

2013 HOUSE AGRICULTURE

HB 1390

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1390
February 14, 2013
Job #18960

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Provide a legislative management study of liability for application of pesticides

Minutes:

Representative Vigesaa, Co-Sponsor: I had a constituent in my area that suffered a significant loss from an aerial applicator. The insurance was not adequate for his compensation. This bill would raise the requirements of insurance for aerial applicators. It is difficult to have people pay more insurance. To open the dialogue I put it in the form of a study. It does include both ground and aerial. It is a "Shall consider" study. The Agriculture Department is very interested in the topic.

Representative Headland: Did your constituent have tissue analysis to support his theory that the pesticide is what happened to his crop?

Representative Vigesaa: We did not discuss that specifically. It was him and others that suffered the loss from the same applicator.

Dan Wogsland, North Dakota Grain Growers: We support this study. It protects the producers of North Dakota and looks at the liability of the applicators.

Representative Fehr: Could you explain in more detail?

Dan Wogsland: We are looking at the liability limits that are present now for applicators. If there is a loss, corn at \$1,000/acre will be more than can come from insurance.

Representative Headland: As an applicator myself for my land, am I part of the study?

Dan Wogsland: This pertains to commercial application. It is not a bad idea to take a look at all liability.

Representative Headland: I would want to know if I have enough liability.

Representative Larson: Do you buy liability insurance as an applicator. Is there a limit?

Dan Wogsland: I would defer to those who have more expertise.

Representative Vigesaa: The intent was commercial applicators.

Opposing:

Eric Aasmundstad, North Dakota Farm Bureau: I am also the chairman of the Board of Directors of the largest seller of farm liability insurance, NoDak Mutual. The liability limits that are faced by commercial or private applicators are a function of the market. The insurance industry determines what rate has to be charged. If government steps in and says we need to raise the limits, you are imposing a mandate on insurance companies that has nothing due with actuarial soundness.

The amount of liability insurance that we sell now is limited by design. It is limited by the market. We could sell higher limits of liability insurance. But those premiums would be unaffordable. An example would be federal flood insurance. For years the industry supplied flood insurance. When the risk became too great and the value of the insured property became greater, the indicators said they had to raise their rates. They had to raise their rates beyond what people could afford to pay. So people quit buying flood insurance and companies quit selling it. People started moving out of flood plains. Then the government stepped in with cheap flood insurance. Now people are moving back into the flood plains. The market works. Let the market function.

Vice Chair John Wall: What would liability insurance be now?

Eric Aasmundstad: I couldn't say. It would be a guess. I can get that information.

Representative Kiefert: Do you find most claims are crop vs. crop or crop vs. rural resident?

Eric Aasmundstad: Most of the claims are crop vs. rural resident.

Eric Aasmundstad: North Dakota Farm Bureau put out a publication "So You Want to Move to the Country." You spray next to someone's farmstead that has a garden, you are to blame whether it is from spray or not. That is 97% of the claims we deal with.

Do they happen often? No. The vast majority of claims at our company are rural resident.

Chairman Dennis Johnson: Do you have quite a few commercial policies with aerial applicators?

Eric Aasmundstad: We have a few commercial ground guys that we cover. We broker that business out.

Chairman Dennis Johnson: The numbers we saw on \$100,000 coverage, it was \$10-14,000 if you had 20 years of no claims. If you were a new pilot you would spray for six years under somebody else's policy. If you had a claim it was out of your own pocket.

Eric Aasmundstad: We are trying to get across to our agents that because of the cost they should make sure our farmer-insured-excess liability is where it needs to be. We are encouraging people to carry \$2 million in excess liability.

Representative Kiefert: You mentioned temperature inversion.

Eric Aasmundstad: Everyone wants a calm day to spray. It hangs over the ground and moves wherever the day takes it. You have to wait for a little breeze. It is the difference in temperature of surface and a little above. It happens on mornings that are real wet. With an airplane it is that much worse.

Representative Fehr: When you talked about actuarials, could you explain.

Eric Aasmundstad: It's a complicated process based on history and cost. The process of rate making is a long process and best guesses. What is the frequency of an event? What does the insurance company have to charge to be profitable? Insurance is probably the most highly regulated industry there is. If the regulators were to come to an insurance company and liquidate the company, they have to have \$1 left. An insurance company always has to have a net value. The statutory accounting requirements also enter into rate making. When figuring out the premium, it is to pay the claim and remain profitable.

Representative Fehr: (20:24) The actuarials aren't intended to cover every claim every loss fully.

Eric Aasmundstad: No. As a company you have to be able to cover them and be prepared for the abnormal.

Representative Fehr: This bill is to do a study. What do you think this study will conclude?

Eric Aasmundstad: There are two kinds of studies. There are studies to find an answer to something you don't know anything about. There also is a lot of outcome-based research. You know what the answer is going into it. If insurance companies are going to be told by a government entity what to cover, we won't offer the coverage. Then you will have commercial applicators that will be out of business. That is the danger of studying something that the market can handle.

Representative Trottier: Commercial applicators are not required to have liability insurance?

Eric Aasmundstad: Yes, you have to have some level of liability insurance. I don't know what the number is for chemical application.

Representative Trottier: We have two brothers that have a helicopter service. One brother carried insurance, the other one didn't. The one with insurance averaged six claims per year. The brother with no insurance had no claims. Is the commercial applicator legally responsible for losses?

Eric Aasmundstad: If it is proven that they caused the loss, I would hope they would be responsible.

Representative Trottier: Federal Crop Insurance does not cover spray loss, do they?

Eric Aasmundstad: If you show a yield loss and didn't say where it came from, they will cover it.

Representative Trottier: That is my experience also.

Eric Aasmundstad: Back to the two brothers, you still have people that don't do things in the right way.

Neutral:

Jim Gray, Pesticide and Fertilizer Division Director with Department of Agriculture: Under the North Dakota Century Code, a person applying pesticides for private use is not obligated under law to carry any type of insurance. If they are applying Restricted Use Pesticides (RUP), like Asana or Tordon, the private applicators need to be certified and they have to take a test.

If I am in the business as a commercial applicator, I not only have to pass a test to show that I am competent, I also have to show financial ability to handle some economic impact. When we read from the Century Code, commercial applicators need to maintain proof of financial responsibility in the amount of \$100,000. It may be demonstrated by a notarized letter from an officer of a financial institution or from a Certified Public Accountant attesting to the existence of net assets equal to at least \$100,000, a performance bond, or a general liability insurance policy.

My understanding of this bill is that it would study if that minimum of a \$100,000 is an appropriate minimum.

Representative Rust: Would you repeat where that is from?

Jim Gray: NDCC 4-35-09.1. The section is called Proof of Financial Responsibility. We have had a number of commercial applicators with that minimum who are unable to cover losses. \$100,000 doesn't go very far with current crop prices. Many commercial applicators carry more than minimum up to \$2 million. When the law talks about a general liability insurance packages, we are not sure that term is right especially for some of the aerial applicators. Some applicators carry drift insurance which is different than a general liability package. If the study is to look at the minimum of \$100,000 and what type of financial responsibility applicators need, the Ag. Dept. would support that. But you can't set the minimum so high that it forces commercial applicators out of the market place.

Chairman Dennis Johnson: The example of the two brothers would be Okay if one had the letter of responsibility.

Jim Gray: (30:00) If they have the net worth of a \$100,000, they are not legally obligated to carry any liability insurance to be a commercial applicator.

Vice Chair John Wall: Is the liability insurance in North Dakota consistent with other states?

Jim Gray: I don't know. In North Dakota the Ag. Dept. doesn't run the certification program. It is a program we deal with indirectly.

Representative Trottier: How many claims are there?

Jim Gray: The department investigates about 50 pesticide drift complaints each year. We probably get a small fraction of them. We get claims when a landowner can't reach a compromise with the applicator.

Vice Chair John Wall: Are you neutral on this bill?

Jim Gray: The Ag. Dept. in general is neutral. It is a number. It is a minimum number. As long as the number is not so high that it forces people from the marketplace.

Representative Headland: 50 complaints. How many were pesticide related?

Jim Gray: I can get those numbers to you.

Chairman Dennis Johnson: Closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1390
February 15, 2013
Job #19051

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Committee Work)

Provide a legislative management study of liability for application of pesticides

Minutes:

Representative Headland: Moved Do Not Pass

Representative Kiefert: Seconded the motion

Representative Rust: This bill talks about pesticides and yet we were talking about all kinds of spray. I'm not sure what we are studying. I think it needs more work.

Representative Headland: If it would get studied, we would find a problem. Especially with aerial application, those guys are so few. A new burden could shut them down. I got this complaint list from Jim Gray. 50% of the complaints received in the Dept. of Ag. are not pesticide related.

Chairman Dennis Johnson: We have had this discussion before with applicators. It is hard to find insurance. That is why there is the option to show a letter of financial responsibility.

A Roll Call vote was taken: Yes 10, No 1, Absent 2. (Reps. Heilman and Haak)

Do Not Pass carries.

Representative Trottier will carry the bill.

Date: 2/15/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1390**

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Headland Seconded By Rep. Kiefert

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman John Wall	X		Rep. Jessica Haak	AB	
Rep. Wesley Belter	X		Rep. Marvin Nelson	X	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Joe Heilman	AB				
Rep. Dwight Kiefert	X				
Rep. Diane Larson		X			
Rep. David Rust	X				
Rep. Wayne Trottier	X				

Total Yes 10 No 1

Absent 2

Floor Assignment Representative Trottier

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

REPORT OF STANDING COMMITTEE

HB 1390: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO NOT PASS** (10 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1390 was placed on the Eleventh order on the calendar.