

2009 SENATE AGRICULTURE

SB 2248

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2248

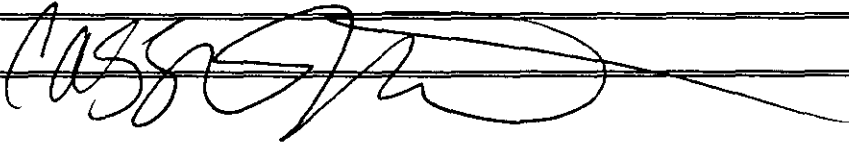
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 30, 2009

Recorder Job Number: 8237

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the hearing on SB 2248, a bill relating to certified pesticide applicators and relating to license plates for vehicles used in the application of certain pesticides and the disposition of funds. All members (7) were present.

Sen. Klein, district 14, testified in favor of the bill. Went over proposed amendments with committee, see attachment #1.

Roger Johnson, ND agriculture commissioner, testified in favor of the bill. See attached testimony, attachment #2.

Sen. Miller- what is the current requirement for commercial applicator, if I understand it right you can be in the presence of someone who is certified?

Roger Johnson as **Jim Gray**, ND department of Ag, to come to podium and answer committees questions.

Jim Gray- under current law a person applying the general use product commercially can either make those applications by having a commercial certification that sells or work under the correct supervision of a commercially certified applicator. However if that person wants to make a commercial application as a product classified as being a commercial product that applicator has to be certified commercially.

Sen. Miller- so how will the current law change now?

Jim Gray- it would say that any person applying a RUB would have to be certified, either privately, commercially or in the public applicator category.

Sen. Klein- tell me why we need this?

Jim Gray- we gather application and sales records all the time that is part of our regular process. If those records were not closed a competing dealership or applicator could make an open records request, get a list of customers, figure pricing structure, a whole lot of confidential information. We want to make sure that those records are closed. This idea of closed records is already found in the century code it is just very vague.

Sen. Wanzek- just for clarification, you are saying that the definitions are not necessary because they are common for other chapters or titles throughout the century code, it is only the definitions that are really necessary cause they are unique to this title?

Jim Gray- yes.

Duane Hauck, Director of NDSU extension service, testified in favor of the bill.

Duane Hauck- We have spend a lot of time reviewing the content of this bill and working with the department of Agriculture on trying to provide input and clarity to the language that hopefully will be beneficial. I am here to speak in support of the bill as is recommended along with the amendments that were also included.

Brian Rau, ND Agricultural Aviation Association, testified in favor of the bill. See attached testimony attachment #3.

Sen. Wanzek- if I understand it right, for medical use they are only allowed to release the name of the pesticide?

Brian Rau- that is how I understand it.

Merlin Leithold, ND Weed Control Association's South Central Area director, testified in favor of the bill. See attached testimony, attachment #4.

Sen. Behm- would this include county road ditches?

Merlin Leithold- when we are spraying county roads we do not have to ask permission.

Gary Knudson, ND agriculture association, testified in favor of the bill.

Gary Knudson- yes we support the bill, I think that we have addressed the main issues of concern. Overall we really do appreciate the added emphasize and the involvement of emission of the Ag department of more outreach work, more appliance education and I think the record stands for itself. The industry appreciates the work that is being done and I think that clarity of the law also helps a great deal.

Steve Strege, ND Grain Dealer's association, testified in favor of the bill.

Steve Strege- We are in favor of the bill.

Myron Dieterle, Sheridan County Weed Board, testified in favor of the bill. See attached testimony, attachment #5.

Keith Witte, Board of Directors representing the US Durum Growers Association and a farmer, testified in favor of the bill. See attached testimony, attachment #6.

Woody Barth, ND Farmers Union, testified in favor of the bill.

Woody Barth- we are in support of this bill, I would like to make note that certification for all people applying to restricted use pesticides is for the safety for all. We will help to make this workable for farmers and ranchers.

Dan Wogsland, executive director of the ND grain growers association, testified in support of the bill.

Dan Wogsland- we are in support of this bill.

No opposition to the bill.

Sen. Flakoll called **Andrew Thostenson**, NDSU extension service, to the podium.

Sen. Heckaman- you have to be licensed and certified to purchase and apply but not to mix?

Andrew Thostenson- when people are applying and purchasing restricted products you have to be certified, when you are mixing that is not considered an application so it does not require one to be certified.

Sen. Taylor- changing the direct supervision on the restricted use pesticides for private applicators, I thought that it has been that way?

Andrew Thostenson- basically we are trying to do a certification program, we are encouraging everybody to get certified. I don't believe that there are a lot of applications going on under the direct supervision as we speak, I know that some of the other background information that the department of agriculture has provided you has indicated that we don't believe this would be a huge number of people that could be impacted by this.

Sen. Klein- can you provide us with some numbers on the people registered and such, that would be good to know.

Andrew Thostenson- yes we can, see attachment #7.

Sen. Flakoll closed the hearing.

Sen. Klein motioned to move amendments 90776.0101 and was seconded by **Sen. Behm**, vote 7 yea 0 nay 0 absent. **Sen. Klein** motioned for a Do Pass as amended and was seconded by **Sen. Taylor**, vote 7 yea 0 nay 0 absent. **Sen. Klein** was designated to carry the bill to the floor.

FISCAL NOTE
Requested by Legislative Council
03/17/2009

Amendment to: Engrossed
SB 2248

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2007-2009 Biennium | | 2009-2011 Biennium | | 2011-2013 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Appropriations | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium | | | 2009-2011 Biennium | | | 2011-2013 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill as amended has no fiscal impact.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill as amended has no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill as amended has no fiscal impact.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill as amended has no fiscal impact.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

This bill as amended has no fiscal impact.

| | | | |
|----------------------|-------------------|-----------------------|-------------|
| Name: | Jeff Weispfenning | Agency: | Agriculture |
| Phone Number: | 328-4758 | Date Prepared: | 03/17/2009 |

FISCAL NOTE

Requested by Legislative Council
02/04/2009

Amendment to: SB 2248

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2007-2009 Biennium | | 2009-2011 Biennium | | 2011-2013 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | \$0 | \$0 | \$0 | \$10,750 | \$0 | \$0 |
| Expenditures | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Appropriations | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium | | | 2009-2011 Biennium | | | 2011-2013 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB2248 as amended will no longer allow the use of restricted use pesticides under the direct supervision of privately certified pesticide applicators.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 11 of the bill disallows the use of restricted use pesticides under the direct supervision of a privately certified pesticide applicator. Many such individuals are likely to become privately certified.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

We estimate that 430 individuals will receive private certification at a cost of \$25 per certification in the coming biennium, because of their inability to use restricted use pesticides under the direct supervision of a privately certified pesticide applicator. These funds are deposited in the NDSU certification and training fund overseen by the pesticide control board.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

| | | | |
|----------------------|-------------------|-----------------------|-------------|
| Name: | Jeff Weispfenning | Agency: | Agriculture |
| Phone Number: | 328-4758 | Date Prepared: | 02/05/2009 |

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: SB 2248

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2007-2009 Biennium | | 2009-2011 Biennium | | 2011-2013 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | \$0 | \$0 | \$0 | \$10,750 | \$0 | \$0 |
| Expenditures | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Appropriations | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium | | | 2009-2011 Biennium | | | 2011-2013 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill will no longer allow the use of restricted use pesticides under the direct supervision of privately certified pesticide applicators.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 11 of the bill disallows the use of restricted use pesticides under the direct supervision of a privately certified pesticide applicator. Many such individuals are likely to become privately certified.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

We estimate that 430 individuals will receive private certification at a cost of \$25 per certification in the coming biennium, because of their inability to use restricted use pesticides under the direct supervision of a privately certified pesticide applicator. These funds are deposited in the certification and training fund under the pesticide control board.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

| | | | |
|---------------|-------------------|----------------|-------------|
| Name: | Jeff Weispfenning | Agency: | Agriculture |
| Phone Number: | 328-4758 | Date Prepared: | 01/22/2009 |

90776.0101
Title.

Prepared by the Legislative Council staff for
Senator Klein

January 20, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, line 5, replace "4-35-28" with "4-35-29"

Page 1, line 6, replace "the disposition of" with "prior liability"

Page 1, line 7, remove "funds"

Page 4, line 15, remove the overstrike over "use"

Page 7, line 7, after the period insert "When requested by the agriculture commissioner, a commercial applicator immediately shall furnish proof of compliance with this section. If the applicator is unable to furnish the required proof, the commissioner may stop a pesticide application and not allow resumption until the applicator furnishes proof of compliance."

Page 7, line 9, overstrike "person" and insert immediately thereafter "commercial applicator"

Page 9, line 27, overstrike the first comma and insert immediately thereafter "or" and overstrike ", or supervise the use of"

Page 11, line 29, overstrike "economic poison" and insert immediately thereafter "pesticide"

Page 12, line 26, after the first boldfaced period insert "**Certification requirements -**"

Page 15, line 30, replace "repacking" with "repackaging"

Page 16, line 24, replace "4-35-28" with "4-35-29"

Renumber accordingly

Date: Jan 30, 09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move amendments 90776-0101

Motion Made By Klein Seconded By Behm

| Senators | Yes | No | Senators | Yes | No |
|----------------------------|-----|----|---------------|-----|----|
| Tim Flakoll-Chairman | X | | Arthur Behm | X | |
| Terry Wanzek-Vice Chairman | X | | Joan Heckaman | X | |
| Jerry Klein | X | | Ryan Taylor | ✓ | |
| Joe Miller | X | | | | |
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Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

Date: Jan 30, 2009
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

Senate Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO Pass as Amended

Motion Made By Klein Seconded By Taylor

| Senators | Yes | No | Senators | Yes | No |
|----------------------------|-----|----|---------------|-----|----|
| Tim Flakoll-Chairman | | | Arthur Behm | | |
| Terry Wanzek-Vice Chairman | | | Joan Heckaman | | |
| Jerry Klein | | | Ryan Taylor | | |
| Joe Miller | | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Klein

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

REPORT OF STANDING COMMITTEE

SB 2248: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2248 was placed on the Sixth order on the calendar.

Page 1, line 5, replace "4-35-28" with "4-35-29"

Page 1, line 6, replace "the disposition of" with "prior liability"

Page 1, line 7, remove "funds"

Page 4, line 15, remove the overstrike over "use"

Page 7, line 7, after the period insert "When requested by the agriculture commissioner, a commercial applicator immediately shall furnish proof of compliance with this section. If the applicator is unable to furnish the required proof, the commissioner may stop a pesticide application and not allow resumption until the applicator furnishes proof of compliance."

Page 7, line 9, overstrike "person" and insert immediately thereafter "commercial applicator"

Page 9, line 27, overstrike the first comma and insert immediately thereafter "or" and overstrike ", or supervise the use of"

Page 11, line 29, overstrike "economic poison" and insert immediately thereafter "pesticide"

Page 12, line 26, after the first boldfaced period insert "**Certification requirements -**"

Page 15, line 30, replace "repacking" with "repackaging"

Page 16, line 24, replace "4-35-28" with "4-35-29"

Renumber accordingly

2009 HOUSE AGRICULTURE

SB 2248

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2248

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 26, 2009

Recorder Job Number: 9758

Committee Clerk Signature

Re Mae Kuehn

Minutes:

Senator Klein, Sponsor: This is a rewrite of the pesticide law. The last section deals with confidentiality of records.

Roger Johnson, Ag Commissioner: The Pesticide Control Board supports the bill. The Attorney General's office was involved with the rewrite over the past several months. The amendments that were added in the Senate were corrective amendments that were initially agreed to but were missed when the bill was first drafted. The bill before us is the bill as it was intended to appear at the beginning. There are three substantive changes.

1. Restrictive Use Products and the requirement that you must be certified to apply them.
2. Compliance with EPA standards.
3. Confidential business information change. This is the one that prompted us to introduce this bill.

(Written testimony attached #1a)

Jim Gray, Pesticide Registration Coordinator, ND Ag. Dept.: Much of the intent of the bill is to write the pesticide law in plain English. Section 1 eliminates many unneeded definitions. Feedback from our legal counsel said that unless there is something unique about that

definition, you can take it out because it is a commonly understood term. There are two significant changes. "Pesticide dealer" on page 4, line 8, under current law the manufacturer sales reps that are selling Restricted Use Pesticides (RUP) to retailers would have to be certified. The change in definition excludes those people making wholesale sales. The second change is the definition of "private applicator." That is on page 4, line 16. We recommend striking the term "or supervise the use of." Section 3 is one of the more significant changes. This is a new section. Only a certified applicator may purchase or use a restricted use pesticide. These are products that pose a special risk. They may be highly toxic to people. They are products that tend to leach into ground water or surface water or have high toxicity to fish. Under current law if you are applying a product commercially, if it is a general use product like 2-4-D or Banvil, you can be either commercially certified or work under the direct supervision of somebody that is certified. If you are working with a product that is RUP, commercially, you have to hold a commercial certification. The law for private applicators has a loophole where one could apply a RUP product without being certified by working under the direct supervision. The new language in Section 3 would make it clear that if you want to buy or use a RUP product you have to be certified. Some may argue that this is going to be burdensome. RUPs represent less than 5% of the registered pesticides in the State of ND. The top 30 of the most widely used products on a per acre basis, only one of them is considered RUP. **(Attachment #1b)** These are not widely used products but they are risky. The Pesticide Control Board gave this a lot of thought. We recognize that during the agricultural season family members, hired hands, and others . . . (interrupt by question)

Representative Boe: When you say 5% of the chemical, is that 5% of the total amount of the chemicals that are available or is that 5% by the volume of chemicals sold?

Jim Gray: We have over 10,000 registered pesticide products in North Dakota. We have less than 400 products that are classified RUP.

Representative Boe: Is it 5% of the volume of usage then or 5% of the total list?

Jim Gray: It's less than 5% of the registered products. Not per volume or per acre.

Representative Boe: What would that number be for the amount of usage?

Jim Gray: We don't track statewide use data for all 10,000 pesticides. The closest is periodic pesticide use surveys conducted by NDSU. Out of the most widely used products on a per acre basis, only one of the top 30 most widely used products is classified as RUP.

Jim Gray: To continue, many have raised concern about a burden to the agriculture community especially when agriculture producers may be sending family members or hired hands to town to pick up parts. The board agreed that we should allow noncertified persons to pick up RUPs on behalf of a certified applicator. The purchase would be made by the certified applicator and the use would have to be made by the certified applicator.

To continue on the changes, Section 4 has minor changes. Section 5 has editorial changes. Section 6, pages 8 & 9, on page 9, lines 23-28, deals with sales of RUPs to persons certified in different states. Under the current law, if an individual in Minnesota, South Dakota, or Montana that comes to a North Dakota dealership and they are certified in their home state they cannot purchase a RUP unless they are certified in North Dakota. If we go to our neighboring states, all of them do allow people with North Dakota certification to go to their state and purchase the RUPs as long as they bring them back to their home state and use them in the state in which they are certified. This section on page 9 would create such a system in North Dakota.

Representative Mueller: Whose responsibility is it to determine that Minnesota laws are similar to our own so the person in Grand Forks can sell them the chemical?

Jim Gray: NDSU is the entity that issues certifications. They have established reciprocity with many states recognizing that those requirements are comparable to what we have in North Dakota. Those have a similar system to North Dakota which is they hand out a certification card .

Jim Gray: Go to Section 7, page 10, line 16. "County of residence of the applicant" The way the law reads now, a person can only obtain a private certification in the county of residence. We recommend striking that so a person can get private certification at any county office in North Dakota. Section 8, line 14, page 11 we struck one act that would be deemed to be illegal and replaced it with a new phrase. We had many cases every year where a person misapplies a product by spraying it on property they don't control without consent of the land owner. This would make such actions in violation of the law. We also recognize that there are certain programs such as mosquito abatement and noxious weed control by government entities.

Jim Gray: Sections 9, 10, 11, 12, 14 don't really have significant changes other than streamlining language and making it read better. Section 15 deals with records. The Dept. of Ag. gathers pesticide application and sales records as a routine way of doing business. This makes sure that people who are buying RUPs are certified. Obviously there is some sensitive information in those records such as customer lists, prices. We want to make it clear that those records are confidential. They are not open to open-record requests. We do not want competing applicators and competing businesses to get those customer and price lists. If we introduce those records as a piece of evidence in a hearing, they become a public record. The change that would exist would be on lines 11-16 of page 16. In a case this summer it would have been a felony for the Dept to tell the medical provider what the chemical was. We want to provide an exemption to confidentiality in a medical situation. This would give the

Commissioner permission to release the name of the product and the product's EPA registration number. This would give the provider the ability to give the best medical treatment.

Page 16, line 5 deals with bulk repackaging. EPA has recently passed new regulations called container regulations that deal with bulk repackaging. Our Dept. staff needs access to those repackaging records to verify that the dealer has adequately rinsed out those bulk tanks and shuttles.

Vice Chairman Brandenburg: What is the change with the certification that we have with RUPs?

Jim Gray: Under the current law, a private applicator could use a RUP by either being privately certified themselves or working under the supervision of a person that is. This bill would strike the direct supervision provision. So anyone applying an RUP would have to be certified.

Vice Chairman Brandenburg: Could you explain repackaging? Is that when they switch from one chemical to another or putting the same chemical into another tote? Can you just refill the tank on a spray wagon?

Jim Gray: It is moving products in shuttles--taking it from a tank that may be several thousand gallons and putting it in 30 or 50 gallons shuttles that are then dispensed to the end customer. The intent is to get rid of the 2 ½ gallon containers. So we are handling product in bulk quantities. We haven't been able to access those repackaging records. The concern on EPA's part is to make sure that all those shuttles that are sent back and forth are adequately rinsed when changed from chemical to chemical.

Vice Chairman Brandenburg: So there would a list on what is in there and when it was refilled. So there might be a tag on the tank.

Representative Belter: On page 1 on the definition of a "certified applicator" you've struck the language "or supervise." So with this bill no one can unless you are certified yourself. An employee cannot be an applicator.

Jim Gray: That is correct.

Representative Belter: Can an employee pick up chemical?

Jim Gray: We still will allow noncertified folks to pick up RUPs on behalf of certified applicators. As long as the certified applicator is the one purchasing and using the product. That's actually going on now.

Vice Chairman Brandenburg: The biggest change I see, an employee without certification can't run the sprayer.

Jim Gray: Again, those hired hands working with products that are not RUPs like 2-4-D or Roundup or Puma or Bronate or the vast majority of agricultural products don't have to be certified.

Representative Uglem: Does this also apply to mixing chemicals?

Jim Gray: If one looks in our pesticide administrative rules, the term "usage of pesticide" means the loading, mixing, applying, storing, distribution, and disposing of pesticides. "Use" would apply to those people mixing and loading. Folks at that mixing and loading site are dealing with concentrated products. Exposure can be very high. Many are formulated at 4 pounds of active ingredient per gallon. Think of dissolving 4 pounds of sugar in a gallon milk jug.

Representative Mueller: On page 1, line 16 "applicator" means any person who applies a pesticide to land. This isn't in keeping with the rules that you just referenced.

Jim Gray: If we go to the new Section 3 on page 6 it says that "Only a certified applicator may purchase or use a restricted use pesticide."

Duane Hauck, Pest Control Board, NDSU Extension Service Director: The Extension Service supports SB 2248. The NDSU Pesticide Program was established in response to the general public's concern that pesticide use should be regulated. The laws and regulations we operate under originated at the national level in the 1970's and were adopted by our state in the early 1980's. Today, the mission of the program is to train people in the safe, effective, and legal use of pesticides and to measure and certify their competency in doing so. To accomplish this, we develop curricula and all kinds of educational materials, deliver commercial training sessions, oversee county extension agent delivery of private applicator training events, design and oversee exams for both commercial and private certificate holders, maintain a database on the status of commercial certificate holders, supervise the record keeping of private applicators, and verify and administer financial responsibility requirements for commercial pesticide applicators. Bottom line, we train and certify pesticide applicators so they will be competent to use pesticides in a manner that will not harm themselves, the general public, or the environment. In any given year, there are about 2,700 commercial and 4,500 private certifications issued. Approximately 3,500 exams are administered and 140 trainings events are delivered. About a third of the training events are commercial and the balance are private. Commercial trainings last about 6.5 hours and private trainings take about 3.5 hours to complete. We constantly evaluate our program. The evaluations we get back continue to indicate that our program is well-organized, well delivered, relevant, and useful. In addition, EPA provides oversight. There is a little funding from EPA that comes to NDSU. Their evaluations have consistently rated our program very high. We are recognized as one of the lead programs across the country. We are involved in national policy development through EPA's Certification and Training Assessment Group (CTAG). Andrew Thostenson currently serves on the CTAG board as Past Chair and has been the primary author on a half dozen

papers published regarding pesticide application and certification. We believe this bill will help clarify and improve the readability, administration, and enforcement of the Pesticide Use Law. We also support the change to restricting the application of RUPs to only those people who have successfully completed a pesticide certification. While we haven't observed any problems with the current law, we are concerned that without training some high profiled event could result from misapplication causing injuries or damage to our environment. If the law is enacted the additional certifications will not place a burden on our pesticide certification program.

Merlin Leithold, ND Weed Control Assn. South Central Area Director:

(Written testimony attached #2)

Larry Neubauer, President of U.S. Durum Growers Assn.:

(Written testimony attached #3)

Woody Barth, ND Farmers Union: We support SB 2248. We had conversations with the Ag Dept. as they went through the rewrite.

Steve Strege, ND Grain Dealers Assn.: We support SB 2248 especially Sections 8 & 9, lines 24 & 28 that allow a person certified in another state to purchase from dealers in ND.

On page 11, line 14, "Applying pesticide to the property of another," could we add "intentionally" or "willfully"? If we have a dealer go out and happens to be on the wrong section of land, he isn't violating this law.

Representative Uglem: Putting "willfully" in there, would that relieve the applicator of liability?

Steve Strege: I don't know. If you do something by accident, you shouldn't be held liable.

Representative Froelich: If I accidentally break the speed limit, I am still going to get a ticket.

Mike Beltz, ND Ag Coalition Chairman:

(Written testimony attached #4)

Gary Knutson, ND Ag Assn.: Many of our dealers are involved in pesticide application.

We've been in close communication in the development of the bill. We support the bill.

Representative Mueller: What are the requirements of those handling the pesticides at the elevator?

Gary Knutson: They are all certified to sell. If they apply, they are certified.

Myron Dieterle, Sheridan County Weed Board: In our county we have a very limited amount of leafy spurge. **(Written testimony attached #5)**

Representative Uglem: (question for **Jim Gray**) I have a concern with taking supervision out. If I have hired help that is not certified and I'm doing the spraying and he's driving the water truck and hauling chemical back and forth to the field. Is he considered "using"?

Jim Gray: "Use" includes a whole variety of steps which is mixing and loading. If only dispensing water, No, they would not need to be certified. If they are mixing and loading RUPs then, Yes, they need to be certified under the proposed change.

Representative Uglem: Can he drive the truck back and forth to the field transporting those chemicals?

Jim Gray: I would have to look at our administrative rules closer. We are planning on revising our rules this calendar year to also streamline them.

Representative Rust: Could you go through the penalties?

Jim Gray: The penalty section would be Subsection 5, line 28, page 14. That was language that was found in other places in the Chapter that was deleted there and moved over. So there are no changes to the penalties. We simplified a list of who it applies to, to make it one person.

Representative Rust: Also on page 16 there is a lot of new wording added.

Jim Gray: I believe you are talking about the record confidentiality section. We already treat those application and sales records as confidential. This simply clarifies that. Also, we want to release limited information in a medical situation.

Vice Chairman Brandenburg: When I go out spraying at 5:30 or 6:00 in the morning, the only one that gets up at that time is my dad. If he's not certified, he can't mix that chemical.

Jim Gray: The intent of the Dept. would be to make sure that the individual mixing, loading, and handling that concentrated product is certified and deemed to be competent as well as the person making the application.

Representative Belter: If an employee is at the site of loading the sprayer and they turn on the water valve for the truck or another chemical, is that employee in violation of the law?

Jim Gray: We have to use a common sense approach and focus on those things that are truly risky. We have more important things to regulate than opening a valve.

Representative Belter: But if you have someone that follows the letter of the law, someone could get nailed on this.

Jim Gray: The way I look at the term mixing is taking the product and dispensing it into a tank. All those inspections come into the office for a review. We have a penalty matrix in our pesticide enforcement program which allows us to look at the available tools to figure out how we should respond which is driven by risk. One of the provisions we use to decide is whether that violation was willful or not.

Representative Uglem: Do you see any problem with adding "willfully"?

Jim Gray: I don't think it's needed. If we look at page 14, line 15 under penalties "knowingly" is already in there.

Representative Boe: On page 15, lines 7-10, "violation or threat" and then on line 10 "about to occur." How much "about to occur" do we have?

Jim Gray: I have a hard enough time regulating things that are occurring. I don't know where that language came from. I can't really comment on it.

Opposing: None

Chairman Johnson: Closed the hearing.

Recorder # 9760 at 29'15" (after SB 2126 & 2127)

Chairman Johnson: Is the committee ready to work on 2248?

Representative Belter: We were provided with a list from 2004 that only lists one chemical as restricted. I'd like a more updated list.

Representative Uglem: I would also like to Jim Gray to see if he would have any opposition to putting a later effective date on this bill so it wouldn't become effective during the spraying season. That would give people more of a chance next winter to get certified.

Chairman Johnson: We'll wait with this bill to get that information.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2248

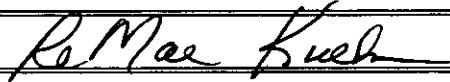
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2009 (**Committee Work**)

Recorder Job Number: 10808

Committee Clerk Signature



Minutes:

Representative Belter: My concern about this bill is that for the private applicator portion it takes away the supervised portion of the bill. I don't agree with that. The amendments that I have prepared would exempt the private applicator from that restriction. I not sure that these amendments do what I want. (**Amendment LC #90776.0201**) Jim Gray thought that Section 3 could be eliminated.

Jim Gray, Dept. of Ag., Pesticide Registration Coordinator and Leader of the Pesticide and Fertilizer Team: This bill does a lot of good changes to 4-35. Not just dealing with certification but it would allow those sales of Restricted Use Pesticides to nonresidents of North Dakota. People can get certification outside of their county of residence. It brings us up to speed with some federal requirements that deal with packaging. It also speaks to records confidentiality. In a medical situation we could release certain information. It rewrites the bill in plain everyday language. I've been visiting with Representative Belter and Headland and other House members about their concerns. They wanted to make sure people applying RUP's commercially had to be certified. They also wanted to allow people applying RUP's for private uses to work under the direct supervision of a certified applicator so they wouldn't have to be certified. I took the proposed amendments and retyped it so you can see how the law

would read if this amendment is used. **(Attachment #1 rewording of 4-35-14)** We would amend the section that deals with private applicator certification. We don't have to affect the definitions. A purchaser of an RUP for private use would have to be certified. When it comes to use there are two choices. That person either has to be certified or they have to be under the direct supervision of a certified applicator. If we adopted these changes and if we struck Section 3 from Engrossed 2248, that would do that. In essence that is where we are right now.

Representative Boe: You're saying this amendment won't completely do it?

Jim Gray: This amendment together with striking Section 3 of the bill would do it. Section 3 starts at the bottom of page 5 and on the top of page 6. This section says only a certified applicator may purchase or use a restricted use pesticide. If this amendment is adopted without striking Section 3, there is a conflict in the law. The section that deals with commercial applicators already speaks to that. This new language would speak to private applicators. So this amendment would do what Representative Belter wants it to do.

Chairman Johnson: So we have before us Representative Belter's amendment and we add on to that to strike Section 3.

Representative Belter: If we could go to page 13, starting with line 14. All of the language "A pesticide is deemed to be applied under the direct supervision of a private applicator . . ." We are striking all that language. I am uncomfortable with those overstrikes. You are confident that we are still getting done what my intent is here?

Jim Gray: Yes. "Under the direct supervision" is defined in the administrative rules. So we don't need this over struck language. This would help streamline the chapter and help meet our intent of getting rid of unnecessary verbiage and get a very easy-to-read document.

Representative Belter: If you go back to line 12, it talks about "a competent person under the direct supervision of a private applicator." We are striking that language.

Jim Gray: We are striking that language and we are putting that requirement in the new amendment language under 4-35-14. So it is not removed from the chapter. It is being moved to 4-35-14.

Representative Vig: A private applicator is a farmer but if I hire the guy in town, he would be in commercial status. Is that correct?

Jim Gary: Page 4, line 15 has the definition of a private applicator. Folks that are hired hands would be considered to be private applicators as long as they are making those applications on lands owned by their employer. If you are trading services on the farm, (Ex. You spray my fields if I help you bale hay) would not be a commercially certified person. This definition would cover hired hands and neighbors trading farm work. They would not have to be commercially certified even though they are getting some form of compensation.

Representative Belter: Go back to page 13, line 14-18. We are striking that language. The way I would interpret this is we've taken a definition away. We are falling back on administrative rules. I am uncomfortable with that because if administrative rules get changed where does that leave us?

Jim Gray: Direct supervision applies to those applying general use products as well. For example, if I'm being compensated for making a pesticide application on land that is not my boss's I need to be a commercial applicator in that setting regardless if that product is RUP or not. I can apply general use products commercially either being commercially certified myself or under the direct supervision of a person that is commercially certified. Representative Belter is right. That definition specifying what "under direct supervision means" is defined in the rules. During that process when we developed that, we went through the public rule making hearing which is about a nine-month process. The advantage to this long process is that we can solicit the input of a whole variety of stakeholders.

Representative Mueller: In referencing the rule-making process, if we adopt whichever version we like, how can rule making be in violation of "under the direct supervision of a certified applicator" if that in fact is in code?

Jim Gray: The rules are not in conflict with this. The rules define what "under direct supervision" means.

Representative Mueller: In that process the intent of the law can't be violated.

Jim Gray: We can't expand the rules to give us more authority than what the law gives us. We do use rules to clarify the law and to write it in language that people can understand.

Chairman Johnson: Are you comfortable, Representative Belter, with that?

Representative Belter: I am not. Rules can easily be changed. I don't like the removal. From a legislative intent, I am very uncomfortable and could not support this bill if we are going to take what I think is a definition of being under direct supervision. It says here "even though the private applicator is not physically present at the time and place the pesticide is applied."

That is saying the private applicator does not have to be on scene at all times. The amendment just talks about direct supervision. What is direct supervision? It's up for definition and that will be clarified in the rules. I want to make sure the rules are written as I want them written. The only way I can do that is putting in code how I think they should be.

Jim Gray: If the desire is to delete that sentence starting at the end of line 14 on page 13, if the intent is to get rid of that overstrike, I have no problem with that. That is how the definition in rules is given right now. If the legislature wants to reattain the ability for that person to not be physically present, I have no issues with that because that is the definition in rules now.

Representative Belter: I want the overstrikes to be taken and I'm looking on line 11 here that "certification requirements of this chapter do not apply to a competent person applying

restricted use pesticides under the direct supervision of a private applicator, unless the pesticide label requires that a certified applicator personally apply the particular pesticide.”

Do any other members have a question on that part?

Representative Uglem: Jim, do many pesticide labels require a certified applicator?

Jim Gray: Some do say, “for use only by a certified applicator.” Some say “for use only by a commercial applicator.” Those are products that are high risk. That’s a label-compliance issue not a certification issue.

Representative Boe: Maybe we should have our intern look this up and find out if we have to define this. This is not the only place in code that “supervision” vs. “direct supervision” is used.

Representative Belter: I would like to remove the overstrikes on page 13 starting on line 8 to line 18.

Jim Gray: Much of those overstrikes were there to make that language more concise and easy to read. The requirement “the certified applicator need not be present” is also found at the end of line 17 moving into line 18. The aircraft issue starting at the end of line 9, we have proposed rewriting that. It is found on line 18 & 19 in a more clear form. The intent is to make sure that “under direct supervision” allows that the certified applicator does not need to be there physically. If the overstrikes are removed from line 8-18, we don’t need to insert the sentence at the end of line 18. One thing we’ve heard from the regulated public is that this chapter is difficult to read because it is written in legalese. I don’t think I would be in opposition to removing those overstrikes. I would just ask that you make sure there isn’t redundant language.

Representative Belter: Moved to remove the overstrikes on page 13 starting on line 8 through line 18 ending with “applied.”

Representative Schatz: Seconded it.

Jim Gray: Then you would need to get rid of the insert language starting on line 18-20.

Representative Belter: I will make that part of my motion.

Voice vote taken. Passed.

Representative Belter: Moved the amendment LC#90776.0201 and add that we strike Section 3 on page 5 and renumber

Representative Wall: Seconded it.

Voice vote taken. Passed.

Representative Mueller: The amendment LC#90776.0201 talks about page 10 letter b after line 6.

Jim Gray: This would create two subsections. (Attachment #1 rewording of 4-35-14)

- a. Buy a RUP
- b. Use

I think we need to retain the language that requires that individual to be certified to buy the RUP. In terms of the use, I don't think we need subsection b if we eliminate the overstrike on page 13. It would be redundant.

Chairman Johnson: What do you want to do with Section 3? Do we still need to remove Section 3?

Jim Gray: Maybe there is an easier fix. What if Section 3 simply stated "only a certified applicator may purchase a Restricted Use Pesticide."

Representative Belter: I would reconsider the action on amendment LC#90776.0201.

Representative Boe: Seconds the reconsider action.

Voice vote taken. Passed.

Jim Gray: I will go into the law to see if the purchase of RUP's is spoken to elsewhere.

If it is, we may not need amendment LC#90776.0201 with the overstrike removal on page 13.

Representative Belter: The only thing about not including the amendment LC#90776.0201, there are a number of places like on page 1 line 20 that remove supervisory. Then on page 4, line 16 we remove supervisory language. There are a couple of other places. That's why I think we may still need the amendment LC#90776.0201 to clarify those other areas.

Chairman Johnson: Called a recess.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2248

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2009 (**Committee Work**) (p.m.)

Recorder Job Number: 10845

Committee Clerk Signature



Minutes:

Chairman Johnson: We had discussion with Legislative Council, Representative Belter, and Mr. Gray. They come to the conclusion to take the overstrikes off on page 13 and remove the understrike on lines 18-20. They suggested we go back and move the amendment

LC#90776.0201 and remove Section 3. Even if there is redundancy, the rewrite will take care of it this summer.

Representative Vig: Are we rewriting the pesticide law during the interim?

Chairman Johnson: Yes.

Representative Mueller: It is not for sure, but the plan was for pesticides and the Seed Dept. to be part of the rewrite.

Representative Rust: Moved amendment LC#90776.0201 including to strike Section 3.

Representative Uglem: Seconded it.

Voice Vote taken. Passed.

Page 2

House Agriculture Committee

Bill/Resolution No. 2248

Hearing Date: March 12, 2009 (Committee Work) (p.m.)

Representative Boe: Moved Do Pass as amended.

Representative Wall: Seconded.

A Roll Call vote was taken. **Yes: 12, No: 0, Absent: 1**, (Representative
Brandenburg).

Representative Uglem will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2248

Page 10, line 1, after "1." insert "a."

Page 10, line 2, remove "or", overstrike "use", and overstrike "classified for"

Page 10, line 3, overstrike "restricted use"

Page 10, after line 6, insert:

"b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:

(1) Complies with the certification requirements established by the board; or

(2) Is under the direct supervision of a certified applicator."

Renumber accordingly

VR
3/12/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2248

Page 1, line 1, remove "to create and enact a new section to chapter 4-35 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to certified pesticide applicators;"

Page 5, remove lines 30 and 31

Page 6, remove lines 1 and 2

Page 10, line 1, after "1." insert "a."

Page 10, line 2, remove "or", overstrike "use", and overstrike "classified for"

Page 10, line 3, overstrike "restricted use"

Page 10, after line 6, insert:

"b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:

- (1) Complies with the certification requirements established by the board; or
- (2) Is under the direct supervision of a certified applicator."

Page 13, line 8, remove the overstrike over "~~The certified~~"

Page 13, remove the overstrike over lines 9 through 17

Page 13, line 18, remove the overstrike over "~~physically present at the time and place that the pesticide is applied.~~" and remove "Because"

Page 13, remove lines 19 and 20

Renumber accordingly

Date: 3/12/09

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

House **Agriculture** Committee☐ Check here for Conference Committee

Legislative Council Amendment Number 90276.0201

Action Taken ☐ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By _____ **Seconded By** _____

[illegible]

Total (Yes) _____ / _____ No _____

Absent

Bill Carrier

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

f Strike Section 3

Date: 3/12/09

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

House Agriculture Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 90776.0201Action Taken ☒ Do Pass ☐ Do Not Pass ☒ AmendedMotion Made By Rep. Boe Seconded By Rep. Wall

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-----------------|-----|----|
| Dennis Johnson, Chair | ✓ | | Tracy Boe | ✓ | |
| Mike Brandenburg, Vice Chair | AB | | Rod Froelich | ✓ | |
| Wesley R. Belter | ✓ | | Richard Holman | ✓ | |
| Joyce M. Kingsbury | ✓ | | Phillip Mueller | ✓ | |
| David S. Rust | ✓ | | Benjamin A. Vig | ✓ | |
| Mike Schatz | ✓ | | | | |
| Gerry Uglem | ✓ | | | | |
| John D. Wall | ✓ | | | | |
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Total (Yes) 12 No 0Absent 1Bill Carrier Rep. Uglem

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

REPORT OF STANDING COMMITTEE

SB 2248, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2248 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact a new section to chapter 4-35 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to certified pesticide applicators;"

Page 5, remove lines 30 and 31

Page 6, remove lines 1 and 2

Page 10, line 1, after "1." insert "a."

Page 10, line 2, remove "or", overstrike "use", and overstrike "classified for"

Page 10, line 3, overstrike "restricted use"

Page 10, after line 6, insert:

"b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:

- (1) Complies with the certification requirements established by the board; or
- (2) Is under the direct supervision of a certified applicator."

Page 13, line 8, remove the overstrike over "~~The certified~~"

Page 13, remove the overstrike over lines 9 through 17

Page 13, line 18, remove the overstrike over "~~physically present at the time and place that the pesticide is applied.~~" and remove "Because"

Page 13, remove lines 19 and 20

Renumber accordingly

2009 SENATE AGRICULTURE

CONFERENCE COMMITTEE

SB 2248

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2248

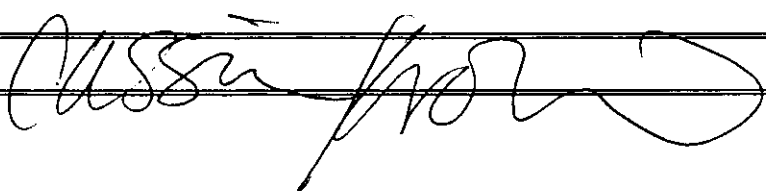
Senate Agriculture Committee

☒ Check here for Conference Committee

Hearing Date: April 21, 2009

Recorder Job Number: 12034

Committee Clerk Signature



Minutes:

Sen. Klein opened the conference committee on SB 2248, Members present **Sen. Klein, Miller and Behm and Rep. D. Johnson, Belter and Vig.**

Rep. Belter- we just made this bill farmer friendly, the intent was to make sure that farm applicators could go out and apply their chemicals in a safe manner that would allow their employees to be part of the loading process and handling of chemicals.

Sen. Klein- I think that we should wait and see what happens with this delayed bill that we have coming up to find out more information on the clean water act resolution. We may need everyone to get a permit from the health department for every chemical, is that correct?

Rep. D. Johnson- that was my understanding that anything that is applied near water has to get a permit from the health department.

Sen. Klein closed the hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2248

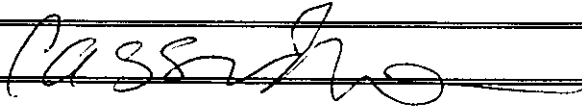
Senate Agriculture Committee

☒ Check here for Conference Committee

Hearing Date: April 21, 2009

Recorder Job Number: 12132

Committee Clerk Signature



Minutes:

Sen. Klein opened the conference committee on SB 2248 members present **Sen. Klein, Miller and Behm and Rep. Johnson, Belter and Vig.**

Sen. Miller motioned for the senate to accede to the house amendments and was seconded by **Sen. Vig.**

Vote 6 yea 0 nay.

Sen. Klein closed the conference committee.

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number 2248 (, as (re)engrossed):

Date: April 21, 09

Your Conference Committee Sen. Agriculture

For the Senate:

For the House:

| YES / NO | | | YES / NO | | |
|-------------|----|---|--------------|----|---|
| Sen. Klein | xx | / | Rep. Johnson | xx | / |
| Sen. Miller | xx | / | Rep. Belter | xx | / |
| Sen. Behm | xx | / | Rep. Vig | xx | / |

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____ and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

| | |
|-----------------------------------|----------------|
| LC NO. | of amendment |
| LC NO. | of engrossment |
| Emergency clause added or deleted | |
| Statement of purpose of amendment | |

MOTION MADE BY: Miller

SECONDED BY: Vig

VOTE COUNT 16 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

SB 2248, as engrossed: Your conference committee (Sens. Klein, Miller, Behm and Reps. D. Johnson, Belter, Vig) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 892-893 and place SB 2248 on the Seventh order.

Engrossed SB 2248 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2248

Roger Johnson
Agriculture Commissioner
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**Testimony of Roger Johnson
Agriculture Commissioner
Senate Bill 2248
Senate Agriculture Committee
Roosevelt Park Room
January 30, 2009**

Chairman Flakoll and members of the Senate Agriculture Committee, I am Agriculture Commissioner Roger Johnson. As Agriculture Commissioner and Chair of the Pesticide Control Board, I am here today in support of SB 2248, as amended.

SB 2248 amends Chapter 4-35 of the North Dakota Century Code, the chapter that regulates the distribution, sale, storage, and use of pesticides. The chapter also establishes certification requirements for pesticide dealers and private, commercial, and public applicators. As Agriculture Commissioner, I am charged with enforcing provisions of N.D.C.C. 4-35.

Most of the proposed changes to N.D.C.C. 4-35 included in amended SB 2248 are housekeeping changes to improve the readability and clarify confusing language. There are a handful of proposed changes that are more substantive in nature which I will identify in my testimony. It

should be noted that all of the proposed changes included in SB 2248 and the amendment have been approved by the Pesticide Control Board and reviewed by the Attorney General's Office.

During the past two years, the Department has significantly increased its use of outreach and education to complement regulatory approaches to bring people into compliance with state pesticide requirements. These efforts paid off. In fact, we documented a 50 percent reduction in the number of pesticide violations in just one year. These results show that people can and do comply with the law once they understand what the law requires. However, we also heard from many people who stated that N.D.C.C. 4-35 is difficult to read and understand. Since persons cannot comply with requirements that they can't understand, I fully support amendments to N.D.C.C. 4-35 to make it easier to read and understand.

Section 1 of the bill cleans up and clarifies several definitions. It also eliminates definitions for commonly understood terms such "antidote", "mixture", and "beneficial insect". I will direct your attention to two substantive changes included in Section 1. First, the definition of "pesticide dealer" on page 4 (line 6) is amended to exclude wholesalers. Without this change, sales representatives from pesticide manufacturers would have to be certified to sell Restricted Use Pesticides (RUPs) to North Dakota retailers.

Second, the definition of "private applicator" is amended to eliminate the phrase "or supervise the use of". This will be discussed in more detail when I discuss Section 3 of the bill.

Section 2 on page 5 of the bill is a minor change and simply adds the word “commercial” to the title of N.D.C.C. 4-35-08. This makes it clear that the section relates only to classification of commercial certificates. This is not a substantive change.

Section 3 on page 5 is a substantive change, and it is probably the most significant change this bill makes to N.D.C.C. 4-35. It relates to persons authorized to use Restricted Use Pesticides (RUPs). RUPs are classified as such because they pose special risk to human health or the environment. RUPs include such things as aluminum phosphide and paraquat that are highly toxic to people; pesticides such as picloram and atrazine that have high potential to leach into groundwater; and substances like insecticides that have high toxicity to fish and aquatic species. Because of the special risk that these products pose, RUPs need to be used by trained, competent individuals.

Current law states that a person can make a commercial application of a pesticide such as 2,4-D or glyphosate either by being commercially certified himself or by working under the direct supervision of a commercially certified applicator. However, because of the risk posed by RUPs, a person cannot make a commercial application of an RUP without being certified. The law is somewhat vague when it comes to private applicators, leaving a loophole whereby a person could make a private application of an RUP without being certified.

The new language on page 5, lines 28-31 makes it clear that only certified applicators may purchase a Restricted Use Pesticide, regardless of whether it is for private or commercial use. I

support this change because it will ensure that RUPs are only used by trained and certified applicators.

Some may argue that the change created by Section 3 will be overly burdensome to agricultural operations, requiring hired hands to become privately certified to use RUPs instead of simply working under the direct supervision of a certified applicator. However, we must remember that RUPs represent less than 5 percent of the registered pesticides in North Dakota. Furthermore, they are not as commonly used as some may believe. In fact, when we look at the top 30 pesticides used in North Dakota on a per-acre basis, only one of them is a RUP.

The law requires that only certified dealers can sell RUPs, and there are strict records requirements for sales. The law also requires that only certified persons can buy RUPs. Both of these provisions are meant to control the distribution of these products and keep them out of the hands of untrained users. However, the greatest risk arises from the use of these pesticides. If we do not keep them in the hands of certified applicators, we defeat the entire purpose of the certification requirements.

The Pesticide Control Board has discussed the issue of who should be allowed to accept or pick up RUPs at a pesticide dealer. The Board agreed that we should allow non-certified persons to pick up RUPs on behalf of certified applicators, but not to use them. This is currently allowed under the law and would still be in effect if this bill is enacted.

Obtaining private certification is not an onerous process; it requires only one half-day training every three years and a \$25 fee. Based on the risk that these products pose to human health and the environment, I believe that this is time well spent. I support this change.

Section 4 on page 6 makes minor changes to N.D.C.C. 4-35-09. These changes are editorial in nature and not substantive.

Section 5 on pages 6 and 7 makes editorial changes to N.D.C.C. 4-35-09.1. Again, these changes are editorial and meant to improve readability, and there are no substantive changes proposed to the financial responsibility requirements for commercial applicators. The proposed change in amendment 90776.0101 will restore the agriculture commissioner's authority to request proof of financial responsibility in the field. This authority currently exists, and the language was inadvertently omitted by Legislative Council when the bill was drafted.

Section 6 on pages 8 and 9 makes changes to the certified pesticide dealer section of the law. Most of these changes are editorial. However, I want to call your attention to one substantive change found on lines 17 to 22 on page 9.

The Pesticide Control Board recently received an informal opinion from the Attorney General that sales of RUPs to non-residents of North Dakota were illegal unless those non-residents held a North Dakota certification, even if they were certified in their home state. In contrast, certified North Dakota residents can purchase RUPs in neighboring states because retailers in Minnesota,

South Dakota, and Montana recognize North Dakota's certification program. This puts our pesticide retailers at a significant disadvantage.

The Pesticide Control Board recognizes the adequacy of certification programs in our neighboring states. Therefore, the Board feels strongly that certified non-residents should be able to purchase, but not use, RUPs in North Dakota with an active certification from their home state. This puts our dealers on a level playing field with their competition in other states.

Section 7 on pages 9 and 10 proposes changes to private certification process. Again, most of the proposed changes are editorial in nature to make the language easier to understand. However, I want to call your attention to a substantive change that is found on page 10, line 10.

Under the current language, a person can only obtain a private certification in his county of residence. This means that a person cannot get a private certification if he travels out of his home county to another county on business. This also precludes non-residents from getting a private certification in North Dakota. The "county of residence" language was originally developed to ensure that all counties offered private certification opportunities, which they do. Striking the "county of residence" requirement will give citizens more flexibility on where they can get certified. It also allows county extension agents to do joint trainings, which is a common and long-standing practice.

Section 8 on pages 10 and 11 amends the "illegal acts" section of the pesticide law. Most of the changes improve the readability of the section. For instance, more than five lines in the

introductory paragraph are reduced to one concise sentence. There is one substantive change to this section, and this is the addition of language to lines 8-10 on page 11.

We have had several cases in recent years where applicators have complied with all restrictions and precautions on pesticide labeling but have intentionally or unintentionally applied pesticides to property that they did not have permission to treat. The Attorney General's office has advised us to add the language on lines 8 to 10 make it illegal to apply a pesticide to the property of another without the permission of the owner or lessee, unless the application is made under the direction of a government entity. The "government entity" provision is meant to allow applications of such things as mosquito repellents and herbicides for noxious weed control under government programs. I support this change.

Section 9 on page 12 amends the section on required records for commercial and public applicators. These changes are editorial in nature and do not change the records requirements.

Section 10 on page 12 addresses certification reciprocity with other states. The lone change to this section is editorial in nature.

Section 11 amends the section of N.D.C.C. 4-35 that provides exemptions to certification. There are no substantive changes to this section. The changes streamline the language and make the section easier to read by eliminating a significant amount of unnecessary text.

Section 12 on page 13 amends N.D.C.C. 4-35-20, the section that deals with discarding and storing of pesticides, containers, and rinsate. The language in SB 2248 will simply eliminate the word "pesticide" from this section because it is not needed.

Section 13 on page 13 and 14 amends the section dealing with subpoena authority. Again, these changes are editorial and not substantive.

Section 14 on page 14 addresses penalties for violations of the chapter. None of these changes are substantive. The language added in lines 22-25 on page 14 is simply moved from N.D.C.C. 4-35-24 (see page 16, lines 18-21 of the bill).

Section 15 on pages 14-16 of SB 2248 has several changes to enforcement authority. Most of the suggested changes are editorial in nature. However, I will call your attention to two substantive changes made to N.D.C.C. 4-35-24 in this section of the bill.

The first substantive change can be found in line 30 on page 15. The U.S. Environmental Protection Agency (EPA) has recently published a bulk pesticide container/containment regulation. As with most federal regulations, states can allow the federal agency to enforce the regulation, or states can enforce it through state authority if their requirements are comparable. North Dakota's bulk pesticide repackaging rules are largely comparable to the federal regulation. One of the only discrepancies lies in the fact that the agriculture commissioner does not have authority to access bulk pesticide repackaging records to ensure that facilities adequately rinse bulk pesticide tanks prior to refilling them. To address this shortfall, the Department needs

access to repackaging records, hence the addition of the word “repackaging” on line 15. Please note that the correct word is “repackaging” and not “repacking”, and this is addressed in the proposed amendment.

The second substantive change in Section **16** of SB 2248 deals with confidentiality of pesticide application and sales records. This can be found lines 1-10 on page 16. Under the current language, application and sales records are confidential “unless required for the enforcement of this chapter”. The Attorney General’s office has communicated that this language is vague. We were recently challenged in this regard by an attorney for a client who alleges human exposure from a pesticide misapplication.

My staff routinely gathers pesticide sales and application records as they inspect dealers and applicators for compliance. We recognize that those records contain sensitive business information that could be used by competitors. Therefore, the language in lines 1-10 on page 16 makes it clear that application and sales records are confidential records and closed from open records requests. However, there are two proposed exceptions: 1) if we use those records in a hearing as an exhibit or piece of evidence, and 2) if there is a medical emergency. In the case of a medical emergency, we should have authority to release enough information for a medical provider to treat a patient. Supplying the name and EPA Registration Number of a product is sufficient information to identify the product and initiate treatment.

Section 16 of the bill repeals two unused and unnecessary sections of the chapter. Note that the proposed language incorrectly lists one of the sections for repeal as 4-35-28. The proposed amendment correctly lists this as 4-35-29.

In summary, I support the changes to N.D.C.C. 4-35 included in SB 2248 and the proposed amendment. I believe that the changes should streamline the chapter and improve its readability. Chairman Flakoll and committee members, I urge a do pass on SB 2248. I would be happy to answer any questions you may have.

Testimony to the Senate Agriculture Committee
1 – 30 – 09
In Support of SB 2248

Brian Rau, representing the *North Dakota Agricultural Aviation Association*

Chairman Flakoll and members of the Senate Agriculture Committee:

For the record, my name is Brian Rau and I farm and operate a commercial aerial application business near Medina, North Dakota. I am here today on behalf of the *North Dakota Agricultural Aviation Association (NDAAA)* and encourage your support for SB 2248. The NDAAA represents 86 aerial applicators in the state. We work to promote aerial application and the safe use of pesticides in the state. Many of our members are also ground applicators.

Much of SB 2248 deals with a clean-up of language in North Dakota pesticide law and the NDAAA supports those efforts.

The specific parts of SB2248 that I would like to address today are:

(page 5 line 30)

We support eliminating the application of Restricted Use Products (RUPs) by persons not certified to apply pesticides by using "direct supervision" of a certified private applicator. Currently commercial applicators cannot use this method to satisfy the certification requirements when using RUPs. Aerial applicators cannot use this method when applying any pesticide. This is a pesticide safety issue. There may have been a time when it could have been argued that commercial applicators cover more acres and thus need more stringent requirements. Today, however, with the farms becoming larger, there are many private applicators who cover more acres and operate more individual spray rigs than some commercial applicators. Most of the pesticides applied in North Dakota are very safe products. A few products (RUPs) do need extra care and some of these are applied by private applicators such as soil fumigants applied to potato fields and the application of chlorpyrifos (Lorsban) products on soybeans. We understand that there is a desire to use the RUP picloram (Tordon) to spot spray weeds and we would not oppose an amendment to allow that to occur with the "direct supervision" method.

(page 8 line 1)

We support the clarification that an employee of a commercial applicator does not have to comply with the financial responsibility if the owner or business does comply.

(page 16 line 8)

We support the clarification that the pesticide records which are obtained by the Dept of Agriculture while doing inspections and investigations are confidential. We understand the need to release certain information when medically necessary. This is business information of a private nature between a commercial applicator and his customer. It sometimes includes financial information, addresses, phone numbers and other information that a customer would not want to have made public.

Thank you for allowing me to address the committee and for consideration of my comments.

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TESTIMONY OF MERLIN LEITHOLD
LOBBYIST # 324
SB 2248
SENATE AGRICULTURE COMMITTEE

JANUARY 30TH, 2009

Good Morning Chairman Flakoll and members of the Senate Agriculture Committee.

My name is Merlin Leithold. I am the ND Weed Control Association's South-Central Area director, the association's lobbyist, and I am also the weed officer in Grant County.

Before you this morning, you have SB 2248. A bill which, in some ways, would simplify the Pesticide Law. As weed control folks, it's obvious that chemicals are a large part of our work. And restricted use chemicals are a large part of the chemicals we use and cost share to landowners. Anytime we can see a change in the law that makes it easier to understand, naturally we will be for it.

His bill does however make changes to the existing law. On page 9 of the bill, language is added to allow people with restricted use licenses to purchase products in North Dakota, providing their state meets our standards. This will be especially

helpful to bordering counties, where farmers farm on both sides of the border.

Also, on page 10 of the bill, language was stricken allowing private applicators to get certified anywhere in the state, not just in their county. There are issues each year where someone misses the local classes.

On behalf of the ND Weed Control Association, I would ask that you consider a do pass on SB 2248.

Thank you

January 30, 2009
Sheridan County Weed Board

*Same given
to House.*

Good Morning Mr. Chairman, members of the committee:

For the record, my name is Myron Dieterle. I am here today representing the Sheridan County Weed Board. I am a farmer, weed board member, and in our county we also are designated to be a weed officers in another portion of the county.

We are here in support of this bill. In our county we have a very limited amount of leafy spurge. This is a result of our 30 years of treatment with a restricted use pesticide by certified applicators. We feel pesticides are labeled "Restricted Use" simply because of the risk misapplication represents to the environment and/ or human health. We feel strongly that any person who applies a pesticide that is restricted in its use should have been personally trained and certified in proper application! Many times our most valuable tools in our battle with noxious weeds are the ones which carry the greatest risk with misapplication.

Thank you! Are there any questions?



Promoting the Production and Marketing of Durum and Semolina

**Testimony of Keith Witte
Before the Senate Agriculture Committee
Friday, January 30, 2009
Senate Bill 2248**

Chairman Flakoll and members of the Senate Agriculture Committee, I am Keith Witte and I am on the Board of Directors representing the United States Durum Growers Association and a farmer in the southwestern corner of the state in the New England-Regent area.

I am here to support SB 2248 as amended.

As growers and users of pesticide products, we support putting the pesticide laws in plain and less complicated language so that the average person can understand them more clearly. The vast majorities of people want to comply with the laws, but are unable to comply with laws that they do not understand.

One of the points of contention is eliminating direct supervision for private applicators that apply restricted use pesticides. If enacted, SB 2248 would require all users of restricted use pesticides to be certified, including hired labor and family members.

Restricted use pesticides (RUPs) are handled with special regard because they are particularly risky to people, other animals and ground water. They require extra effort in record keeping and specific laws govern their purchase. However, the risk is not in the sale of the chemical, but in the use of these chemicals. Having a law to require certification for the use and application of RUPs will help prevent their misuse and improper application.

Since RUPs are inherently risky, we think that it is reasonable to require applicators to be certified. As a farm owner and operator, I must look out for the best interest of my employees and family members. My liability and concern for the safety of my employees and family members is directly impacted by the requirement for training and certification in the safe handling of these restricted use pesticides.

Therefore, Mr. Chairman and members of the Senate Agriculture Committee, the USDGA urges a do pass of SB 2248 as amended. Thank you for your time and consideration.

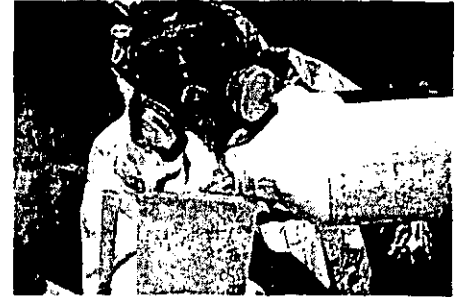
Extension Pesticide Program

Walster Hall, Room 205, NDSU Dept 7060, PO Box 6050
Fargo, North Dakota 58108-6050

January 2009

NDSU Extension Pesticide Program

What do we do?



The NDSU Extension Pesticide Program was established in response to the general public's concern that pesticide use should be regulated. The laws and regulations we operate under originated at the national level in the 1970's and were adopted by the Governor and the Legislature of the State of North Dakota in 1982. Today, the mission of the program is to train people in the safe, effective, and legal use of pesticides and to measure and certify applicator competence.

To accomplish this, we develop curricula and supporting educational materials, deliver commercial training sessions, oversee county extension agent delivery of private applicator training events, design and oversee exams for both commercial and private certificate holders, maintain a database on the status of commercial certificate holders, supervise the record keeping of private applicators, and verify and administer financial responsibility requirements for commercial pesticide applicators.

Bottom line, we train and certify pesticide applicators so they will be competent to use pesticides in a manner that will not harm themselves, the general public, or the environment.

Who we are?

In partnership with the North Dakota Department of Agriculture, the NDSU Extension Pesticide Program coordinates with 100+ NDSU specialists and county extension staff across North Dakota to deliver pesticide training and certification. We have three staff members on campus and a part time trainer located at Devils Lake.

- **Andrew A. Thostenson, Pesticide Program Specialist**—Responsible for managing the program. (Full-time)
- **Julie Anderson, Administrative Secretary**—Responsible for overseeing the commercial applicator program, the financial responsibility program, and managing the commercial certificate program. (Full time during the school term, 50% time in the summer)
- **Jayne Aukland, Administrative Secretary**—Responsible for providing support to county offices for the private applicator program, managing training material inventories, and fund administration. (Full-time)
- **Mike Liane, Pesticide Training Specialist**—Responsible for conducting commercial and private pesticide trainings. (15% appointment for pesticides and 85% for irrigation development)

In addition, we employ a computer programmer/database administrator on an as needed basis to maintain and develop our certification databases. From October to May we employ seasonal help to manage our trainings. And finally, we employ four college students for general administrative support.

Who are our clients?

People who use pesticides to raise crops (private applicators or farmers) and people who merchandise and apply pesticides for commercial/public purposes (pesticide dealers and custom applicators, researchers, public health officials). At the time of this writing, there are about 13,500 active private certifications and 8,000 active commercial/public/dealer certifications.

This clientele group is different from traditional extension audiences on two major points. One, they are required to participate in the program by law and are, therefore, not at all enthusiastic. And two, these people represent the entire spectrum of the adoption model, from early adopters to late adopters and everyone in between. This makes education difficult at best and impossible at worst. Therefore, being successful is an extraordinary challenge.

Program delivery

In any given year, about 2,700 commercial and 4,500 private certifications are issued. Approximately 3,500 exams are administered and 140 trainings are delivered. About a third of the trainings are commercial and the balance are private. Commercial trainings last about 6.5 hours and private trainings take about 3.5 hours to complete. Planning for each yearly certification cycle begins six months beforehand. Training schedules and venues are fixed, publications are ordered, notices are sent to applicators whose certifications are set to expire, newsletters are published and distributed, training materials are distributed, and then curriculum, videos and other teaching materials are prepared and distributed before the yearly training season even commences. Finally, from October through May, trainings are conducted. Records, exams, and certificates are updated, administered, and issued year round.

Getting results

Both mail and live audience surveys at trainings indicate that our program is well-organized, well-delivered, relevant, and useful. What follows is a recent quote from an experienced applicator who attended a pesticide training sponsored by the North Dakota Ag Association:

"Hi Andrew: I wanted to let you know that I think you did a very good job of putting together the training session yesterday and keeping things moving. The mix of slides, movie clips, and the personal response session helped keep people in tune. It is tough to keep that many people for that long in a training session, but you did a nice job....."

In addition, independent annual reviews of the program by the Environmental Protection Agency (EPA) have consistently rated the program highly and we are widely recognized as leaders in pesticide training and certification. Finally, we are involved in national policy development through EPA's Certification and Training Assessment Group (CTAG). (CTAG's mission is to develop and implement proposals that will strengthen federal, state, territory, and tribal pesticide certification and training programs.) Andrew Thostenson currently serves on the CTAG board as Past Chair and he has been the primary author on six white papers on certification and training issues.

Roger Johnson
Agriculture Commissioner
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Equal Opportunity in Employment and Services

**Testimony of Roger Johnson
Agriculture Commissioner
Senate Bill 2248
House Agriculture Committee
Peace Garden Room
February 26, 2009**

Chairman Johnson and members of the House Agriculture Committee, I am Agriculture Commissioner Roger Johnson. As Agriculture Commissioner and Chair of the Pesticide Control Board, I am here today in support of engrossed SB 2248.

SB 2248 amends Chapter 4-35 of the North Dakota Century Code, the chapter that regulates the distribution, sale, storage, and use of pesticides. The chapter also establishes certification requirements for pesticide dealers and private, commercial, and public applicators. As Agriculture Commissioner, I am charged with enforcing provisions of N.D.C.C. 4-35.

Most of the proposed changes to N.D.C.C. 4-35 included in engrossed SB 2248 are housekeeping changes to improve the readability and clarify confusing language. There are a handful of proposed changes that are more substantive in nature which I will identify in my testimony. It should be noted that all of the proposed changes included in SB 2248 have been approved by the

Pesticide Control Board and reviewed by the Attorney General's Office. It should be noted that the amendment introduced to date for SB 2248 were simply made to correct inadvertent omissions and typographical errors when the bill was drafted.

During the past two years, the Department has significantly increased its use of outreach and education to complement regulatory approaches to bring people into compliance with state pesticide requirements. These efforts paid off. In fact, we documented a 50 percent reduction in the number of pesticide violations in just one year. These results show that people can and do comply with the law once they understand what the law requires. However, we also heard from many people who stated that N.D.C.C. 4-35 is difficult to read and understand. Since persons cannot comply with requirements that they can't understand, I fully support amendments to N.D.C.C. 4-35 to make it easier to read and understand.

Section 1 of the bill cleans up and clarifies several definitions. It also eliminates definitions for commonly understood terms such "antidote", "mixture", and "beneficial insect". I will direct your attention to two substantive changes included in Section 1. First, the definition of "pesticide dealer" on page 4 (line 8) is amended to exclude wholesalers. Without this change, sales representatives from pesticide manufacturers would have to be certified to sell Restricted Use Pesticides (RUPs) to North Dakota retailers.

Second, the definition of "private applicator" is amended to eliminate the phrase "or supervise the use of". This will be discussed in more detail when I discuss Section 3 of the bill.

Section 2 on page 5 of the bill is a minor change and simply adds the word “commercial” to the title of N.D.C.C. 4-35-08. This makes it clear that the section relates only to classification of commercial certificates. This is not a substantive change.

Section 3 on pages 5 and 6 is a substantive change, and it is probably the most significant change this bill makes to N.D.C.C. 4-35. It relates to persons authorized to use Restricted Use Pesticides (RUPs). RUPs are classified as such because they pose special risk to human health or the environment. RUPs include such things as aluminum phosphide and paraquat that are highly toxic to people; pesticides such as picloram and atrazine that have high potential to leach into groundwater; and substances like insecticides that have high toxicity to fish and aquatic species. Because of the special risk that these products pose, RUPs need to be used by trained, competent individuals.

Current law states that a person can make a commercial application of a pesticide such as 2,4-D or glyphosate either by being commercially certified himself or by working under the direct supervision of a commercially certified applicator. However, because of the risk posed by RUPs, a person cannot make a commercial application of an RUP without being certified. The law is somewhat vague when it comes to private applicators, leaving a loophole whereby a person could make a private application of an RUP without being certified.

The new language in Section 3 (page 5, lines 28-31 and page 6, lines 1 and 2) makes it clear that only certified applicators may purchase a Restricted Use Pesticide, regardless of whether it is for

private or commercial use. I support this change because it will ensure that RUPs are only used by trained and certified applicators.

Some may argue that the change created by Section 3 will be overly burdensome to agricultural operations, requiring hired hands to become privately certified to use RUPs instead of simply working under the direct supervision of a certified applicator. However, we must remember that RUPs represent less than 5 percent of the registered pesticides in North Dakota. Furthermore, they are not as commonly used as some may believe. In fact, when we look at the top 30 pesticides used in North Dakota on a per-acre basis, only one of them is a RUP.

The law requires that only certified dealers can sell RUPs, and there are strict records requirements for sales. The law also requires that only certified persons can buy RUPs. Both of these provisions are meant to control the distribution of these products and keep them out of the hands of untrained users. However, the greatest risk arises from the use of these pesticides. If we do not keep them in the hands of certified applicators, we defeat the entire purpose of the certification requirements.

The Pesticide Control Board has discussed the issue of who should be allowed to accept or pick up RUPs at a pesticide dealer. The Board agreed that we should allow non-certified persons to pick up RUPs on behalf of certified applicators, but not to use them. This is currently allowed under the law and would still be in effect if this bill is enacted.

Obtaining private certification is not an onerous process; it requires only one half-day training every three years and a \$25 fee. Based on the risk that these products pose to human health and the environment, I believe that this is time well spent. I support this change.

Section 4 on page 6 makes minor changes to N.D.C.C. 4-35-09. These changes are editorial in nature and not substantive.

Section 5 on pages 6 and 7 makes editorial changes to N.D.C.C. 4-35-09.1. Again, these changes are editorial and meant to improve readability, and there are no substantive changes proposed to the financial responsibility requirements for commercial applicators.

Section 6 on pages 8 and 9 makes changes to the certified pesticide dealer section of the law. Most of these changes are editorial. However, I want to call your attention to one substantive change found on lines 23 to 28 on page 9.

The Pesticide Control Board recently received an informal opinion from the Attorney General that sales of RUPs to non-residents of North Dakota were illegal unless those non-residents held a North Dakota certification, even if they were certified in their home state. In contrast, certified North Dakota residents can purchase RUPs in neighboring states because retailers in Minnesota, South Dakota, and Montana recognize North Dakota's certification program. This puts our pesticide retailers at a significant disadvantage.

The Pesticide Control Board recognizes the adequacy of certification programs in our neighboring states. Therefore, the Board feels strongly that certified non-residents should be able to purchase, but not use, RUPs in North Dakota with an active certification from their home state. This puts our dealers on a level playing field with their competition in other states.

Section 7 on pages 9 and 10 proposes changes to private certification process. Again, most of the proposed changes are editorial in nature to make the language easier to understand. However, I want to call your attention to a substantive change that is found on page 10, line 16.

Under the current language, a person can only obtain a private certification in his county of residence. This means that a person cannot get a private certification if he travels out of his home county to another county on business. This also precludes non-residents from getting a private certification in North Dakota. The "county of residence" language was originally developed to ensure that all counties offered private certification opportunities, which they do. Striking the "county of residence" requirement will give citizens more flexibility on where they can get certified. It also allows county extension agents to do joint trainings, which is a common and long-standing practice.

Section 8 on pages 10 and 11 amends the "illegal acts" section of the pesticide law. Most of the changes improve the readability of the section. For instance, more than five lines in the introductory paragraph are reduced to one concise sentence. There is one substantive change to this section, and this is the addition of language to lines 14-16 on page 11.

We have had several cases in recent years where applicators have complied with all restrictions and precautions on pesticide labeling but have intentionally or unintentionally applied pesticides to property that they did not have permission to treat. The Attorney General's office has advised us to add the language on lines 14 to 16 make it illegal to apply a pesticide to the property of another without the permission of the owner or lessee, unless the application is made under the direction of a government entity. The "government entity" provision is meant to allow applications of such things as mosquito repellents and herbicides for noxious weed control under government programs. I support this change.

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Section 12 on page 13 amends N.D.C.C. 4-35-20, the section that deals with discarding and storing of pesticides, containers, and rinsate. The language in SB 2248 will simply eliminate the word "pesticide" from this section because it is not needed.

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Section 15 on pages 14 to 16 of SB 2248 has several changes to enforcement authority. Most of the suggested changes are editorial in nature. However, I will call your attention to two substantive changes made to N.D.C.C. 4-35-24 in this section.

The first substantive change can be found in line 5 on page 16. The U.S. Environmental Protection Agency (EPA) has recently published a bulk pesticide container/containment regulation. As with most federal regulations, states can allow the federal agency to enforce the regulation, or states can enforce it through state authority if their requirements are comparable. North Dakota's bulk pesticide repackaging rules are largely comparable to the federal regulation. One of the only discrepancies lies in the fact that the agriculture commissioner does not have authority to access bulk pesticide repackaging records to ensure that facilities adequately rinse bulk pesticide tanks prior to refilling them. To address this shortfall, the Department needs access to repackaging records, hence the addition of the word "repackaging" on line 15.

The second substantive change in Section 15 of SB 2248 deals with confidentiality of pesticide application and sales records. This can be found lines 8-16 on page 16.

My staff routinely gathers pesticide sales and application records as they inspect dealers and applicators for compliance. Under the current language, application and sales records are confidential "unless required for the enforcement of this chapter". The Attorney General's office has communicated that this language is vague and open to differing interpretations. In fact, one could assert that all records gathered through inspections and investigations are gathered to enforce the chapter. The new language in lines 8 to 10 simply clarifies that these records are confidential unless we use those records as an exhibit in an enforcement action (hearing). This is how we deal with application and sales records now, so this is not a substantive change. The language simply makes this clearer.

The language in lines 11 to 16 on page 16 deals with the release of pesticide application records in the event of a medical emergency. We were recently challenged in this regard by an attorney for a client who alleged human exposure from a pesticide misapplication. The individual in question asked for information on what pesticides were being used by the applicator in question. We had gathered the application records as part of our investigation, but were told by our legal counsel that we could not legally disclose the information, even in a medical emergency. In fact, it was a felony to disclose the information. The new language allows the Agriculture Commissioner to release information on the name and EPA Registration Number of a pesticide when there is a medical necessity. Supplying the name and EPA Registration Number of a product is sufficient information to identify the product and initiate treatment.

In summary, I support the changes to N.D.C.C. 4-35 included in engrossed SB 2248. I believe that the changes should streamline the chapter and improve its readability. Chairman Johnson and committee members, I urge a do pass on SB 2248. I would be happy to answer any questions you may have.

Most Widely Used Pesticides in ND Based on 2004 NDSU Use Survey

#16
Jim Gray
2/26/09
2248

| Active Ingredients | ND Treated Acres (1000) ^a | ND Product | RUP? |
|------------------------------|---|-------------------------|------------|
| Glyphosate | 9569.1 | Several | no |
| Fenoxaprop | 4007.0 | Puma | no |
| Bromoxynil + MCPA | 2924.6 | Bronate, Bromox, Brox-M | no |
| 2,4-D | 2911.0 | Several | no |
| MCPA | 1188.4 | Several | no |
| Clethodim | 1163.9 | Select, Arrow, | no |
| Dicamba | 1100.8 | Banvel | no |
| Fluroxypyr | 825.8 | Starane, Vista | no |
| Thifensulfuron + Tribenuron | 774.8 | Harmony Extra | no |
| Tebuconazole | 655.3 | Folicur | no |
| Flucarbazone | 611.3 | Everest | no |
| Thifensulfuron | 558.2 | Harmony GT | no |
| Triflurosulfuron | 551.6 | Upbeet | no |
| Bentazon + Sethoxydim | 544.3 | Rezult | no |
| Pyraclostrobin | 540.8 | Headline | no |
| Imazamox | 508.8 | Beyond | no |
| Clopyralid + Fluroxypyr | 472.8 | Widematch | no |
| Sulfentrazone | 456.7 | Spartan | no |
| Propiconazole | 401.0 | Tilt, Bumper, etc | no |
| Chlorothalonil | 394.3 | Bravo Zn | no |
| Desmidipharm + Phenmedipharm | 392.9 | Betamix | no |
| Tribenuron | 392.2 | Express | no |
| Quizalofop | 299.4 | Assure II | no |
| Trifluralin | 279.2 | Treflan TR-10 | no |
| Fluroxypyr + MCPA | 262.9 | Starane + Sword | no |
| Esfenvalerate | 257.1 | Asana | YES |
| Pendimethalin | 250.1 | Prowl | no |
| Tetraconazole | 221.3 | Eminent | no |
| Ethofumesate | 220.0 | Progress, Nortron | no |
| Sethoxydim | 203.3 | Poast | no |
| Total: | 32938.9 | | |

2/26/09 #2
NORTH DAKOTA WEED CONTROL ASSOCIATION

3196 119th Ave SE, Valley City, ND 58072 2248

www.ndweeds.homestead.com Merlin Leithold



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TESTIMONY OF MERLIN LEITHOLD
LOBBYIST # 324
SB 2248
HOUSE AGRICULTURE COMMITTEE
FEBRUARY 26TH, 2009

Good Morning Chairman Johnson and members of the House Agriculture Committee. My name is Merlin Leithold. I am the ND Weed Control Association's South-Central Area director, the association's lobbyist, and I am also the weed officer in Grant County. Before you this morning, you have SB 2248. A bill which, in some ways, would simplify the Pesticide Law. As weed control folks, it's obvious that chemicals are a large part of our work. And restricted use chemicals are a large part of the chemicals we use and cost share to landowners. Anytime a change is made in the law, that makes it easier to understand, we will be for it.

This bill does however make changes to the existing law. On page 9 of this bill, language is added to allow people, from other states, with restricted use licenses to purchase products in North Dakota, providing their state meets our standards. This will be especially helpful to bordering counties, where farmers farm on both sides of the border. Also, on page 10 of the bill, language was stricken allowing private applicators to get certified anywhere in the state, not just in their county. There are issues we hear of each year where someone misses the classes in their local counties.

On behalf of the ND Weed Control Association, I would ask that you consider a do pass on SB 2248.

Thank you



U.S. Durum Growers Association

Promoting the Production and Marketing of Durum and Semolina

#3
2248
2/26/09
Larry Neubauer

**Testimony from the U.S. Durum Growers Association
Before the House Agriculture Committee
Thursday, February 26, 2009
Senate Bill 2248**

Mr. Chairman and members of the House Agriculture Committee, My name is Larry Neubauer. I am President of the United States Durum Growers Association.

I am here to support SB 2248 as amended.

As growers and users of pesticide products, we support putting the pesticide laws in plain and less complicated language so that the average person can understand them more clearly. The vast majorities of people want to comply with the laws, but are unable to comply with laws that they do not understand.

One of the points of contention is eliminating direct supervision for private applicators that apply restricted use pesticides. If enacted, SB 2248 would require all users of restricted use pesticides to be certified, including hired labor and family members.

Restricted use pesticides (RUPs) are handled with special regard because they are particularly risky to people, other animals and ground water. They require extra effort in record keeping and specific laws govern their purchase, but the risk is not in the sale of the chemical, but in the use of these chemicals. Having a law to require certification for the use and application of RUPs will help prevent their misuse and improper application.

Since RUPs are inherently risky, we think that it is reasonable to require applicators to be certified. As a farm owner and operator, I must look out for the best interest of my employees and family members. My liability and concern for the safety of my employees and family members is directly impacted by the requirement for training and certification in the safe handling of these restricted use pesticides.

Therefore, Mr. Chairman and members of the House Agriculture Committee, the USDGA urges a do pass of SB 2248. Thank you for your time and consideration.



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Association
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North Dakota Department of
Agriculture
North Dakota Dry Bean Council
North Dakota Dry Edible Bean
Seed Growers
North Dakota Elk Growers
North Dakota Farm Bureau
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North Dakota Soybean Growers
Association
North Dakota State Seed
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North Dakota State University
Agriculture and University
Extension
North Dakota Wheat
Commission
North Dakota Potato Growers
Association
Northern Plains Potato Growers
Association
Northern Pulse Growers
Association
Red River Valley Sugarbeet
Growers

#4
2248
2/26/09
Mike Beltz

Testimony of Mike Beltz North Dakota Ag Coalition In Support of SB 2248 February 26, 2009

Chairman Johnson and members of the House Agriculture Committee:

For the record, my name is Mike Beltz and I farm near Hillsboro. I am here today as the chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of SB 2248.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for more than 25 years. Today, we represent 38 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. The Ag Coalition takes a position on a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry.

The Ag Coalition supports SB 2248, which clarifies the language in the Pesticide Act, making it easier for pesticide applicators to understand and comply with the law. The markets for North Dakota commodities depend on customer confidence that the food and feed crops are safe and marketable. The changes in this bill ensure that compliance with the law will be easier, therefore benefiting the entire agriculture industry.

We encourage your favorable consideration of SB 2248.

Beltz testimony in support of SB 2248.

Duane Hauck
NDSU
2/26/09

**SB2248: Revisions to the Pesticide Use Law of
North Dakota—Chapter Code 4.35**

January 30, 2009

Key Points

1. The NDSU Extension Service is supportive of SB2248, as written and amended with technical corrections, especially with regards to the primary effort to clarify and improve the readability, administration, and enforcement of the Pesticide Use Law. However, we urge extreme care in making these changes as they could lead to un-intended consequences for the regulated community (farmers, ranchers, custom applicators, pest control eliminators, researchers, public health applicators, and even home owners).
2. The NDSU Extension Service is supportive with respect to additional restrictions on the application of Restricted Use Pesticides
 - a. We support the change to restricting the application of RUP's to only those people who have successfully completed a pesticide certification.
 - b. While we have not observed significant problems with the existing law, we are concerned that a person who has not demonstrated competency may become involved in a high profile event which could result in serious injuries, fatalities, or damage to the environment.
 - c. NDSU has sufficient expertise and resources to meet the burdens this change might have with respect to increased numbers of farmers, ranchers, and hired hands that may need to become certified.
3. NDSU believes that the other substantive changes to the pesticide laws are not likely to result in significant negative impacts on users of pesticides and should result in more flexibility with respect to: sales, obtaining a pesticide certificate, handling bulk pesticides safely, and protecting the health of people accidentally exposed to pesticides.

Tim Gray
#1
3/12/09

Re-wording to NDCC 4-35 if engrossed SB 2248 passes with proposed Belter amendment:

4-35-14. Private applicators certification.

1. a. An individual who would be a private applicator, if certified, may not buy any restricted use pesticide unless the individual first complies with the certification requirements established by the board.
- b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:
 - (1) Complies with the certification requirements established by the board;
or
 - (2) Is under the direct supervision of a certified applicator.