

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2419

2001 SENATE AGRICULTURE

SB 2419

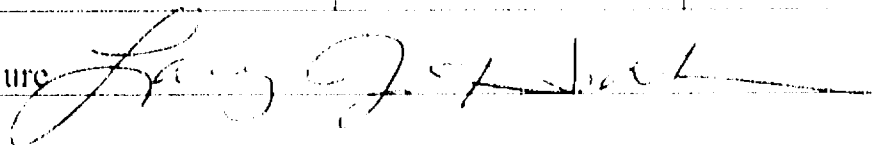
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2419

Senate Agriculture Committee

☐ Conference Committee

Hearing Date February 8, 2001

Tape Number	Side A	Side B	Meter #
Feb. 8 1	X		32.0 - END
		X	0.0 - 1.2
Committee Clerk Signature 			

Minutes:

SENATOR NICHOLS: Sponsor, introduced the bill to the committee. This bill relates to proof of financial responsibility of commercial pesticide applicators. Section 1 of the bill would ask legislative council to consider studying these issue regarding financial responsibility requirements.

ANDREW THOSTENSON; NDSU Extension Service, Pesticide Program Specialist. Testified in support of this bill. See attached testimony.

SENATOR WANZEK; Are you aware that we past a bill in this committee and it past on the Senator floor, that would require certification for even all general use pesticides?

ANDREW THOSTENSON; Yes, I am well aware of that. That would change this a little bit, but don't really do anything in terms of addressing the enforcement side. The certification program runs over a three year period, proof comes in annually. It would help matters to some

degree if the bill that has past the Senate comes into law, but it still won't cover the main problem.

MERLIN LEITHOLD; ND Weed Control Association, testified in support of the bill. See attached testimony.

JEFF OLSON; Program Manager Plant Industries, ND Dept. Of Agriculture, testified in support of this bill. See attached testimony.

SENATOR WANZEC; This is an ongoing issue and hopefully we can figure something out, but this a difficult issue to find a solution for.

JEFF OLSON; I have been looking at this frequently and a lot of discussion about the certification. This is difficult topic because of the different interest groups and I think a study would help find a middle ground.

GARY KNUTSON; NDAA, testified in the neutral position on this bill. We realize that this doesn't work and need to be worked on. There are a lot of complexities to this bill.

LOWELL BERNTSON; testified in opposition of this bill. We as producers have to protect ourselves and these applicators have to have liability insurance and have to be responsible for their actions. A good applicator is cover by liability and drift insurance.

ANDREW THOSTENSON; The downside of this bill is that it doesn't do anything for drift liability insurance.

DONALD VIG; testified in opposition to this bill.

SENATOR KLEIN; There is always people that will break the law and create these issues. The hearing was closed.

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Senate Agriculture Committee
Bill/Resolution Number SB 2419
Hearing Date February 8, 2001

February 9, 2001

SENATOR KLEIN moved to DO PASS.

SENATOR NICHOLS seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR NICHOLS will carry the bill.

Date: 2-9-01
Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2419

Senate _____ Agriculture _____ Committee _____

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Klein Seconded By Sen. Nichols

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Nichols

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

REPORT OF STANDING COMMITTEE (410)
February 9, 2001 1:09 p.m.

Module No: SR-24-2871
Carrier: Nichols
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2419: Agriculture Committee (Sen. Wanzek, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2419 was placed on the
Eleventh order on the calendar.

2001 HOUSE AGRICULTURE

SB 2419

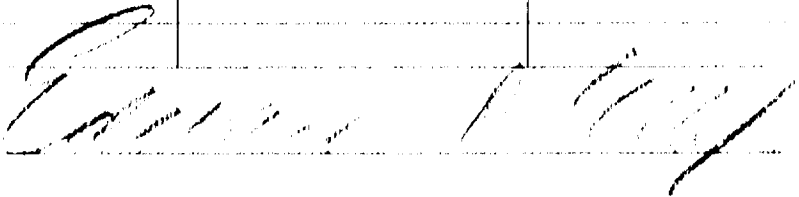
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2419

House Agriculture Committee

☐ Conference Committee

Hearing Date 3--09--01

Tape Number	Side A	Side B	Meter #
THREE	A		1080 TO 3455
Committee Clerk Signature			

Minutes:

CHAIRMAN NICHOLAS: COMMITTEE MEMBERS WE WILL OPEN THE HEARING ON SB 2419. SENATOR NICHOLS GO AHEAD ON 2419.

SENATOR NICHOLS: I am here today as the prime sponsor of SB 2419. In general terms we have had some problems in this area for quite sometime. We have tried legislation in the past. It has not worked very well. I know that the legislation that is on the book right now is extremely hard to administer and for that reason I submitted this Bill. It will offer a study of the issues regarding financial responsibility requirements for commercial applicators. To repeal the law that we now have on the books that really dose not work and takes a lot of time and effort and money and basically it can not work. I have someone from the Agr. Dept. discuss the details.

JEFF OLSON: PROGRAM MANAGER PLANT INDUSTRIES NDDA Please see printed testimony. I am also passing out testimony for Andrew A Thostenson who is absent today.

I URGE A DO PASS ON THIS BILL.

REPRESENTATIVE PIETSCH: With this law in place, you come over and spray someone's territory and the drift comes on me. My recourse now is the person who is drifted on is civil action. Is that correct. Just being certified, that dose not give that air applicator any protection from damage that they might do in a civil action.

JEFF: No it dose not give you any protection whatsoever. It gives us no enforcement ability either. Unless ofcourse if they applied it in an inappropriate way.

GARY KNUTSON: ND AGR. ASSOCIATION. From day on this is a very difficult issue and obviously within the association. We want to promote stewardship with use of the pesticide products and the application and the responsibility through out the system. Financially for the small applicator this is very expensive. A lot of the larger applicators will have this insurance. Do we totally want to start over or dose the legislature want to carry an unworkable law on the books to expedite. We do need a group to study it. In civil action you have to have a worth of \$100,000.00.

MERLIN MICHAEL'S: I am here to represent the ND WHEAT CONTROL ASSOCIATION. We are in favor of a study to see if something can be done. We do know that there is a problem out there.

STEVE STREGIE: ND GRAIN DEALERS. Keep current law in place. Something is better then nothing. Take line 11 and 12 out of SB 2419.

RENNER: MOST COMPLAINTS ARE FROM AERIAL APPLICATORS. THE FARMER THAT OWNS THE LAND AND HIRES THE APPLICATOR HAS FARM LIABILITY THAT WILL COVER THE DRIFT.

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House Agriculture Committee
Bill/Resolution Number SB 2419
Hearing Date 3--09--01

REPRESENTATIVE BERG: The issue that four years ago what that they were going to require all applicants to buy insurance to cover drift protection. Everyone. If there was a law they would go to the farm owner and work out a settlement. I very supportive of eliminating burdens on our ND applicators and I think removing this would eliminate a burden. Having said that I think that I think that this was kind of a way of slicing that pie that these people could easily show that they had a net-worth of one hundred thousand. These claims that we are talking about are 3 or 4 hundred claim. I don't know who would be in the business that would not have that kind of equity. I believe in the study. I don't think it is quite solved yet. I am concerned about just eliminating this boom and we have fly by night operators come in and create huge problems so we go back to where we were with the crops we had four years ago.

JEFF OLSON: You are correct. I can see both ways. An administrative hearing cost as to enforcement where I am required to have a hearing cost 1,000.00. There has to be an administrative hearing before I can suspend. One third of applicators are out of compliance even after we send out warning letters. I have no problem with leaving the Bill in place but I would like something in place as far as the enforcement responsibility. We don't have money in the Agr. Department just to enforce this, particularly section of the law. That is where the problem comes in. Lets look at the existing amendment before moving ahead with this, we have no problem with that.

JEFF OLSON: I will have to get together with the attorney general etc. and see if we can put something together, for the committee to take a look at.

BERG: If there is a road block talk to me.

CHAIRMAN NICHOLAS: ANY ADDITION TESTIMONY ON 2419?

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House Agriculture Committee

Bill/Resolution Number SB 2419

Hearing Date 3--09--01

WE WILL CLOSE ON SB 2419. 1A:3455

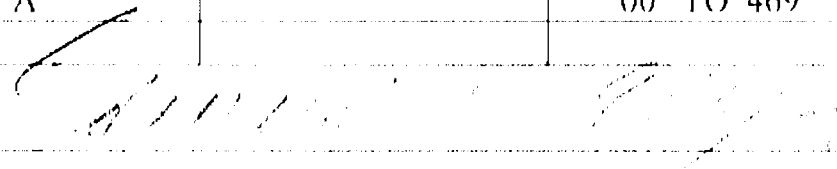
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. S B 2419

House Agriculture Committee

☐ Conference Committee

Hearing Date 3--16--01

Tape Number	Side A	Side B	Meter #
TWO	A		5000 TO END
THREE	A		00 TO 469
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: WE WILL OPEN THE HEARING ON 2419.

REPRESENTATIVE BERG: BASICALLY THIS ISSUE IS AN OLD FRIEND OF THIS COMMITTEE. WHAT HAS HAPPENED IN THE PAST WE HAVE HAD CERTAIN PERIODS OF TIME WHERE WE NEED A LOT OF COMMERCIAL SPRAYERS AND IN THE VALLEY THEY BROUGHT A LOT OF OUT OF STATE SPRAYERS IN; THEY HIT IT HARD FOR TWO OR THREE WEEK; THEY HAVE PROBLEMS WITH SOME OF THOSE OUT OF STATE SPRAYERS BECAUSE THEY LEFT THE STATE; THERE WAS OVER SPRAY; MANY PROBLEMS; SO LEGISLATION CAME IN TO REQUIRE ALL SPRAYERS TO HAVE OVER SPRAY INSURANCE, DRIFT INSURANCE, WHICH WAS NOT POSSIBLE SO WE ENDED UP SAYING WE WANTED A SPRAYER TO HAVE A FINANCIAL NET WORTH SO SOMEONE COULD SUE THEM. WHAT THE BILL DID WAS TAKE THAT SECTION OUT. WITH THE AMENDMENTS IT WILL LEAVE THAT

Page 2

House Agriculture Committee

Bill/Resolution Number SB 2419

Hearing Date 3--16--01

SECTION IN AND I THINK IT IS A \$100,000.00 DOLLARS EQUITY THEY NEED TO HAVE. FOR THE SPRAYERS THAT HAVE BEEN AROUND FOR TWENTY YEARS. THIS IS NOT CAUSING THEM TO GO OUT AND GET A BOND OR BUY INSURANCE. WE JUST WANT TO MAKE SURE THAT THERE ARE ENOUGH ASSETS SO THAT SOMEONE COULD SUE YOU IF YOU HAVE A PROBLEM. THE AMENDMENTS TWEET THE EXISTING STATUE. RATHER THEN ANNUALLY PROVE THAT YOU HAVE THE NET WORTH OF ONE HUNDRED THOUSAND, YOU WOULD PROVE IT ONE TIME AND IF THERE WAS A PROBLEM THEY COULD ASK YOU TO RE-SUBMIT YOUR WORTH SO THAT YOU COULD COVER A DRIFT SITUATION. THE OTHER ISSUE IS THAT IN THE STATUE THEY HAVE THE RIGHT TO REVOKE SOMEONE'S LICENSE. WHEN YOU REVOKE A LICENSE THERE IS A PROCESS YOU GO THROUGH, IT TAKE 30 TO 90 DAYS TO REVOKE A LICENSE. SO WHAT THEY WANT TO DO IS CHANGE IT SO THAT THEY CAN SUSPEND A LICENSE SO THAT THEY CAN SUSPEND THAT PERSON FROM SPRAYING. IN ESSENCE IT WOULD TAKE THEM OUT OF THE SPRAYING SEASON. THAT IS WHAT THE AMENDMENTS DO WHEN WE GET THEM. PLEASE SEE AMENDMENTS.

JEFF KNUTSON: PLEASE SEE AMENDMENTS AS TO JEFF KNUTSON TESTIMONY. THIS AMENDMENT GIVE THE AGR. COMMISSIONER PERMISSION TO AUTOMATICALLY SUSPEND THE LICENSE.

REPRESENTATIVE BERG: DO WE STILL NEED THE LEGISLATIVE STUDY

JEFF KNUTSON: BILL MIGHT NOT BE PERFECT. IT IS A COMPROMISE

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House Agriculture Committee
Bill/Resolution Number SB 2419
Hearing Date 3--16--01

REPRESENTATIVE RENNER: HOW ABOUT A LETTER OF CREDIT. GO TO THE BANK AND GET IT.

JEFF KNUTSON: I THINK THE MAJORITY HAVE AN INSURANCE POLICY.

CHAIRMAN NICHOLAS: ANY MORE DISCUSSION? O.K. THE CHAIR WILL ENTERTAIN A MOTION FOR DO PASS AS AMENDED.

REPRESENTATIVE BERG MADE A MOTION FOR A DO PASS AS AMENDED AND REPRESENTATIVE LEMIEUX SECONDED.

CHAIRMAN NICHOLAS: ANY OTHER QUESTIONS? THE CLERK WILL TAKE THE ROLL. THERE WERE ****14 YES***0 NO****1 ABSENT****

THE BILL WAS CARRIED BY REPRESENTATIVE RENNER:

WE WILL CLOSE THE HEARING ON SB 2419.

PROPOSED AMENDMENTS TO SB2419:

On line 1 replace the word "repeal" with "amend".

Delete lines 11 and 12.

On line 10, after the period insert:

SECTION 2. AMENDMENT. Section 4-35-09.1 is amended and reenacted as follows:

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator must furnish proof of financial responsibility on demand to the commissioner of agriculture as provided in this section. Minimum financial responsibility must be ~~demonstrated annually~~ maintained in the amount of one hundred thousand dollars, and 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 one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner must immediately ~~request the suspension of~~ suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder must demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.

2. This section does not apply to:

a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.

b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal

grasslands lease.

c. A person required to be certified in the right-of-way category.

d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

And renumber accordingly.

VR
3/16/01
1062

HOUSE AMENDMENTS TO SB2419 HSE AGR. 3-16-01

Page 1, line 1, remove "to provide for a legislative council study; and" and replace "repeal" with "amend and reenact"

Page 1, line 3, after "applicators" insert "; and to provide for a legislative council study"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 4-35-09.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator shall furnish proof of responsibility on demand to the commissioner of agriculture as provided in this section. Minimum financial responsibility must be ~~demonstrated~~ annually maintained in the amount of one hundred thousand dollars, and 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 one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner ~~must~~ shall immediately ~~request the suspension of~~ suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder ~~must~~ shall demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.
2. This section does not apply to:
 - a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - c. A person required to be certified in the right-of-way category.
 - d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop."

2062

Page 1, remove lines 11 and 12

Renumber accordingly

3-16-01

Date:
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

SB 2419

House AGRICULTURE

Committee

☐ Subcommittee on _____

or

☐ Conference Committee

BERG LEMIEUX

Legislative Council Amendment Number

AS AMENDED

Action Taken

DO PASS

Motion Made By

BERG

Seconded By

LEMIEUX

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux	✓	
Rick Berg	✓		Philip Mueller	✓	
Michael Brandenburg			Kenton Onstad	✓	
Joyce Kingsbury	✓		Sally M. Slandvig	✓	
Myron Koppang	✓		Dennis J. Renner	✓	
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes)

14

No

0

Absent

1

Floor Assignment

RENNER

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

REPORT OF STANDING COMMITTEE

SB 2419: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2419 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to provide for a legislative council study; and" and replace "repeal" with "amend and reenact"

Page 1, line 3, after "applicators" insert "; and to provide for a legislative council study"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 4-35-09.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator shall furnish proof of responsibility on demand to the commissioner of agriculture as provided in this section. Minimum financial responsibility must be ~~demonstrated annually~~ maintained in the amount of one hundred thousand dollars, and 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 one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner ~~must~~ shall immediately ~~request the suspension of~~ suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder ~~must~~ shall demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.
2. This section does not apply to:
 - a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - c. A person required to be certified in the right-of-way category.

- d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop."

Page 1, remove lines 11 and 12

Renumber accordingly

CO

NT

NEXT FIGURE

2001 SENATE AGRICULTURE

CONFERENCE COMMITTEE

SB 2419

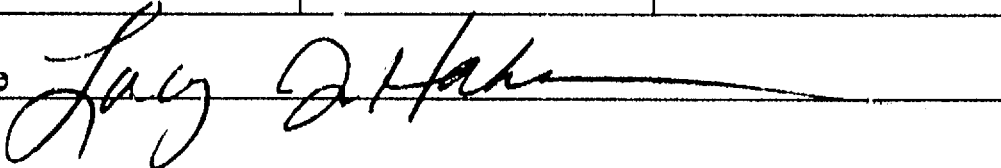
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2419

Senate Agriculture Committee

☒ Conference Committee

Hearing Date: April 12, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-7.2
Committee Clerk Signature 			

Minutes:

The conference committee on SB2419 was called to order by the conference chairperson SENATOR URLACHER. Others in attendance were SENATORS ERBELE, KROEPLIN and REPRESENTATIVES BRANDENBURG, PIETSCH. REP. MUELLER was absent.

SENATOR URLACHER: We have a quorum. I would like to call on committee members or whoever to go through the amendments and explain the changes and the effects. I believe.

REP. BRANDENBURG: I will just start out here, but, I've been visiting with Rep. Pietsch and we were talking in the House amendments, the commercial pesticide applicator shall furnish proof of responsibility and demand that the Commission of Agriculture is provided in this section. I think the thinking was that and Rep. Pietsch can add to it, that if somebody does run into some problems that the Agriculture Commissioner could request proof of responsibility and have it demanded so they can find out whether or not this person is solvent or would be able to cover the faucets and I think Rep. Pietsch may want to add to it.

REPRESENTATIVE PIETSCH: I think the proof of financial responsibility really needs to be demonstrated or provided upon certification. The certification of commercial pesticide applicators only happens once every three years. So in effect, most applicators are out of compliance and second and third year of their period. As I understand our amendment is to say it is not up to the Agriculture Commissioner to be constantly looking for people who are out of compliance but should a complaint come forward relating to that applicator that on demand that applicator needs to prove that financial responsibility to the State Department of Agriculture. And so I think rather than having people, you may be out of compliance but you're not out looking to find people out of compliance but when there is a situation where that financial responsibility ought to be in place. I think the other part was that there is a time frame, and Jeff helped us quite a bit with this, but the Attorney General indicated that in order to revoke a license, did I have that correct, you need to go through a court action in order to revoke a license, and so the language is changed to say that the license can be suspended which is our understanding that it does not require that suspend a license for not having a financial statement without going through a court action. I think that was the main thing we were trying to clear up.

SENATOR URLACHER: Do the Ag Dept have any more comments to follow up on?

JEFF OLSON, DEPARTMENT OF AGRICULTURE PLANT INDUSTRIES and PROGRAM MANAGERS: When we've stepped to the House requested that we go back and try to find something workable, so that we had something on the books. For the next Interim and hopefully a study will happen at the same time which is Section Two of this same bill. We got together with the Ag Association, the Grain Dealers Association, NDSU, and we worked something's that we thought from the departments point of view, would be enforceable and would be acceptable at

NDSU and with the Ag Association. The Ag Association and the Ag Dealers really had kind of changed their position on this bill when it was first proposed as far as repealing it, and we wanted to keep something on the books instead of starting from ground zero. So we were approached by them as this was going in and through the process of all the hearings and stuff, so when we sat down with them, they were acceptable with the language that we have, that we came up with here and it's something that the department can enforce because we're not going to require them to prove that they are in compliance but if upon demand of the Ag commissioner office, or representative they must demonstrate their responsibility. So it is just like, we kind of patterned it after insurance requirements for having or driving a car, or licensing a vehicle. You can have it when you get a license but you don't have to show proof until you actually get stopped. So, that is what we kind of patterned this after to kind of make it enforceable for us and eliminates a lot of paper work for NDSU in trying to maintain a data base as far as who is in compliance and what not. One question that I have I guess it is in line 10 to furnish proof of responsibility. Should that be financial responsibility? The term responsibility could probably be a broader ranging cause we're not just talking about the financial responsibility of the commercial applicators. Responsibility could mean the act that they did or accused of doing or what not versus the financial responsibility of maintaining that.

REPRESENTATIVE PIETSCH: I notice and I am assuming that this underlined from our amendment that really was, that word , was inserted and apparently for some reason it didn't get transferred to the underlined wording in the Engrossed bill.

SENATOR URLACHER: So the amendment I think ought to, as we accepted it, I think that was included.

JEFF OLSON: I also believe that is correct, financial.

REPRESENTATIVE PIETSCH: And I would be glad to answer any other questions that may be paying for this bill.

SENATOR URLACHER: Let's bring it in line with a more enforceable angle or is that the way you see it?

JEFF OLSON: Yes! Mr. Chairman, it does! We aren't, the department, we're not going to go out and specifically look for these non compilers. We would, anytime we do a random inspection or if we get a complaint where we have to do an investigation that is the time that we would ask for their proof of financial responsibility.

SENATOR URLACHER: Any other questions for the committee?

Any other concerns for the members? Do I hear any other than the proposal to change the one wording " financial responsibility" rather than "proof it".

REPRESENTATIVE PIETSCH: I move that we add the word " financial" between of and responsibility in Line 10.

REPRESENTATIVE BRANDENBURG: seconded the motion. Discussion was held among the conference committee members. Roll call vote: 5 Yeas, 0 No, 1 Absent and Not voting.

SENATOR ERBELE moved that the Senate accede to the House amendments and further amend.

SENATOR KROEPLIN; seconded the motion. Roll call vote: 5 Yeas, 0 No, 1 Absent and Not voting.

Date: April 12, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2419

Senate Agriculture Committee

☐ Subcommittee on _____

or
☒ Conference Committee

Legislative Council Amendment Number _____

Action Taken amend

Motion Made By Rep. Pitsch Seconded By Rep. Brandenburg

Senators	Yes	No	Senators	Yes	No
<u>Senator Uhlacher</u>	<u>✓</u>		<u>Rep. Brandenburg</u>	<u>✓</u>	
<u>Senator Erbe</u>	<u>✓</u>		<u>Rep. Pitsch</u>	<u>✓</u>	
<u>Senator Kropf</u>	<u>✓</u>		<u>Rep. Mueller</u>	<u>A</u>	

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

insert "financial" before responsibilities

Roll Call Vote #: 2

Senate Agriculture Committee

Conference Committee

Legislative Council Amendment Number _____

Action Taken Senate accedes to House amendments

Motion Made By Sen. Eckels Seconded By Sen. Kroepelin

[illegible]

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

REPORT OF CONFERENCE COMMITTEE

SB 2419: Your conference committee (Sens. Uriacher, Erbele, Kroeplin and Reps. Brandenburg, Pietsch, Mueller) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 970, adopt amendments as follows, and place SB 2419 on the Seventh order:

That the House recede from its amendments as printed on page 970 of the Senate Journal and pages 1011 and 1012 of the House Journal and that Senate Bill No. 2419 be amended as follows:

Page 1, line 1, replace "provide for a legislative council study; and to repeal" with "amend and reenact"

Page 1, line 3, after "applicators" insert "; and to provide for a legislative council study"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 4-35-09.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator shall furnish proof of financial responsibility on demand to the agriculture commissioner as provided in this section. Minimum financial responsibility must be ~~demonstrated annually maintained~~ in the amount of one hundred thousand dollars, and 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 one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner ~~must~~ shall immediately ~~request the suspension of~~ suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder ~~must~~ shall demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.
2. This section does not apply to:
 - a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.

- c. A person required to be certified in the right-of-way category.
- d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop."

Page 1, remove lines 11 and 12

Renumber accordingly

SB 2419 was placed on the Seventh order of business on the calendar.

2001 TESTIMONY

SB 2419



NORTH DAKOTA STATE UNIVERSITY

Extension Pesticide Program

Department of Plant Sciences

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February 8, 2001

Senate Agriculture Committee Testimony—SB 2419

Chairman Wanzek and members of the committee. My name is Andrew A. Thostenson. I am the Pesticide Program Specialist with the North Dakota State University Extension Service. I am here to testify in regards to the proposed repeal of North Dakota's "Financial Responsibility Law" for commercial pesticide applicators.

Background

Concerns from agricultural producer groups about civil liability arising from pesticide misapplication resulted in the establishment of a Financial Responsibility (FR) law in 1997. Predictably the law was a compromise. It sought to keep the burden associated with obtaining insurance or bonding by the industry reasonable and still meet the concerns of producer groups who would suffer from pesticide misapplication. The law is summarized as follows:

- Only certified commercial pesticide applicators are covered.
- The applicator must show financial responsibility of at least \$100,000.
- If the applicator does not have assets or bonding of \$100,000, the applicator must obtain general liability insurance.
- The general liability insurance policy need not cover pesticide misapplication (*this was established by an Attorney General opinion*).
- The applicator must demonstrate proof annually.
- Failure to provide FR can result in the denial of certification and or the suspension of certification.
- In 1999 the Legislature amended the law to exempt certain applicators engaged in the control of noxious weeds.

Deficiencies with the Law

The language of the law presents several difficulties for compliance by the industry, the administering agency (North Dakota State University Extension Service--NDSU), and the enforcement agency (the North Dakota Department of Agriculture--NDDA).

- The law only covers certified commercial applicators.
- Certification is only required under the ND Pesticide Act for those people engaged in the application and merchandising of restricted use pesticides.
 - Those individuals who work with general use pesticides, which make up 90% of the pesticides used in ND, need not be certified.
 - The result is the law does not cover a sizable population of pesticide users in the state.
 - The law acts as a disincentive to certification. The certification program's mission is to provide all applicators with basic pesticide education and then grant them minimum competency credentials through the examination process. The law causes many applicators to forego this beneficial educational program because of the added financial and bureaucratic burdens.
- The law requires annual proof of FR, yet the certification cycle is every three years. In the first year of certification, FR compliance is 100%. But in years two and three applicators often failed to provide proof of FR.
- Failure to provide proof of FR in years two and three of the certification cycle is a common problem. On the average, at least one third of all certified applicators (over 1,000) are not in compliance with the law because:
 - The penalty for non-compliance is relatively light--only suspension.
 - According to numerous rulings by the Attorney General, suspension can only be effected via an administrative hearing (A hearing takes weeks if not months to schedule and costs in excess of \$1,000 each to convene.).
 - Administrative hearings are not practicable for suspending a thousand or more applicators.
 - Failure to enforce the law (though not from lack of trying) has resulted in indifference or contempt for it by applicators.

- Confusion--numerous exceptions and waivers cause many to assume falsely that they are in compliance.
- The certification program trains and issues credentials to individuals. Most commercial applicators are employed by businesses, and the business provides FR. Therefore, the certifying agency (NDSU) whose primary mission is education, in effect must become a licensing agency for businesses.
- The certification training and testing program does not differentiate between people who apply pesticides and those that simply merchandise or recommend them. Therefore, hundreds of people who ordinarily would not be covered (because they do not apply pesticides) must request exemptions.
- The law was designed to address the need for FR for people who apply pesticides. However, general liability insurance clearly does not include pesticide misapplication. Therefore, if an applicator drives a sprayer into a barn, the expense would be covered. But if the applicator destroys a quarter section of canola, beets, or sunflowers via misapplication, no compensation would be forthcoming.
- The law detracts from the mission of the certifying agency by absorbing staff time and resources that would ordinarily be used to develop and enhance educational programs and issuance of certification credentials.
- The law is practicably unenforceable so the enforcing agency (the NDDA) is reduced to making only empty threats of enforcement action. This frustrates both the NDDA and the industry.

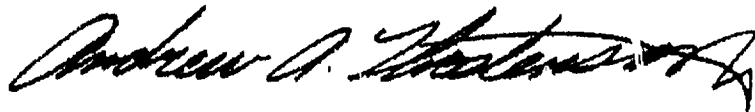
Courses of Action

Clearly the present FR law has deficiencies that require some action by the 2001 Legislature. What action the Legislature should take is your prerogative, but three courses of action are clear:

1. Remove the FR law from the books. Or...
2. Enact broader language that would:
 - a. Require pesticide misapplication coverage instead of just general liability.

- b. Require FR for all commercial applicators regardless of certification status.
 - c. Require the FR law be administered by a licensing agency rather than an educational organization. Or...
3. Modify the present law, so it's administration can be streamlined

Thank you for your attention,



Andrew A. Thostenson, Pesticide Program Specialist
NDSU Extension Service Pesticide Training and Certification Program
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**NORTH DAKOTA WEED CONTROL ASSOCIATION
TESTIMONY OF MERLIN LEITHOLD**

SB 2419

SENATE AGRICULTURAL COMMITTEE

FEBRUARY 8, 2001

Good morning, Chairman Wansek, and members of the Senate Agricultural Committee.

My name is Merlin Leithold. I am the weed control officer in Grant County. I am here today representing the ND Weed Control Association.

SB 2419 would repeal the current financial responsibility law for pesticide applicators.

Proof of financial responsibility first started 2 sessions ago. It was with this committee, that a bill was introduced relating to financial proof for aerial applicators. Due to various testimony, that bill was amended to include ground applicators.

Last session, a bill was introduced to expand the existing law. That bill was defeated.

Another bill was introduced last session to exempt ranchers on federal grazing lands.

The ND Weed Control Association successfully had that bill amended to exempt all ground applicators spraying noncropland.

The ND Weed Control Association favors repeal of the current law, and we look forward to the legislative council trying to find a workable resolution.

Thank-you

COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



PHONE (701) 328-2231
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FAX (701) 328-4567

DEPARTMENT OF AGRICULTURE
State of North Dakota
600 E. Boulevard Ave. Dept. 602
Bismarck, ND 58505-0020

**NORTH DAKOTA DEPARTMENT OF AGRICULTURE
LEGISLATIVE TESTIMONY**

Testimony of Jeff Olson, Program Manager
Plant Industries
North Dakota Department of Agriculture
Senate Bill 2419
February 8, 2001
9:45 a.m.
Senate Agriculture Committee
Roosevelt Room

Chairman Wanzek and members of the committee. My name is Jeff Olson. I am the Program Manager for the Plant Industries Area in the Department of Agriculture. I am here to testify in support of SB 2419 for the repeal of section 4-35-09.1 dealing with "Proof of Financial Responsibility - Exceptions" and for an interim study to look into industry's for request a better, more enforceable version.

The Department of Agriculture agrees that insurance requirements are necessary for commercial pesticide applicators, and the Department would be interested in working with the interim committee to discuss the complications of the present law and solutions to rectify them. The existing law simply has not worked as it was intended. A significant number of people do not

realize it requires general liability insurance. They also do not realize it applies only to certified applicators. We have had several complaint situations where the applicator has told an aggrieved party they are not required to carry insurance because they do not spray restricted use pesticides.

Filing "proof of insurance" is an annual requirement while re-certification occurs every three years. Approximately one-third of the commercial applicators do not comply with the financial responsibility requirements in the second and third years. Enforcing this section is difficult because duties are shared by North Dakota State University Extension Service (certifying agency) and the North Dakota Department of Agriculture (enforcement agency). The Department relies on the certifying agency to submit the names of applicators who are not in compliance. In years two and three some certified applicators quit the business or no longer are in the commercial application business, therefore, the information received from the certifying agency would be flawed as these applicators would no longer be required to carry insurance.

Many businesses also do not understand that they must list their employees to have coverage. Some of the employees are not notified of the requirement for general liability insurance and in some cases obtain duplicate insurance coverage. There is also a natural turnover of help and the applicator goes to a new employer or starts spraying on his own and the agencies are not notified.

The Department has taken action against non-complying applicators by issuing warning letters during the past biennium. The current law says the Commissioner must initiate a suspension

procedure for a non-complying applicator. Based on an Attorney General's opinion, it is mandatory that each non-compliance situation must have an administrative hearing before a suspension of their certification can occur. The cost and time involved in an administrative hearing for one situation is approximately \$1,000. With about one-third (500) of the commercial applicators not in compliance, that would be a cost of approximately \$500,000 to the department plus the time for preparation. It would also require the time of the Attorney General's office to aid in the administration of these cases.

Chairman Wanzek and committee members, I urge a do pass to SB 2419. I would be happy to answer any questions you may have.



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SB 2419

March 9, 2001

House Agriculture Committee Testimony—SB 2419

Chairman Nicholas and members of the committee. My name is Andrew A. Thostenson. I am the Pesticide Program Specialist with the North Dakota State University Extension Service. My testimony is being delivered by Plant Industries Director, Jeff Olson from the North Dakota Department of Agriculture. Please accept my apologies for not attending in person. At the time of this hearing I will be delivering a commercial pesticide applicator recertification training in Carrington.

I wish to testify today regarding the proposed repeal of the "Financial Responsibility Law" for commercial pesticide applicators.

Background

Concerns from agricultural producer groups about civil liability arising from pesticide misapplication resulted in the establishment of a Financial Responsibility (FR) law in 1997. Predictably the law was a compromise. It sought to keep the burden associated with obtaining insurance or bonding by the industry reasonable and still meet the concerns of producer groups who would suffer from pesticide misapplication. The law is summarized as follows:

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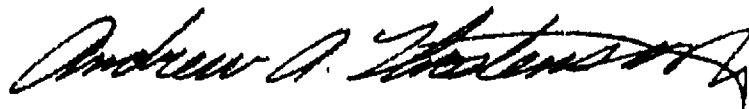
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