we found out that it was Dutch elm disease and not a spray drift issue at all. As an investigator to a spray issue, we need to be in that field as soon as possible to be able to discover what the problem could be and also enough time allowed to be able to see what will come of the injured plant.

I can sympathize with Mr. ~~Benz~~ and his problem, but I don't think that it was the law that caused the problem, but the lack of knowledge or misinformation of the law.

My daughter once went to a fair with her friends. At the time she was twenty and her friends were twenty-one. In order to do the same things that they could do, she decided that she would take along a fake ID. When she got caught she didn't realize that the offense for lying to a policeman was worse than drinking underage. It wasn't the bars fault that she didn't know the law. It wasn't the policeman's fault that she didn't know the laws and the repercussions that come from doing something wrong. But she was old enough to be thought of as an adult and it was her responsibility to know or to find out what the correct procedures are and what the penalties are if the law is not adhered to. Even though there is only a few weeks difference in age between those that are legal and those that are not.

Crop injury is an issue that we will have in the future. Accidents happen. I don't know of anyone that would go out and intentionally destroy someone else's crop. But we do have to have insurance to help us with these issues when accidents do happen. Insurance is expensive and continues to get more expensive. Our own insurance has a \$5,000.00 deductible on it to help keep our premiums down. We feel that we can handle a little loss and take the risk that we can settle the claim without getting the insurance company involved and keep our insurance expenses to a minimum, if we are immediately informed of the damage. Another way for all of us to keep the insurance premiums down is by trying to settle crop damage issues outside of the court system. It seems to me that no matter who wins in court the attorney's fees are paid by someone and normally by both parties. So if the accused party is notified of the problem early they maybe able to relieve some of the loss by replanting and raising a substitute crop. By working more closely together we can potentially lower our insurance costs and keep more people in business and make money so we can pay more taxes. Thank you.

SB 2228
Testimony by Brian Rau
House Agricultural Committee
3 - 7 - 07

Brian Rau
Farmer / Commercial Applicator
Representing the North Dakota Agricultural Aviation Association
Medina, ND
701 486 3414, 701 320 9505

Thank you for the opportunity to address the committee regarding SB2228. The North Dakota Agricultural Aviation Association represents over 60% of the aerial sprayers in the state of North Dakota. Also representing the NDAAA is Glen Wharam.

I am testifying to urge you to support SB2228 as amended. There is a need to bring people together when the issue of pesticide damage is alleged. Symptoms on crops change with time and to properly investigate a claim, all parties need to have the opportunity to gather the information that they need. The old system referred to as "Report of Loss" attempted to do that, but had many problems. It required time consuming forms to be filled out and filed with the State Department of Agriculture, it required a party involved in a dispute, to provide the other party with legal advise, and in cases where the parties were negotiating in good faith, it set up an adversarial relationship. This is important not only for applicators, but also for the farmers who hire us. In North Dakota, the person who hires an applicator is jointly liable with the applicator in cases of damage.

SB 2228 solves many of the concerns that growers, applicators and regulators have had with the "Report of Loss" system. Please support it as amended. Thank you.



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Association
Red River Valley Sugarbeet
Growers

Testimony of Kent Albers

North Dakota Ag Coalition

Senate Bill 2228

March 8, 2007

Chairman Johnson and members of the House Agriculture Committee:

I am Kent Albers. I farm and ranch near Center and serve as the chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I encourage your support of SB 2228.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for 20 years. Today, we represent 30 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, these members seek to enhance the business climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on only a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry. SB 2228 is one of these issues as it works to assure that all parties can work together quickly and efficiently in reporting and settling crop damage claims.

This bill will put the responsibility of filing for damages caused by pesticide application in the hands of the claimant. This helps to eliminate the unnecessary step of filing with the state, thereby benefiting both the applicator and the claimant by simplifying the notification process. This will assure that both can work together quicker and easier to settle claims and compensate for damages.

Therefore, we encourage your support of SB 2228.