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OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

2128

2007 SENATE AGRICULTURE

SB 2128

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2128

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 12, 2007

Recorder Job Number: 993

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the hearing on SB 2128, a bill relating to potato dealer agent identification cards. All members (7) were present.

Kenneth Bertsch, State Seed Commissioner and administrator of the ND state seed department, testified in favor of the bill. See attached testimony.

Sen. Klein- so are you saying we created a law that has made it very difficult for you guys to actually apply that and this creates that flexibility?

Kenneth Bertsch- It doesn't necessarily make it difficult.

Sen. Taylor- I would think there probably is a need for some policies on segregation but if its not within the seed commission is there another entity, you mentioned the grain traders, is there another entity in which it belongs, I would think its still a issue if there's another place for it?

Kenneth Bertsch- its still an issue. We are trying to set up a IP program for a grower to certify a company when the grower has accomplished what they expect.

Sen Klein- what is the repeal about in section 8?

Kenneth Bertsch- simply about a potato identification card that a potato dealer is suppose to carry in their wallet, they also have one that they hang on their wall but the code says we have to give them that pocket ID card, this would get rid of those, they don't need them.

Sen. Taylor- on section 5, that date change do we have to do that every two years?

Kenneth Bertsch- yes, whenever that code is open we update it to the most current date.

Blaine Schmaltz, a farmer and rancher from the Rugby area and a seed breeder with the Northern Plains Sustainable Senate Agriculture Society, testified in opposition to the bill. See attached testimony.

Sen. Taylor- referring back to Ken's testimony, the updated language doesn't accomplish what you would like to see in terms of being able to mix seed for a new variety.

Blaine Schmaltz- that's right. Ken talked about seeding in a network which cancels out new seed production among individuals.

Sen. Behm- why are you opposed to this?

Blaine Schmaltz- with the change in the breeding methods and the systematic approach on how you enter seeds into its system it allows for unless you're a very large seed company with a breeding program, it allows for not very much access to your certification at least to access our state system with this wording being struck out. As Ken mentioned, it may not have been used but to take it away would definitely take away the right to do that.

Sen. Wanzek- do you feel that the new language doesn't define an individual or an individual group?

Blaine Schmaltz- that's correct.

Sen. Wanzek- Do you feel that if you worked with the seed commissioner you could find a new way to change the language to define an individual, would that make the bill less objectionable to you?

Blaine Schmaltz- any option that we would have other than striking out the option of individuals, I would definitely be up for that.

Kenneth Bertsch was called back to the podium.

Sen. Taylor- on Blaine's concerns, could you tell me a little bit about who would be some state designation authorities that growers could go to, are they generally private companies? And then secondly if we were to add another section that would provide a direct on to it to provide an individual grower to submit seed for certification to the seed commission, it would still give you your new language and get rid of his concern would that be agreeable?

Kenneth Bertsch- to answer you second question first, yes our intention is not to try to anger any of our growers.

Sen. Klein- so what your saying is that the concerns we just heard about are covered?

Kenneth Bertsch- I think they are, we can dress it up to design some additional comfort if that's what need to be. We just want them to show us that it is distinguishable. We are open to any suggestions.

Sen. Wanzek- so you wouldn't object if we changed the language to say something like the intent is to allow as long as we don't destroy the original concern with the bill.

Kenneth Bertsch- that would be fine with us and we could work out details if we need to.

Blaine Schmaltz was called back to the podium.

Blaine Schmaltz- under the section 3 on page 5 on 8 the statements made that it has to be accepted into a certification program by a national designated or a state designated program, I would like clarity on that.

Sen. Flakoll closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2128

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1343

Committee Clerk Signature



Minutes:

Sen. Flakoll opened discussion on SB2128.

Sen. Klein- I did visit with the seed commissioner in the hallway, the question he had was weather or not the organic folks were concerned about some of the language we were striking.

He said that's clarified in there, if the committee finds some way to change that to make it look better that would be ok with him. He felt his concerns were addressed, I don't know if anyone has followed up on that or not.

Sen. Taylor- I guess I have email, Blaine lives in my district and I think he would like to see an sentence added in there that maybe gets rid of some of his concerns and I haven't drawn that up yet, but I guess I would like to maybe do that.

Sen. Flakoll- who would you need to talk to for that?

Sen. Taylor- maybe Anita, it will be a new sentence but will kind of be some new language pulled. Or it could be from some of that previously stricken language.

Sen. Flakoll- technical language?

Sen. Taylor- ya. I could maybe get that for tomorrow.

Sen. Flakoll- so we will hold off on 2128 until tomorrow.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2128

Senate Agriculture Committee

Check here for Conference Committee

Hearing Date: January 19, 2007

Recorder Job Number: 1434

Committee Clerk Signature

Cassie Kroh

Minutes:

Committee Work

Sen. Flakoll opened the discussion.

Sen. Taylor- I consulted with Blaine Schmaltz who testified before the committee on a concern he had. We came up with a amendment with Blaine and the seed council, we would add a sub section 8, under section 4 and goes into the amendment. I would move the amendment if there's any concern in the committee we could wait until we get Ken Bertsch to look at it.

Sen. Klein- maybe I could spend the next 15 minutes trying to track Ken Bertsch, the seed commissioner, down to make sure that this is ok with him. This is his clean up bill so I would sure like to run it by him.

Sen. Wanzek- when I read the language that was overstricken and compare it to the amendment, what is the difference?

Sen. Taylor- I believe that Ken just want to replace it with language that was more detailed in terms of the variety and the distinction of the variety. He didn't think that they were purposely making it look like it could only come from a company rather than a seedsmen that's why we just wanted to add that language. I would be fine with removing the overstrike to but I would like to get Ken's take on that.

19

Sen. Klein- I had a note that said that Ken said that that never happens and that is why they struck that language.

Sen. Klein- I talked with Ken and the issue is that it doesn't belong in that section, it needs to fit into another area. On page 5, line 25 at number 3 we would take the language that says except from any person a sample of seed which the person claims to be a new variety of distinct from any commonly known variety of seed together with a proposed distinctive name the commissioner shall- at that point then it would go back to determine the eligibility of a variety of certification based on factors including that. So all that language would be put right there. I would move the amendment as I just recited.

Sen. Klein motions for a Do Pass **Sen. Wanzek** seconded the motion on roll call vote #1.

6 yeas, 0 nays, 1 absent- **Sen. Erbele**. Roll call vote#2 **Sen. Klein** motioned a do pass as amended **Sen. Taylor** seconded the motion **Sen. Klein** was designated to carry the bill to the floor 6 yeas, 0 nays, 1 absent- **Sen. Erbele**

78062.0101
Title.0200

Adopted by the Agriculture Committee
January 19, 2007

JTB
1-19-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2128

Page 5, line 25, replace "Determine" with "Accept from any person a sample of seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner shall determine"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2128: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2128 was placed on the Sixth order on the calendar.

Page 5, line 25, replace "Determine" with "Accept from any person a sample of seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner shall determine"

Renumber accordingly

2007 HOUSE AGRICULTURE

SB 2128

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2128

House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-1-07

Recorder Job Number: 4166

Committee Clerk Signature



Minutes:

Chairman Johnson opened the hearing on SB 2128.

Rep Heller introduced her special guest. Her daughter Ashley is a page for a day.

John Olson representing Monsanto had two amendments but decided to keep them until the next hearing date as the storm kept several people away who requested to be heard.

Chairman Johnson rescheduled for next week.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2128

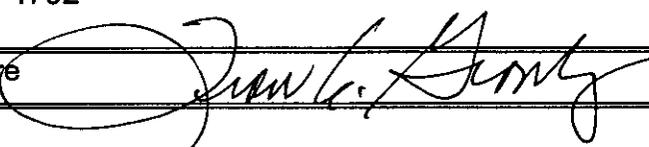
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-8-07

Recorder Job Number: 4702

Committee Clerk Signature



Minutes:

Chairman Johnson opened the hearing on SB 2128.

Ken Bertsch, State Seed Commissioner: (testimony attached)

Rep Boe: In Section 3 on the exemptions from the exemptions the sale or transfer of protected varieties between farmers for the purpose of planting without the approval of variety owners, wasn't that prohibited before?

Bertsch: Yes, it is. But it isn't very black and white. We've been encouraged by the AG's office to be more specific.

Rep Boe: Then back up one line. Plant variety law is existing. They get protection from PVP just by the application. Is there a time line? Just how long do they get the protection?

Bertsch: Generally plant variety protection is applied for when a variety is released or even before release. That process might take in some cases 3 to 4 months and in some cases a year. In guidelines of the federal seed act, often when the PVP applied, some people thought that before it was approved it wasn't technically protected. And during that time seed developers would find that their seed varieties were being exchanged. Which if protected, this would be considered brown bagging and so their technologies were being lost so to speak.

Approximately 2 to 3 year ago, a judgment was made that when the seed variety was applied for it is considered protected.

Rep Boe: I want it clear that if they apply, just the application, but after 12 months if they haven't finished and gotten the protection in place, that the protection is no longer there.

Bertsch: That becomes the duty of the PVP office.

Rep Boe: Do they have to pay a fee when they apply to the PVP, don't they?

Bertsch: Yes, the fee is up front.

Chairman Johnson: Do you have John Olson's amendments?

Bertsch: They are not a significant change and we have no problem with them.

Chairman Johnson: We will work on this bill this afternoon. The hearing is closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2128

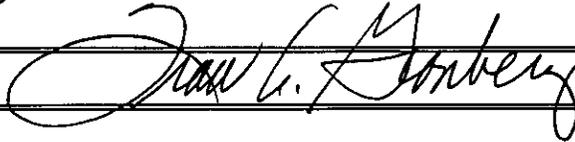
House Agriculture Committee

Check here for Conference Committee

Hearing Date: 3-8-07

Recorder Job Number: 4718

Committee Clerk Signature



Minutes:

Chairman Johnson called the committee back to order and said to work on SB2128.

John Olson, representing Monsanto: These are amendments that are technical and I've run them by Ken Bertsch and he has no problem with them. He probably thinks they are not needed, but we have the general counsel of Monsanto making sure everyone is on the same page. The amendments are fairly self explanatory. The bill you have before you does use variety names in some places and this just completes that and makes sure that variety is modified with other places in the bill. On page 5, line 28, that language currently has the word "that" and his experience that the that may comply with any one of those factors and the change to whether means they all apply. These are the areas that our counsel was concerned about that there could be a brand interpretation instead of a variety.

Rep Mueller: The "whether" vs "that". It seems to me that we have that or references like that all through the code. I'm wondering is whether is going to be misunderstood more than that.

Olson: His comment is that it should be any one of the factors. I don't know if they have run into problems in other states with that, but this is what he'd like on there.

Rep Headland moved the amendments

The amendments passed on a voice vote

Rep Headland made a Do Pass as Amended motion

Rep Uglem seconded the motion

(Yes) 11 (No) 1 (Absent) 1

Carrier: Chairman Dennis Johnson

Prepared by John M. Olson (on behalf of Monsanto)

Lobbyist #256

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*Amendments
adopted*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2128

Page 2, line 27, after "any" add "variety"

Page 2, line 28, after "the" add "variety"

Page 5, line 28, after "including" remove "that" and add "whether"

Renumber Accordingly

78062.0201
Title.0300

Adopted by the Agriculture Committee
March 8, 2007

**House Amendments to Engrossed SB 2128 (78062.0201) - Agriculture Committee
03/08/2007**

Page 2, line 27, after "any" insert "variety"

Page 2, line 28, after the first "the" insert "variety"

**House Amendments to Engrossed SB 2128 (78062.0201) - Agriculture Committee
03/08/2007**

Page 5, line 28, replace "that" with "whether"

Renumber accordingly

Date: _____
Roll Call Vote #: /

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

House _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number ^{SB} 2/28

Action Taken Do Pass on Amendment

Motion Made By Rep Headland Seconded By Rep Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Tracy Boe		
Vice Chair Joyce Kingsbury			Rodney Froelich		
Wesley Belter			Phillip Mueller		
Mike Brandenburg			Kenton Onstad		
Craig Headland			Benjamin Vig		
Brenda Heller					
John D Wall					
Gerry Uglem					

Total (Yes) 4 No 2

Absent _____

Floor Assignment _____

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

aid

Date:
Roll Call Vote #: 2

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

House _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number 2128

Action Taken Do Pass as Amended

Motion Made By Rep. Headland Seconded By Rep. Uglem

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe	.	
Vice Chair Joyce Kingsbury	✓		Rodney Froelich	✓	
Wesley Belter	✓		Phillip Mueller	✓	
Mike Brandenburg	✓		Kenton Onstad	✓	
Craig Headland	✓		Benjamin Vig	.	✓
Brenda Heller	✓				
John D Wall	✓				
Gerry Uglem	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. D. Johnson

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

REPORT OF STANDING COMMITTEE

SB 2128, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2128 was placed on the Sixth order on the calendar.

Page 2, line 27, after "any" insert "variety"

Page 2, line 28, after the first "the" insert "variety"

Page 5, line 28, replace "that" with "whether"

Renumber accordingly

2007 TESTIMONY

SB 2128



North Dakota State
NDSSD
Seed Department

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Web: ndseed.com

Kenneth J. Bertsch
State Seed Commissioner

Testimony

Senate Bill 2128
Senate Agriculture Committee

January 12, 2007

Good morning Mr. Chairman and members of the Senate Agriculture Committee. For the record, my name is Ken Bertsch, and I serve as State Seed Commissioner and administrator of the ND State Seed Department. I am here today to provide information on SB 2128, which amends Chapter 4-09 and 4-42 of century code governing programs of the Seed Department.

SB 2128 is an agency bill, one that seeks to update and improve sections of code in areas important to the Department and seed industry. With your consent I will review the amendments.

Section 1 (page 1, line 9):

The term "planting" is added to the paragraph, which speaks to those persons or entities required by law to cooperate with the Commissioner on enforcement issues. Presently, any seed business or retailer can be required to provide records regarding seed sales or transactions. As Plant Variety Protection expands to almost every crop and variety, the Department's Regulatory Program may need to ask for records of individuals, incorporated farming operations or other non-licensed entities in order to verify purchase of legal seed. This amendment will also assist in the process of regulatory examination of complaints regarding "brownbagged" seed transfers or sales.

Section 2 (page 3, lines 3-10):

Language regarding designation of varieties is removed from this section of code, and replaced by updated language in 4-09-16 (which is a more suitable section for this issue). If you read the repealed language, you will note that it is largely outdated, since the Commissioner has not "approved" varieties for decades. An updated variety release and approval process is outlined in Section 4.

Section 3 (page 5, lines 2-4)

This amendment further clarifies statements regarding Plant Variety Protection. Chapter 4-09-15 provides for exemptions to the requirements and regulations of the chapter, with

paragraph 1.e specifically related to farmer owned seed. The paragraph was improved in 2005 by adding the second sentence: "However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter". This statement clarified that PVP varieties were not exempt from regulation and could not be transferred between farmers/growers.

The new statement further clarifies the restrictions to transferring protected varieties. Because nearly every preferred variety in production is regulated by PVP Title V (requiring that it be sold only as a class of certified seed), it is important to set clear statutory language that prohibits its transfer at the farm-to-farm level.

Section 4

(page 5, line 20)

This statement simply clarifies that the Commissioner "accepts" for certification, rather than designates seedstocks (which is covered in the next paragraph). It also expands the Commissioner's authority to deal with "selections" of true varieties, which is common in potato certification where selections, clones or strains of varieties are utilized throughout the potato industry.

(page 5, line 25 through page 6, line 5)

This section replaces the repealed language in Section 2, and updates the code appropriately to the present system of variety release, eligibility and acceptance into certification. The four points covered in parts a through d provide a more precise outline of the way varieties can be released into the system, and a guideline utilized by the Department for entry of those seeds into certification programs.

Section 5 (page 6, line 28)

The amendment simply updates the Century Code to the most recent version of Plant Variety Protection Act language, and states that certified seed sold in the state must be sold under the most recent requirements of the Act.

Section 6 and 7 (page 7, lines 6, 7, 11 and 12)

Sections 6 and 7 deal with Chapter 4-42 which was passed during the 2001 Legislative Session and allows the Seed Department to provide services related to commodities, not just seed products.

As currently written, the Chapter requires the Department to develop and implement programs that are either not in demand, or impossible to achieve. For example line 6 provides that the Commissioner must establish procedures for verifying genetic identity of crops. In many cases the technology does not yet exist to reliably do so. Section 6 amendments remove the requirement but still allow the Department to implement these services for commodity certification and testing.

Section 7 amendments remove the term "segregation" from the chapter. While traceability programs are within the reach of inspection and certification processes we

provide, the segregation issue is really a function of grain trade and outside the scope of our abilities.

Section 8 (page 7, line 14)

The amendments simply remove a requirement in the Wholesale Potato Dealers chapter for licensed dealers to obtain and carry identification cards. We believe this requirement to be outdated and unnecessary, since wholesale dealers are still required to be licensed and to post a license in their place of business.

Mr. Chairman, this completes an overview of SB 2128. I ask for your favorable action on the bill, and I would be happy to answer any questions from the Committee.

**Testimony on SB 2128 to the House Committee on Agriculture
January 12, 2006**

Chairman Flakoll and committee members my name is Blaine Schmaltz and I am here to give testimony for SB 2128. I farm and ranch in the Rugby area with my family. I am also actively involved with seed breeding with the Northern Plains Sustainable Agriculture Society.

This bill at first glance may appear to be a housekeeping bill. But, I am concerned that it may, in fact, affect many individuals and groups in our state. With a new era of proprietary seeds and the new developments in breeding methods it has been feared by many that public domain, public breeding or even individual plant selection may go by the wayside.

This is especially evident in the changes proposed on page 3, lines 3-10, in which the ability of an individual to submit seed to the Seed Commission for review and the obligation of the Commission to test the seed is being stricken from the North Dakota Century Code. This appears to be just another brick being taken down in the building process of new seed varieties.

It is important today to recognize that historic seed banks did not come out of organized or private seed breeding programs, but rather from individuals or concerned farmers who saved seed and recognized the seeds' special traits for their area or farm.

Today these genetics are the seed bank from which the public has access to use as breeding material. This is the material that is today being used to build the privatized seed industry. There would be no Monsanto today if it had not been for the individuals and farmers that have been selecting seed traits since Brother Mendel back in the 1800s.

I respectfully ask you to oppose SB 2128. Thank you.



North Dakota State
NDSSD
Seed Department

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Kenneth J. Bertsch
State Seed Commissioner

Testimony

Senate Bill 2128
House Agriculture Committee

March 1, 2007

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paragraph 1.e specifically related to farmer owned seed. The paragraph was improved in 2005 by adding the second sentence: "However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter". This statement clarified that PVP varieties were not exempt from regulation and could not be transferred between farmers/growers.

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Section 5 (page 6, line 28)

The amendment simply updates the Century Code to the most recent version of Plant Variety Protection Act language, and states that certified seed sold in the state must be sold under the most recent requirements of the Act. This updating is commonly done each time Chapter 4-09 is opened during a legislative session.

Section 6 and 7 (page 7, lines 7, 8, 12 and 13)

Sections 6 and 7 deal with Chapter 4-42 which was passed during the 2001 Legislative Session and allows the Seed Department to provide inspection and testing services related to commodities, not just seed products.

As currently written, the Chapter requires the Department to develop and implement programs that are either not in demand, or impossible to achieve. For example line 6 provides that the Commissioner must establish procedures for verifying genetic identity of crops. In many cases the technology does not yet exist to reliably do so. Section 6 amendments remove the requirement but still allow the Department to implement these services for commodity certification and testing.

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