

# MICROFILM DIVIDER

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



ROLL NUMBER
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DESCRIPTION

1033

2001 HOUSE AGRICULTURE

HB 1033

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1033

House Agriculture Committee

Conference Committee

Hearing Date 1-18-2001

Tape Number	Side A	Side B	Meter #
one	A		00 TO 5800
two	A		00 TO 888
Committee Clerk Signature <i>Edward D. Ellyson</i>			

Minutes:

1A:00: VICE CHAIRMAN D JOHNSON: We will now open the hearing on HB 1033.

REPRESENTATIVE JOHN WARNER: Representative Warner read testimony from prepared text. There we pass out. He then asked for questions.

Representative Berg: Has there been any litigation under this statute in N.D? The answer was I am not sure.

1A:351: TIM DAWSON: I am Tim Dawson with legislative council and I am here to explain the bill. I'm not here for the Bill or against the Bill. Representative Warner pretty much covered everything in the Bill. We are taking out subsection 4 which states the investigatory authority of the Attorney General over antitrust matters may be invoked by the Attorney General only after a district court has reviewed the information and has determined reasonable cause to believe that there is a possible violation of antitrust laws. This has been removed so now they can just go ahead without going to court. If there is a problem, a person dose not

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cooperate then we go to court anyway. So it just takes that first going to court out of the way.

1A:417: Vice chairman Johnson: Are there any questions?

Representative Berg: Mr.Chairman, so the current process is some other entity would have bring an action into the court and then the Attorney General could get involved after a different party had been brought up to that level.

1A:440 TIM DAWSON: This is when the Attorney General of the State of North Dakota enforces antitrust matter so if they think there is an antitrust problem out there, they go out to investigate it. So they go out there and they ask for lets say in subsection one, they have reasonable cause to believe that a person has anything revenant to an investigation of a violation of this chapter, the Attorney General can go out there and ask them for that thing. Before, they would have to go to district court. Now they just have to go to the person and ask them for that thing. The person says, no I don't want to give you the thing. Then they go to court.

REPRESENTATIVE BERG: O.K., so current statue is they would need to go to the district court to obtain permission to start with the antitrust investigation. This bill would simply say, if they see a violation, they can go ahead and proceed with that violation. Then if is substantial they would take it to court.

TIM DAWSON: It dose not have to be substantial. All a person has to do is fail to comply with the written demand. Then the Attorney General would have to go to court.

1A:542: VICE CHAIRMAN JOHNSON: Anymore questions.

Unidentified Speaker: Just to follow up; how long has this been on the books?

TIM DAWSON: Since 1987.

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Mark Sitz: My name is Mark Sitz. Thank you Mr. Chairman and committee members. I'm a farmer from Drake and I represent the Members of North Dakota Farmers Union. We would like to certainly throw our support behind HB 1033. Our farm organization has for sometime been following the concentration issues of we all know about. I don't think there is any secret in how direction the Ag. marketing and processing industry with the companies joining forces. The mergers or acquisitions. The producer is certainly the ultimate individual that our organization wants to protect. We feel that this is a reasonable step in doing that. In my opinion this move if you will HB 1033 is kind of going down the same road as the mandatory price reporting issue that congress has stalled on for sometime and eventually the state legislature in S.D. went ahead and made a bold move and took it on. I see this as somewhat of the same issue although there are other states that have had this provision that we do not. So that how I view this and I think it is an important move for recognizing the difficulties that producers have out there and I would just Mr. Chairman put my support behind this BILL. In consumer protection issues that this is the way it is done. We are just asking for equality for Ag. producers. Bring that all together.

1A:946: John Crabtree: I am relatively a new resident of N.D. having moved here in August of last year. I came to N.D. to accept the position of Executive Director of the Commission of the Future of Agriculture. There is prepared testimony from John Crabtree which is attached to these minutes. After the testimony was read John stated that he would be glad to answer any questions.

1A:1550 Karl Limvere: I am pastor of the Zion United Church of Christ of Medina. I serve as the chairperson of the Rural Life Committee of the North Dakota Conference of Churches and

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am representing the Conference and the committee today. Written testimony attached to these minutes. Pertains to both HB1033 AND 1034. KARL RECOMMENDED A DO PASS FOR THE BILL.

1A 1997 VICE CHAIRMAN JOHNSON: Are there any questions.

Link Reinhiller: Mr. Chairman and members of the committee. My name is Link Reinhiller I am a cow calf producer. I am giving testimony in support of the bill and I am representing the Dakota Resource Council. Written testimony follows and is attached to the minutes.

1A:2925: VICE CHAIRMAN JOHNSON: Are there any questions to this testimony? Is there any other additional testimony in favor of this Bill?

Farm Beau: Brian Kramer: Thank you Mr. Chairman and members of the committee. We support the position on HB1033 as well it simply allows the Attorney General a little more latitude in investigating antitrust laws and antitrust actions. From that stand point we think it is good for us for our producers and we would support it. That's the end of my testimony. If there is any questions, I'd be glad to answer questions..

1A:3026: VICE CHAIRMAN JOHNSON: Any questions? Any other testimony in favor of this Bill? Opposition to the Bill.

1A:3024: Cal Rolfson: I represent American Crop Protection Association. Printed testimony follows. There has been some very good testimony on this Bill. I do not in my testimony intend to demean the value of that testimony. As Paul Harvey would say, I hope to bring you the other side of the story. Printed testimony follows.

Following the written testimony Cal Rolfson went on to say. In conclusion, I note that the Attorney Generals office is not here to support this Bill. I understand they are maintain a

neutral position. I understand the need to deal with antitrust investigation issues in the Agricultural industry. I support that concept. In my opinion there is nothing in the current law that would prohibit the Attorney General of North Dakota from enforcing the antitrust laws under its power in this chapter. Without this Bill. That power is still there. There is nothing that prevents with all the explanation we have heard today from the prior speakers the Attorney General from taking that information, gathering it and presenting it to a District Court. I am also concerned about the spring board attempt that I seem to hear that is the rationale for this Bill that we really want to just force the Federal Government to do some investigation. To do what we believe what we should do. I think this bill seems to be a little excessive. I do not think it is necessary to change this law to accomplish the very thing we expect to accomplish.

This Bill shifts the burden from the government to the private citizen.

1AA:4578 Representative Berg: Are you aware of any antitrust the Attorney General has made in recent years where they have gone to District Court and been denied.

CAL ROLFSON: I don't recall that they have.

Representative Berg: The intent of this legislation is to get at some of those companies that have consolidated and really controlling the the price of Agricultural Products. It is a frustration that we have in N.D. separating those issues that are federal verses those issues that are state and a lot of times we try and get at those federal issues and have a tough time doing it. I guess my concern really relates to this section.. Cal Rolfson states that the power that is granted will not accomplish and need not accomplish what is expected.

1A:5123 QUESTIONER: You represent American Crop Protection Association. O.K., you are representing a company that could be investigated for antitrust violations.

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Cal Rolfson: That certainly is correct, but I also represent many others could well be here and certainly would support the position that I support. 1A:5800

My professional position is that there is no need to change the statutes. The protections were in there in this uniform act that passed in 1987. There is another issue. If you change a uniform law, you may wind up causing Federal preemption to take place if there is a law in that area and in changing a uniform law, you then create exclusive federal authority. You may just do what you don't want to do with this Bill. This would give the Attorney General considerably more power.

1A:Representative Berg: I don't want to belabor my point but it would seem to me that this Bill may not have any effect because the Attorney General would have to go to the District Court, prove that there is probable cause to investigate. If this Bill goes into effect and the person being questioned for antitrust just says no then the Attorney would have to go back to court to meet the same threshold that they would need under existing law. If they did not meet that threshold they would not go anywhere with it. Cal Rolfson: Please read paragraph four. That is what you are deleting.

1A:833: VICE CHAIRMAN JOHNSON: Are there any more questions on this Bill. Any additional testimony? We will close the hearing on H.B. 1033.



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Tape Number	Side A	Side B	Meter #
ONE	A		3830 TO 5148
TWO	A		00 TO 1503
Committee Clerk Signature <i>Edward Ellyson</i>			

Minutes:

1A:3830 REPRESENTATIVE NICHOLAS: We will open the hearing on HB 1033 AND HB1034.

1A:3840: ATTORNEY FOR THE ATTORNEY GENERALS OFFICE: DARREL GROSSMAN.

1A:3901: REPRESENTATIVE BERG: If HB1033 passes, were saying the Attorney General could go ahead and go directly if they see an anti trust violation to a business organization and request records etc. The current statue without 1033 says, the attorney general must go to a district court and get authorization to proceed. Is that right so far? So the question I have is the comparison was kind of made of made with a search warrant. We do not allow someone to go out and search someone's house without first getting some judge to sign off and say you have reasonable cause to go search. More specifically has the Attorney Generals office in recent year seen a antitrust issue gone to a District Court and not been given the authorization to

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proceed with its investigation.

1A:4084 MR. GROSSMAN: Mr Chairman and members of the committee. No we have not.

While I certainly don't have any concerns about the proposed amendment, I want to make it clear to the committee that if there were no change in the law, I do not believe it would impede any of the investigations or legal responsibilities or enforcement abilities that the antitrust would have. We are confident that if a situation would arise that we could intact go to a District Court and that Judge if we are doing or job properly would infaret give us the permission that is requested under the current statue.

1A:4195 REPRESENTATIVE BERG: HBO 1034 provides an appropriation to do this so the questions really relate to HB 1033. Is there anything that you can not do now under current statues that you could do with this change.

1A:4240 MR. GROSSMAN: I can give one simple example of when it might arise and that might be in the case rather high profile visible militate national antitrust issue and that particular case that other states with sufficient bases could proceed with their investigation immediately where in that instance we would have to try and get in to see a District Court Judge to get approval. Again I am not suggesting Mr. Chairman that would impede us. There might be a minor delay of a day or two and that is the most prominent example I can give you. I believe that if we had an urgency and we went to the District Court we could get the approval. I believe that would be quite promptly. I think it would be granted at the time we were there unless is was some extremely complicate if the court needed to further consider.

We would go to a judge and say here is the probable cause and that is why we need to do follow upon this. This is why we need to do an investigation. Most of the circumstances the courts

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are it would be our area of expertise and if you are satisfied that you have a sufficient case that you need to proceed and if the only way you can proceed is with Courts approval we could get it. Again, it is going to have to be an antitrust issue and again it is only an authority to investigate. It is not an authority to take and sort of immediate action nor to issue any sort of injunctive relief. It is merely getting that first step of approval process. If you want to pass this legislation the money would be there. If we don't need the sums we won't use them but if they are there then we would get involved if it is significant to N.D. It won't hurt to have the resources available if we need them. For expert witness etc. costs.

We have a fund like this in consumer protection funds like this one. The antitrust fund could build up because multi state cases do involve large sums. There are significant amounts in antitrust situations. In our current situation we would let other states take the lead roll.

1A:1190:CHAIRMAN NICHOLAS: Any other questions. Thank you for coming down.

We will close on HB 1033 AND HB1034

