

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Eugene Shore at 9:00 a.m. on February 8, 1994 in Room 423-S of the Capitol.

All members were present except: Representative Reinhardt - Excused
Representative Rutledge - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Kay Johnson, Committee Secretary

Conferees appearing before the committee: Representative Stephen Wiard
Larry Cordell, farmer
Robert Whelpley, farmer
Rex Naanes, Kansas Tree Farm Committee
Terry Shistar, Kansas Sierra Club
Ralph Mars, farmer
Jamie Clover Adams, Kansas Fertilizer & Chemical Assoc.
Forrest St. Aubin, Department of Agriculture
Robert Grace, Kansas Agricultural Aviation Assoc.
Randy Hardy, Professional Insurance Management

Chairman Shore called the meeting to order and asked committee members to review the minutes of January 25, 26, 26, February 1 and 2, 1994. If no corrections are received by 5pm today, they will be considered approved. Also, the fiscal note on the bill to be heard today, **HB 2686**, has been distributed, attachment #1.

Hearings opened on **HB 2686**: pesticide licensees required to carry liability insurance for drift occurrences.

Raney Gilliland, Legislative Research Department, explained that this issue has come up before in past years and this bill would require aerial applicators to prove they have liability insurance to cover occurrences of drift. The coverage amounts are outlined on page 4, line 22 of the bill.

PROPONENTS:

Representative Wiard, who introduced the bill at a constituent's request, thanked the committee for the opportunity to hear this bill and introduced his constituent, Mr. Larry Cordell.

Larry Cordell, farmer, attachment #2, sent around pictures and described losses on his brother's timber farm and, referring to when he testified on this same issue in 1992, said the problem is not fixed. If anyone damages or kills any of his trees, he expects to be compensated.

Robert Whelpley, farmer, attachment #3, passed around picture books of his tree farm and outlined the many pitfalls in getting an established tree stand. His one problem however, is pesticide drift. He supports this bill and wishes it included ground-rig applicators.

Rex Naanes, Vice-Chair, Kansas Tree Farm Committee, attachment #4, expressed concern about the impact of herbicide spray drift on native woodlands and tree plantings. Licensed commercial pesticide applicators should have ample liability insurance to cover damage claims by landowners growing and maintaining trees.

Terry Shistar, Pesticide Chair, Kansas Sierra Club, attachment #5, said she has been following pesticide legislation since 1979 and the inadequacy of the insurance and bond provisions in Kansas law has been a recurrent theme. She pointed out that laws like this one give chemically-dependent agriculture an artificial economic advantage over organic or low-input sustainable agriculture. The reason the cost of insurance is

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on February 8, 1994.

high is because the costs of damages are high.

Ken Krause, farmer, Overbrook, KS, outlined the work involved to start a vineyard and produce grapes. On his 65th birthday eight years of work was wiped out and something needs to be done. He said all states have problems with weeds, but Kansas is one of the few that has not taken action.

Ralph Mars, farmer, Centralia, KS, attachment #6, said he has never had damage from any farmer or ground driven rig. He then detailed damage done by a specific aerial applicator who has broken many rules and regulations, yet the Department of Agriculture still gives him a license. Why waste time to pass this bill if it won't be enforced any better than the ones already on the books.

Written testimony in support of **HB 2686** was submitted by Rosalie Clymer, Council Grove, KS, attachment #7, Ed Grasso, Executive Vice-President/Owner, American Walnut Company, attachment #8 and Charles Marr, Extension Horticulturist, K-State University, attachment #9.

Committee discussion followed. It was noted that damages have occurred from not only private applicators, but county and state applicators as well.

NEUTRAL:

Jamie Clover Adams, Director of Legislative and Regulatory Affairs, Kansas Fertilizer and Chemical Association (KFCA), attachment #10, said the KFCA neither supports nor opposes the bill, but their interpretation is that it would cover ground applicators. Currently, KFCA members are required to have liability insurance or a bond and 90% of their members are already covered for drift occurrences as the two primary insurance providers for KFCA members include drift coverage in their policies. The KFCA questions the need for another law with another requirement.

Forrest St. Aubin, Plant Health Division, Department of Agriculture, attachment #11, provided different meanings of the term "pesticide drift"; spray droplets carried away from the target field and vaporization. It is his assumption that this bill covers both of the above. Regarding the aerial applicator referred to today by Mr. Mars, Mr. St. Aubin described the action brought against this person and said it is the most severe penalty to be handed down. He also discussed various court rulings and how they could impact this legislation and some language in the bill that, in his opinion, would apply to those doing cockroach control in homes as well as aerial applicators.

OPPONENTS:

Robert Grace, Kansas Agricultural Aviation Association (KAAA), attachment #12, said the KAAA opposes **HB 2686** because there are already existing methods by which a person can be compensated for damages, the bill singles out independent applicators and does not include state or county applicators and mandatory insurance laws increase the incidence of frivolous claims. Mr. Grace is an independent aerial applicator and does not carry drift insurance. Repeat customers are necessary to his business, so it makes good business sense to do the job properly or pay for any damages should they occur. Most damage claims fall under the \$1000 deductible, so would not be covered anyway. Mr. Grace said he may have one complaint every two years.

Randy Hardy, Professional Insurance Management, attachment #13, spoke in opposition to making the requirement for chemical drift liability insurance mandatory. In his opinion, it would open up the insurance industry to unhealthy claims, costs and restrictions. Mr. Hardy discussed frivolous claims, the increased cost per aircraft and the fact that chemical liability coverage is not available to everyone.

The hearing on **HB 2686** will conclude tomorrow. The meeting adjourned at 10:10am. The next meeting is scheduled for February 9, 1994.

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer
Director

January 31, 1994

The Honorable Eugene Shore, Chairperson
House Committee on Agriculture
Statehouse, Room 446-N
Topeka, Kansas 66612

Dear Representative Shore:

SUBJECT: Fiscal Note for HB 2686 by Representative Wiard

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2686 is respectfully submitted to your committee.

HB 2686 would require aerial applicator businesses to obtain insurance for damages caused by pesticide drifts from aerial application. Current law requires that all pesticide businesses provide proof of financial responsibility, including a surety bond or a certificate of insurance, as a condition of obtaining a pesticide license. However, no specific insurance is required for damage caused from the drift of pesticides from aerial application under current law. This coverage would be required at not less than \$25,000 for bodily injury liability and not less than \$50,000 for property damage for each drift occurrence. The insurance coverage for other (non-aerial drift) occurrences would not change.

Estimated State Fiscal Impact				
	FY 1994 SGF	FY 1994 All Funds	FY 1995 SGF	FY 1995 All Funds
Revenue	--	--	--	--
Expenditure	--	--	6,185	6,185
FTE Pos.	--	--	--	--

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The Honorable Eugene Shore, Chairperson
January 31, 1994
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The agency estimates an increase in activities as businesses are informed of the new requirements and as compliance is enforced. It is estimated that provisions of the bill would require expenditures of \$6,185 from the State General Fund. This amount is not included in the Governor's budget recommendations for FY 1995.

Sincerely,

A handwritten signature in cursive script, reading "Gloria M. Timmer". The signature is written in dark ink and is positioned above the printed name and title.

Gloria M. Timmer
Director of the Budget

cc: Don Jacka, Board of Agriculture

2686.fn

To The House Ag Committee 1994

Here we go again. Still scared stiff but here. The record apparently does not show we were here in 1992 but we were. The record apparently shows "The Committee did not receive testimony that claims have been made that cannot be paid, due to lack of liability insurance." A copy of Sheila Hochhauser's letter to Ray Aslin, state Forester is attached. Ray Aslin was rather surprised when he received this letter since he had testified.

I have grown used to being called a "damn bleeding liberal environmentalist." Why is planting trees on a flood plain or riparian area a liberal activity. On our own small farm our net profit is going up as our soil erosion goes down. Another liberal activity, stopping soil erosion.

The next time you hear someone talking about "damn bleeding liberal environmentalists" please remember this environmentalist has a B.S. from Fort Hays with Majors in Ag and Botany. I am a State Certified Arborist. My formal education roughly equals that of a Soil Conservation Conservationist plus a County Ag Agent.

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I studied under Dr. Tomaneck at Fort Hays when he was rated as the best range manager in the world. I was not a great student but did learn that sound basic management and not quick chemical fixes is the answer.

Since there seems to be a question of what was said in 1992 I have attached a copy of my 1992 testimony. If anyone damages or kills my trees I expect to be compensated.

Thanks

Larry Cordell

SHEILA HOCHHAUSER
REPRESENTATIVE 56TH DISTRICT
1636 LEAVENWORTH
MANHATTAN, KANSAS 66502
(913) 539-6177 HOME
(913) 296-7657 TOPEKA OFFICE



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
JUDICIARY
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE
RULES AND JOURNAL

March 10, 1992

Ray Aslin
2610 Claflin Road
Manhattan, Ks.66502

Dear Ray:

I would like to thank you for your note and the information you provided about pesticide drift from aerial applicators and the need for liability insurance. I am sorry I wasn't in my office when you stopped by.

I regret to report HB 2704 died in committee. I spoke with both Steve Wiard, the bill's sponsor, and Lee Hamm, chair of the House Agriculture committee. They told me that two-thirds of the pesticide applicators already carry liability insurance. In Chairman Hamm's opinion, the one-third who do not are located in western Kansas, where, he believes, the danger to trees is minimal. The committee did direct the State Board of Agriculture to be more aggressive in pulling the licenses of irresponsible applicators. The committee did not receive testimony that claims have been made that cannot be paid, due to lack of liability insurance.

Thank you for sharing your concerns with me. It is constituents such as yourself who help me to be the best legislator I can be on your behalf.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sheila Hochhauser', written in dark ink.

Rep. Sheila Hochhauser

SH/hea

To the House Ag Committee - 1992

When Kermit Hains sprayed Eldon and Jean Cordell's timber he was totally unconcerned. He said, "Yeah, I sprayed the timber and there's not a damn thing you can do about it. I'm flat broke, everything I own is fully mortgaged, I'm behind on child support and I just mailed a check to the IRS with no money in the bank. So sue me, you get a court order. I have a large stack of court orders. There just damn pieces of paper."

I thought, maybe!

When we came up here last year and talked to several people they all told us a bill to put some limits on aerial spraying would pass the house if we could get it out of committee. They also said Farm Bureau Insurance and Don Rezac would kill it in committee.

I thought, maybe!

No one was willing to predict what will happen to any bill in the Senate.

I believe we should have the right to grow any legal crop we choose and have windbreaks around our homes. If anyone destroys our crops and windbreaks they should have to pay for them.

There is probably more support in Kansas for a total ban on aerial spraying and a ban on mist blowers than there is for HB2704. Most people I have talked to say special interests will kill HB2704. There appears to be growing support for initiative and referendum. Many people believe this will cure all the problems the legislature refused to face.

Again I think, Maybe!

I would not be here if I did not believe the current system works. I am asking for your support of HB2704.

Thank You

Larry Lordell 2-5

Since we purchased our farm in 1979 we have had damage from spray to our timber and crops six different years. We have lost approximately 90 walnut trees, ranging from two to twelve inches in diameter; about 60 hackberry trees; ten cherry trees; and numerous other trees.

On the morning of May 29, 1990, with a southeast wind of over 12 miles per hour, the pasture south of us was sprayed. I had given my permission to the owner to have this sprayed with a north wind only. These were the instructions that had been given to the sprayer.

In the drift from this spray we lost seven acres of sweet clover that had been left for seed. The north end of this field was almost one quarter mile from the spray.

We had been setting out crown vetch plants to stop erosion. We had approximately 200 plants set out at this time; we had only one left.

On May 21, 1991, I complained to the county weed department about spraying my fruit trees the previous week. They said they had not been spraying in my area. When I came home and looked, we had a strip of drift about ten yards wide, running from the southwest to the northeast side of our farm. In this we lost two patches of crown vetch and our alfalfa field was damaged.

Drift from spray has not allowed me to grow the crops that I need to in order to build up my farm.

Chairman Shore
Ag Committee members

START PICTURES.

I'm Robert Whelpley, McPherson County Tree Farmer. I worked for SCS for 35 years. Retired January 1986. I started planting trees for the Wild & Parks in 1986 and have planted now for 8 yrs,. I've contracted to plant for the state and for the US (National Guard). I've cultivated trees for the state and any number of individuals. One year I was cultivating probably 25 different plantings and saw herbicide damage on 5 different plantings.

BACK TO MY OWN

In 1987 I planted my first CRP planting on 80 acres. Sixty acres of trees (44,000), the rest was a grassed waterway already established and I planted native grass strips under CRP's wildlife grass planting practice for aesthetics and more diversity for wildlife. The second planting was 2 yrs later 1989. It also was a CRP, 50,000 trees and grass strips and 2 miles of wildlife shrub rows.

It isn't easy to get an established tree stand. First, a low IQ would help. A good seedbed is a must, A MUST, then good stock and planting methods at the right time. Follow this with 6 cultivations the first year. Also you need to like rabbit, fried rabbits, baked rabbits, rabbit stew.-- anyway to get rid of them. Now you'll have \$600. an acre in the crazy idea you had last spring and still need to cultivate (not as often, but for two or three more years). You'll need cans and cans of OFF and don't be afraid of ticks, you'll get them. I succeeded very well, inspite of 3 dry years, a Halloween zero temperture when they had not hardened off yet and one year a heavy infestation of grasshoppers. Two years they went dormant in the fall dry, dry and got very little moisture in the winter, bad news for any tree, especially young trees getting established.

I said I was successful, I'm not the only one to think so because I've had 5 county, state or National awards. (don't read) Wildlife Habitate Improvment - Kansas Wildlife Federation Forester of the year -Kansas Tree Farmer of the Year -Arbor Day).

I have one big problem (drift) not snow, herbicide. The two farms have had 5 hits (probably 6). A professional forester estimated 3 occurances at more than \$50,000. None of these 5 hits were aerial applied but a herbicide dosen't know if it came from a ground rig, airplane or helicopter. Herbicides don't know a tree from a

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weed. I use herbicide, quite often.

Another problem could be maintaining a satisfactory cover to satisfy the CRP requirements. The practice I'm under requires a 70% stand. I'm plenty safe on that but there is a "kicker". If losses are concentrated so that area doesn't meet requirements then I'm in trouble. Pay back, about \$700. per acre, or re-establish the concentrated loss area. Either way it would cost me an arm and a leg. Another hit or two along the same edges, I would be in deep trouble.

I'm for this bill, only wish it included ground-rig applicators also. Anything you people can do would be appreciated by tree farmers and I'm sure cotton farmers, grapes, bee keepers, organic farmer, orchards and many others.

Thank you.



Kansas Tree Farm Committee

2610 Claflin Rd., Manhattan, KS 66502-2798

February 7, 1994

TO: House Committee on Agriculture
Eugene L. Shore, Chairman

FROM: Rex Naanes, Vice-Chair,
Kansas Tree Farm Committee

SUBJECT: HB 2686 - Relating to Insurance for Pesticide
Applicators

I am Rex Naanes, Vice-Chair of the Kansas Tree Farm Committee, representing over 300 Tree Farmers in Kansas. I appreciate the opportunity to testify in support of House Bill No. 2686.

The Kansas Tree Farm Committee and its members are committed to proper management of our state's forest resources for wood products, wildlife and other multiple benefits. Expanding our forest resource base through tree planting is also strongly encouraged.

Tree Farmers are concerned about the impact of herbicide spray drift on native woodlands and tree plantings. We have witnessed numerous occasions where careless application of herbicides from aerial applications have damaged our woodlands and tree plantings. In some cases, the guilty party is insured and pays restitution. However, some commercial applicators are not insured and pay no restitution for the damage caused by spray drift on neighboring property.

Tree planting is one of the most popular conservation programs with the citizens of Kansas. Over one million trees and shrubs alone are distributed through Kansas State and Extension Forestry's Conservation Tree Planting Program each year for the past 37 years. These trees and shrubs go into plantings for conservation purposes such as windbreaks, erosion control, wildlife habitat, Christmas trees and timber production.

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It takes a strong commitment to grow trees in Kansas. Planting trees is just the beginning of that commitment. To do well, tree plantings must be weeded, watered, protected from insects, disease and animal damage and dead trees need to be replaced. A planting must overcome many natural problems before it is considered established. But, when a man-caused disaster occurs, such as careless application of herbicides, trees become even more difficult to grow.

Many tree growers are becoming discouraged for planting trees right at the time when tree planting is strongly being encouraged at the national, state and local levels. Major programs by many state and federal agencies are providing cost-share incentives to landowners to improve existing woodlands and plant trees to reduce non-point source pollution and carry out the Riparian and Wetland Protection Program. Kansas State and Extension Forestry, the State Conservation Commission, Kansas Department of Wildlife and Parks, Kansas Department of Health and Environment, County Conservation Districts and the Soil Conservation Service are all involved in supporting tree planting efforts.

Our concern is this - that licensed commercial pesticide applicators should have ample liability insurance to cover damage claims by landowners growing and maintaining trees. We recognize that many commercial pesticide applicators operate in a responsible manner now, and we also realize the liability insurance will not prevent all careless or accidental applications. But, required liability insurance against drift would help to compensate landowners who suffer damage to their trees from misapplied pesticides. In the long-run, required liability insurance for drift occurrences should lead to more responsible use and applications of herbicide by all commercial applicators. For these reasons, the Kansas Tree Farm Committee supports House Bill No. 2686.



SIERRA CLUB

Kansas Chapter

Testimony of Terry Shistar
Pesticide Chair, Kansas Sierra Club
House Agriculture Committee
February 8, 1994
HB 2686

Thank you, Mr. Chairman, and members of the committee. I am the Pesticide Chair for the Kansas Sierra Club, and the Pesticide Reform Steering Committee Chair for the national Sierra Club.

As long as I have been following pesticide legislation--which is since 1979--the inadequacy of the insurance and bond provisions of the Kansas Pesticide Law has been a recurrent theme.

Hearings on proposals to increase insurance coverage generally follow a common pattern:

--Proponents of increasing insurance requirements for sprayers bring in a number of speakers who tell about damage that has gone uncompensated because of the lack of insurance.

--Opponents say, "Where are all these cases that have been decided in favor of plaintiffs in which the sprayer was unable to pay?"

--Proponents reply that there isn't much reason to file a suit when you know (or think you know) that you can't recover anything.

--Finally, opponents tell how hard it is to get insurance, how expensive it is, and how they will have to either pass the cost on to the farmer or go out of business.

--In the end, the legislature does nothing or makes things worse.

The proponents, I might add, are sometimes people who like trees, bees, or wildlife, sometimes organic farmers, and sometimes conventional farmers who got hit with the wrong chemical at the wrong place or the wrong time.

Now I don't expect this committee to place undue weight on the Sierra Club's view of this matter. However, I would like to point out that it is laws like this one that

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give chemically-dependent agriculture an artificial economic advantage over organic or low-input sustainable agriculture.

The true cost of doing business for those who broadcast toxic materials into the air and onto the land includes the cost of paying for mistakes, such as injury to neighbors and crops--just as a doctor pays if he removes the gall bladder from the wrong patient.

The cost of pesticide applicator's insurance is high because the costs of damages are high. If those costs are not paid by the applicator and the person who hires him, they will be paid by the victim.

Organic agriculture doesn't rely on pesticide applicators. But as long as an organic farmer pays for damage done to him, and the farmer relying on the chemicals doesn't pay for the damage, the organic farmer will have to pay more than his share.

While I don't expect this legislature to give any incentives to organic agriculture, it would be nice if you could even things up a bit. My guess is that it will take higher coverage than is proposed in this bill to cover many claims, but this bill (which should be expanded to include ground application and chemigation) would help even things up.

I appreciate the opportunity to testify and will be pleased to answer any questions.

House Ag Committee of Kansas

I have been farming for approximately 30 years in Kansas and have never had damage from chemical from any farmer or ground driven rig. Along came aerial commercial sprayer named Karns and have had drifts on 4 different occasions. Mr. Karns has refused to compensate me for damages done Case No. 92080 - 91169. It has been 3 years and the Ag. Department has only left the complaints on their desks. Mr. Karns has falsified his application record and advocated without a license. Applied chemical when it was known, that it would drift off target. I have a copy of the rules and regulations of the Kansas Pesticide Laws and Regulations, in which he has broken many of them and has been reported be several incidents. Yet the Ag Department still gives him a license. There is no one else that can go out and do irreputable damages to their crops, timber without being arrested for destruction. How can you let this man do this to rural America?

Writing a bill to be compensated for damages, in town a tree is worth \$300.00 to \$3000.00. On a farm they would say no value. If this bill is passed and it isn't enforced any better then the ones on the books.

Why waste your time and the taxpayers money to make believe that you have done something. This isn't progress only passing the buck. If you read the instructions on Tordon 22K, Mr. Karns is violating many of the instructions on the label. On both of Karns records, he indicated $\frac{1}{2}$ pint of Tordon 22K was used. Your lab did not find any and it was impossible for the chemical to

come from any other source. One or the other is lying (Who)?

On Case No. 91169 Mr. Karns sprayed Mr. Caffrey's pasture and there was 5 other farmers that had drift $\frac{1}{2}$ mile away on their land. The man was off target doing severe damages. How can a sane man be allowed to let this continue destroying our enviroment in rural America. It appears to me that large landowners or representatives in power are allowing this to continue, even thou their laws forbidding this.

I feel this is a criminal act and should be delt with (no exceptions). The following are from the Kansas Pesticide Law And Regulations. Look at article 2-2450 page 11,

2-2440 page 3 article 1

2-2454 page 12 article F & N

2-2462 page 15 last paragraph

2-2467A page 15 & 16 article H

These regulations have not been enforced on Mr. Karn. What are you going to do to protect our property? I feel it would be a very safe bet that Mr. Karns is off target 95% of the time. I don't feel it's possible to aerial spray without drifting off target damageing nearby farmers property. It indicates that on page 17 article 9 on the Tordon label, do not spray when the wind is blowing towards accessible crops or ornamental plants that are 1 mile from the target area. Tordon 22K label should be read and the directions followed carefully. It is in violation of federal law to use this product in a manner inconsistent with its label. Tordon 22K indicates on the label to not contaminate crop, land, streams, ponds or to sensivitive plants such as alfalfa, grapes, soybeans, tomatoes, walnut trees and many other plants. On page 17 of the Tordon 22K label it has a residaul of up to 2 years on cropland can cause injury

to growing trees, crops, whether dormant or growing. Aerial spraying can drift when there is no wind blowing depending on ground temperature and moisture. If you were to hire me for this year to only check Mr. Karns work, he would be off target 95% of the time and violating the above.

Ralph Mann

R1 BtH67

Centralia KS

2-1-94

Gene Shore, Chairman
House Agriculture Committee
Capitol Building
Topeka, Kansas
Dear Sir,

I am writing this letter in support of bill (HB 2686)
requiring licensed aerial pesticide applicators to carry
liability insurance coverage for drift occurrences.

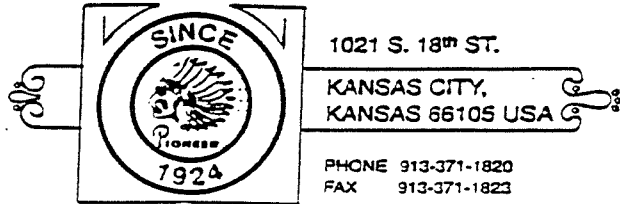
aerial spray destroys vegetation that should not be
destroyed such as the weeping willow in my yard. It
is for this reason why aerial pesticide applicators need
liability insurance.

Sincerely,

Roscoe Chymers
Rural Route 2, Box 51
Council Grove, Kansas 66846

HOUSE AGRICULTURE
2-8-94
Attachment #7

AMERICAN WALNUT COMPANY



February 7, 1994

TO: House committee on Agriculture
Representative Eugene L. Shore, Chairperson

FROM: Ed Grasso
Executive Vice President/Owner

SUBJECT: HB 2686 - Relating to Insurance for Pesticide Applicators

American Walnut Company is a long established Kansas firm that is a leading producer of graded hardwood lumber and quality black walnut gunstocks. In addition to our Kansas facility, we own sawmills in Missouri. We operate in a number of states for our logs, but we depend on Kansas for our base supply. In 1993, we sold over \$9,000,000 of hardwood products out of our Kansas facility. Over half of our sales were exports and we anticipate a significant increase in overseas sales in future years.

I am writing in support of HB 2686. As buyers of walnut timber over much of the eastern half of Kansas, we are well aware of the extensive damage that can be caused by misapplied herbicide that drifts off target to walnut timber. Unfortunately, native black walnut seems to be particularly sensitive to herbicides commonly being used in Kansas. If the trees are not outright killed, they suffer damage and reduced vigor that is ultimately reflected in lower quality logs. The net effect of this damage is lower economic returns to us as the buyer and manufacturer, and lower returns to the farmer/landowner selling us the trees.

We have a long term commitment to the timber resource of Kansas. Walnut trees that are accidentally sprayed and killed often are too young to be salvaged, or if of marketable size, may be at the small end of the marketable size range. If they were able to grow to maturity their value would be much greater to both us and the landowner.

We believe that licensed commercial pesticide applicators should be required to carry sufficient liability insurance to cover damage suffered by landowners growing timber. If fact, we are somewhat amazed that they are not required to do so already. As businessmen and a manufacturing firm, carrying sufficient liability insurance is a required part of the cost of our doing business--and an expensive one I might add. I am sure that the majority of commercial pesticide applicators are responsible businesses just as we consider ourselves to be. But accidents do happen, and there always are a few irresponsible applicators just as there are in any business. That is why liability insurance is a common cost of doing business in this country, and why we encourage passage of HB 2686.

HOUSE AGRICULTURE
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Attachment # 8

COMMENTS ON HB-2686

Charles W. Marr
Extension Horticulturist, Vegetable Crops
Professor of Horticulture
Kansas State University
Manhattan, KS 66506

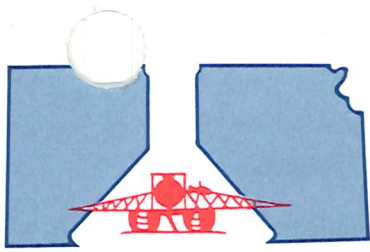
In my extension and research position with Kansas State University, which I have held for 24 years, I encounter numerous instances each year where herbicide drift injures susceptible horticultural crops. Many vegetable and ornamental plants have special sensitivity to these materials. I have been involved in 4 court cases within the last 2 years where drift applications were involved with horticultural commercial operations.

Most horticultural operations are fairly small in comparisons to larger land areas where field crops are grown. Sometimes there is not an awareness that the horticultural production exists in an area. In other instances, variations in weather make drift difficult to avoid.

During the last 10 years or so we have been actively involved in trying to encourage a diversification of our Kansas agricultural economy by the encouraging small scale fruit and vegetable production operations. These operations sell in local markets, farmers markets, and other local outlets-- adding to rural income and community economic growth. Most producers involved in these operations are small-scale producers. Many have limited incomes such as retired people. Many are farm families supplementing the farm income with a few acres of vegetables. Nearly all of these producers lack the resources or ability to pursue damages to their crops and property that may occur from spray drift through a court proceedings. Many of them fear pressing legal "charges" against a large agricultural business in the community. The final result is that they suffer damage without any recourse.

I believe that requiring insurance to cover potential cases of damage from pesticide drift by commercial pesticide applicators is not an unreasonable request. Potential damage instances would be directed to insurance claims personnel that would either settle a claim or require a legal settlement. I would support the addition of the insurance provision to pesticide applicators licensing provisions.

HOUSE AGRICULTURE
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Attachment #9



KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

Phone 913 234-0463

816 S.W. Tyler St., Topeka, KS 66612

Fax 913 234-2930

(Mailing Address) P.O. Box 1517, Topeka, KS 66601-1517

STATEMENT OF THE
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION
TO THE
HOUSE AGRICULTURE COMMITTEE
REP. EUGENE SHORE, CHAIR
REGARDING H.B. 2686
FEBRUARY 8, 1994

Mr. Chairman and members of the committee, I am Jamie Clover Adams, Director of Legislative and Regulatory Affairs for the Kansas Fertilizer and Chemical Association (KFCA). KFCA is the professional trade association of our state's agrichemical and fertilizer industry. Our 600 members are primarily retailers, but also include distribution firms, manufacturer representatives and others who serve the industry. Thank you for this opportunity to comment on H.B. 2686, concerning liability insurance for drift occurrences.

KFCA neither opposes or supports this bill, but would offer the following information which may prove beneficial during consideration of this bill. Our retail and custom applicator members are primarily involved with ground application of pesticides. Currently, our members are required to have liability insurance or a bond. However, H.B. 2686 would require that their liability insurance specifically include drift coverage.

HOUSE AGRICULTURE
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Attachment #10

There are two primary providers of liability insurance for our members, Kansas Farmer Services and Mill Mutuals. Both of these companies, which provide liability insurance for approximately 90% of the industry, include drift coverage in their liability policies. Consequently, at least 90% of our members who apply pesticides on the ground are already covered for the drift occurrences addressed in H.B. 2686. Our members generally want and have the liability coverage, including drift, for any major occurrence which may likely to happen.

Therefore, we question the need for another law with another requirement. We also question the need for the bill based on unsettled claims. The Board of Agriculture has effectively handled complaints from persons with pesticide damage and dealt with the "bad actors." We do not view this bill as overly burdensome, but question the need for it based on industry practice and the complaint mechanism already in place to deal with problem applicators. I would be glad to respond to any questions you may have.

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TESTIMONY

HOUSE BILL NO. 2686

FORREST E. ST. AUBIN
PLANT HEALTH DIVISION
KANSAS DEPARTMENT OF AGRICULTURE

FEBRUARY 8, 1994

For many years, Kansas law has required licensing of those who are in the business of applying pesticides to the property of others for compensation. To obtain a pesticide business license, an applicant must take four (4) basic steps. These are:

1. submit the appropriate application for licensure;
2. pay the appropriate fees;
3. provide proof that at least one (1) of the employees of the company has taken the appropriate exams and is a state certified commercial applicator in each category of pesticide application in which the company operates; and
4. show proof that the business has sufficient bond or insurance to meet proof of financial responsibility requirements set forth in the Kansas Pesticide Law.

In respect to insurance coverage, the statute states the "the liability insurance policy shall provide coverage (a) for not less than \$25,000 for bodily injury liability for each occurrence; and (b) for not less than \$5,000 for property damage liability for each occurrence".

The issue of drift insurance has been discussed in the legislature from time to time. It was considered during the 1988 interim study of the pesticide law program. It was again discussed in hearings on House Bill 2704 in the 1992 legislative session.

I would like to provide some observations about the meaning of the term "pesticide drift". From the classical standpoint, drift is the off target movement of a pesticide during application. Small spray droplets applied on windy days can be carried a great distance away from the target field. However, there is another type of pesticide movement called vaporization. Some pesticides are highly volatile, which means that they can evaporate from the field where applied and move to cause damage in nontarget areas. In my opinion, vaporization is responsible for many of the problems confronting the cotton growers in south central Kansas, for example. It is my assumption that "drift" as used in this Bill would cover both types of conditions.

Drift cases may subject the pesticide business to criminal penalties, civil penalties, injunctive action or administrative action.

On February 2, 1994, a hearing officer announced his decision in an administrative action brought against Kermit Karns, owner of Karns Aerial Applicators, an Onaga, Kansas, commercial aerial applicator service. The action is one of the most severe brought against a commercial pesticide applicator by the Kansas Department of Agriculture. A hearing was held in September and October of 1993 regarding a 17 count complaint against Mr. Karns. The complaint alleged one count of not being properly licensed to perform specific services,

multiple counts of misuse of pesticide (some involving "drift"), and numerous record keeping violations. Last week the hearing officer ordered Mr. Karns to pay a civil penalty of \$13,400, denied issuance of his pesticide business license and revoked Mr. Karns' commercial certification.

In 1988 the Kansas Court of Appeals decided the case Uhock v. Sleitweiler (13 K. A. 2nd 621) involving the issue of insurance coverage required under the Kansas Pesticide Law, K.S.A. 2-2438a et seq.

In that case the court held that the legislative history and circumstances surrounding the passage of the Kansas Pesticide Law indicates that K.S.A. 2-2448 mandates coverage for damage caused by pesticides - for damage to persons or property resulting from the negligent application of pesticides.

The Supreme Court had earlier held that the statutory forerunners of K.S.A. 2-2448 (K.S.A. 3-904 and 2-2423) required owners and operators of aerial spraying equipment to post bond or liability insurance to pay for damages due to their negligence. Binder v. Perkins (213 Kan. 365)(1973)

You will note that K.S.A. 2-2448 provides that pesticide application equipment required to be registered by Statute (K.S.A. 2-2456) is also to be covered by the required liability insurance.

Aircraft are required to be marked and registered under K.A.R. 4-13-19.

This would imply that the liability insurance required of aerial applicators would be in addition to any liability insurance that might cover the operation of the aircraft, just as the liability of a ground pest control operator would require coverage beyond that for his pesticide application equipment (trucks, etc.).

While K.S.A. 2-2448 requires a pesticide business to furnish proof of financial responsibility to obtain a pesticide business license the statute does not specify the scope of required liability insurance or define "occurrence".

K.S.A. 2-2467a authorizes the secretary to promulgate and adopt rules and regulations concerning several matters including:

"(h) proof of financial responsibility including acceptable surety bond or liability insurance coverage."

Present rules and regulations, including K.A.R. 4-13-27 which deals with the certificate of liability insurance do not presently address the scope of required liability insurance or define "occurrence".

Since K.S.A. 2-2448 is a financial responsibility statute and the legislative history behind it repeatedly refers to chemical drift, there is every reason to believe our Kansas

Courts would conclude that chemical liability falls within the statutory description of "bodily injury liability" or "property damage liability". Any insurance policy provision or exclusion which attempts to limit, condition or dilute the mandatory coverage required would then be void, at least up to the \$25,000/5,000 statutory minimums, provided our courts applied the same reasoning here that they have in automobile financial responsibility cases.

This would require someone damaged by pesticide drift to raise the issue in litigation as the insurance companies would in all likelihood resist this interpretation.

There is, however, no legitimate reason that scope of required liability insurance and a definition of "occurrence" could not be set out either in the statutes or the rules and regulations.

I would like now to turn to some items of a technical nature relating to language of the proposed bill. There are, under current law, seven (7) categories of applicator businesses ranging from agricultural pest control to structural pest control. This bill would require all pesticide applicator businesses to obtain liability insurance from aerial drift occurrence of not less than \$25,000 for bodily injury for each drift occurrence and not less than \$50,000 for property damage for each occurrence. To my reading, this coverage would be required in addition to any other insurance or bond requirements of the law and would be required of all pesticide applicator businesses regardless of the means of application or the type of pesticide applied. Consequently, both businesses doing aerial application as well as those doing cockroach control in homes would fall under the drift insurance requirement.

The committee may wish to closely examine the language in that area. The Plant Health Division has confronted the same problem with the administrative regulations involving wind direction and velocity records and addressed it by exempting those applying pesticide inside structures, doing seed treatments and for termite control treatments.

HB 2686 Testimony

Testimony by Robert Grace, representative of the Kansas Agricultural Aviation Association. The KAAA has approximately 200 members. More than half of these members are owners or operators of firms which do custom aerial application.

The KAAA opposes HB 2686 for these reasons:

- There are existing methods in Kansas civil law by which a person damaged by chemical drift can be compensated. All persons, not just commercial applicators, are subject to these laws. The KAAA believes that the existing law is adequate.
- The bill is discriminatory, since it singles out aerial application. Aerial application is no more drift prone than other types of application.
- The proposed bill will substantially increase the operating costs of some Kansas applicators, which will ultimately increase the operating costs of Kansas farmers. It also increases the amount of bureaucratic intrusion by the state into the operations of these small businesses.
- Mandatory insurance laws of this type dramatically increase the incidence of superfluous and frivolous claims. These claims are expensive and time consuming to process, and result in increased costs to farmers.

The KAAA believes that drift is a serious issue for all types of applicators: this is true of chemigation, home owners, and aerial, ground and right-of-way operators.

However, we now feel both the State Board of Agriculture and the present law are adequately handling any problems which arise.



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February 4, 1994

TO: House Agricultural Committee

I have been asked to speak to your committee today regarding the proposed bill changing the insurance requirements for aerial application in the State of Kansas.

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Professional Insurance Management, Inc., is an aviation insurance agency/broker, located in Wichita. A large part of our business is providing liability coverage, as well as aircraft physical damage coverage, for aerial applicators. As Vice President of our agency, I am responsible for obtaining quotes and placing the coverage with the underwriters. Our agency represents 14 of the major aviation insurance firms, including Lloyds of London. Since aerial application is a special type of risk, only 6 of the carriers currently write aerial application insurance, with recent years having as few as 2 carriers writing aerial application coverage.

I am also the current insurance representative and board member for the NAAA (National Agricultural Aviation Association), based in Washington, D.C. In addition, I serve as an insurance representative for the Kansas Aviation Advisory Committee, assisting the Director of the Division of Aviation for the State of Kansas.

I would like to speak in opposition to the proposed bill HB 2686. In my opinion and experience, by making the requirement for chemical drift liability insurance mandatory, you would open up our industry to unhealthy claims, costs and restrictions. Some of my concerns are:

1) FRIVOLOUS CLAIMS: Claims pursued by individuals who are looking for the "deep pockets", or in hopes of making a settlement, knowing it is cost prohibitive for insurance companies to spend a lot of money to defend chemical damage claims. Even though the farmers have ground rigs, the railroads and highway/county divisions spray their rights-of-way, not to mention center pivots now disbursing chemical unattended, the aerial applicator is highly visible, and thus more likely to be pursued.

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In situations where chemical drift liability is implemented, cases of insurance claims and complaints increase. The cost to defend such claims are causing some carriers to re-examine writing aerial application coverage.

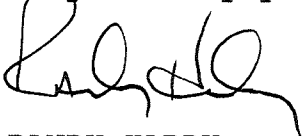
2) INCREASED COST PER AIRCRAFT: The cost of adding chemical liability coverage ranges from \$900 - \$2,200., PER AIRCRAFT, depending on the limit or type of coverage required, over and above the basic liability premium. If an aerial applicator has multiple aircraft, this cost is easily doubled or tripled. Keep in mind, this cost is PER AIRCRAFT, not per business. Most likely, the increased cost to do business will have to be passed on to the grower, resulting in lower profits for everyone.

3) CHEMICAL LIABILITY COVERAGE IS NOT AVAILABLE TO EVERYONE: With the trend toward new ag pilots in the industry, we find most of the ag markets are not willing to provide chemical drift liability coverage for these new pilots during their first year of operation, requiring the operator to self-insure during transition operations.

If chemical liability is provided, the cost factor is again substantially higher, with a load factor of 25%-50% per aircraft.

The areas of concern I've outlined; frivolous claims, increased cost and non-availability of chemical coverage to all operators, are, in our opinion, substantial reasons to leave the current insurance requirements in the State of Kansas as they are, and not proceed with the proposed HB2686 requiring mandatory chemical drift liability.

Respectfully yours,



RANDY HARDY
VICE PRESIDENT