

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:00 a.m. ~~pm~~ on March 6, 1985 in room 423-S of the Capitol.

All members were present except: Senator Doyen (excused)
Senator Warren (excused)

Committee staff present: Raney Gilliland, Research Department
Jim Wilson, Revisor of Statutes Department

Conferees appearing before the committee: Nancy Kantola, Kansas Cooperative Council
Daniel Bell, Manager, Co-op Elevator, Harveyville
Terry Bertholff, Attorney, Kansas Farmer
Service Association, Hutchinson
Bill R. Fuller, Kansas Farm Bureau
Howard Tice, Kansas Association of Wheat Growers
Rich McKee, Kansas Livestock Association
Mary Turkington, Kansas Motor Carriers Association

Senator Allen called the committee to order at 10:10 a.m. Senator Allen ask Raney Gilliland to do a short overview of SB 336.

Raney Gilliland explained SB 336 concerned Kansas State Grain Inspection Department relating to regulation of public grain dealers requiring licensure and bonding thereof, registration of agents, prescribing certain procedures and requiring certain inspections and investigations, imposing certain duties on public grain dealers and placing limitations on the business activities thereof, prescribing powers, duties and functions for the director, authorizing rules and regulations, declaring certain acts to be crimes and imposing penalties.

Senator Allen turned the meeting over to Nancy Kantola who made a few statements and introduced two proponents to speak about the bill. Ms. Kantola stated co-ops had been requesting this bill because due to the economy and some bad business practices many dollar loses had occurred in the grain business. Ms. Kantola introduced Daniel Bell.

Daniel Bell reported he had sold grain to an unlicensed grain outfit. After not receiving payment, and his own investigation, he then received a form letter (see attachment A) from the grain dealer telling him they could not pay. Mr. Bell stated this as an example of why licensing and bonding needed to be required of all grain dealers. Mr. Bell encouraged support for SB 336.

Ms. Kantola introduced Terry Bertholff who testified in favor of SB 336. Mr. Bertholff stated if all are concerned for our farmers and the grain industry in the state then licensing and bonding requirements should be imposed upon grain dealers. (see attachment B).

The chairman called on the next proponent to speak, Bill R. Fuller. Mr. Fuller stated that grain dealers should be regulated as grain warehouses are. (see attachment C).

The chairman called on Howard Tice, a proponent of SB 336. Mr. Tice stated his organization feels the need is great for comprehensive rules and regulations to bring this segment of our industry in line with the rest of agri-business, and to protect citizens against further losses such as have been seen from unregulated grain dealers. Mr. Tice encouraged the committee report the bill favorably. (see attachment D).

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:00 a.m. ~~PM~~ on March 6, 1985

Senator Allen introduced Rich McKee an opponent of SB 336. Mr. McKee stated this bill would be too restrictive on the grain industry and the bonding requirements listed in this bill would force numbers of small grain dealers out of business. Mr. McKee expressed willingness to work with the committee to address problems in the grain industry but SB 336 is not the answer. (see attachment E).

The chairman introduced Mary Turkington who spoke as an opponent. Ms. Turkington stated the bill is not workable and requested the committee recommend this bill not be passed. (see attachment F).

Senator Allen declared the meeting adjourned at 11:00 a.m.

GUEST LIST

COMMITTEE: SENATE AGRICULTURE

DATE: March 6 - 1985
10:00 A.M.

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<i>Maury E. Worthington</i>	<i>Topeka</i>	<i>Kansas Motor Carriers Assn.</i>
<i>Tom Whitaker</i>	<i>Topeka</i>	<i>Kansas Motor Carriers Assn.</i>
<i>Jack Sweeney</i>	<i>Topeka</i>	<i>Ks. State Grain Insp. Dept.</i>
<i>Gorman R. Miller</i>	<i>"</i>	<i>" " " "</i>
<i>Sam Reder</i>	<i>"</i>	<i>" " " "</i>
<i>Ron Scheibner</i>	<i>"</i>	<i>" " " "</i>
<i>Sabrina Wells</i>	<i>Topeka</i>	<i>Budget Division</i>
<i>MIKE BEAM</i>	<i>TOPEKA</i>	<i>K.L.A.</i>
<i>Rebecca Crenshaw</i>	<i>"</i>	<i>Comm. of Farm Orgs.</i>
<i>HOWARD W. TEE</i>	<i>Hutchinson</i>	<i>KAWG</i>
<i>Rich McKee</i>	<i>Topeka</i>	<i>KLA</i>
<i>Lee Jones</i>	<i>Topeka</i>	<i>KLA</i>
<i>Dann Bell</i>	<i>Harveyville</i>	<i>MGR Harveyville</i>
<i>Terry D. Berthoff</i>	<i>Hutchinson, KS</i>	<i>Ks Co-op Council</i>
<i>Nancy E Kantola</i>	<i>Topeka</i>	<i>Ks Co-op Council</i>
<i>TOM R. TUNNELL</i>	<i>KANSAS GRAIN AND FEED DEALERS ASSOCIATION HUTCHINSON</i>	
<i>MARSHA HUTCHINSON</i>	<i>KG7DA</i>	<i>HUTCHINSON</i>
<i>Joe Lieber</i>	<i>Ks Coop Council</i>	<i>Topeka</i>
<i>John K. Blythe</i>	<i>Manhattan</i>	<i>Ks Farm Bureau</i>
<i>Bill R. Fuller</i>	<i>"</i>	<i>" " "</i>
<i>Jim Mraz</i>	<i>Topeka</i>	<i>Ks Bankers Assoc.</i>

Midway Grain

Brokerage, Inc.

9/18/84

Dear *Harveyville Coop*

As you well know, there have been some recent situations that have caused an upheaval in the grain industry. However, the major problems were caused by those who have created and passed along rumors and innuendo. This has forced some in the grain industry to demand that business be done in an abnormal manner that has adversely affected the cash flow for a lot of us.

As it is well known that we are a small company it should be obvious that we depend on the normal float, that up until this time, has been normal in the industry to insure that everyone is protected.

However, there are some who wish to believe these rumors without proof and therefore our cash flow has been severely curtailed.

This requires certain measures to be taken by our company that will insure our survival and help get business back to normal.

We need for your company to extend to us a 60 day extension on all business transactions we now have with you. This will go a long way towards helping us to maintain a solid cash base wherein we can protect our customers.

We have been forced to ask this of your company, not because of our business practices but the unreasonable demands of others.

If you can or cannot see your way clear to meet our request at this time, a simple letter by return mail will do to give us your answer. No additional information can be given by phone at this time however, you will be contacted as information concerning your account becomes available.

attachment A
3/6/85

Terry D. Bertholf
Attorney at Law
100 East First
P.O. Box 2560
Hutchinson, KS 67504-2560
(316) 663-5453
(800) 362-2104

THE GRAIN DEALERS ACT
LICENSING AND BONDING
OF GRAIN DEALERS
Senate Bill 336

SELF INTRODUCTION. I am a 1973 graduate of the University of Kansas School of Law. I am a sole practitioner in Hutchinson, Kansas. My clients include the Kansas Cooperative Council, Kansas Farmers Service Association, an insurance agency in Hutchinson and its subsidiaries, and in various specific matters most farmers cooperatives in Kansas. My relevant professional qualifications are that I am a member of the American, Kansas, Southwest Kansas and Reno County Bar Associations, the National Society of Accountants for Cooperatives, the National Cooperative Council's Legal, Tax, and Accounting Committee, and the Midwest Regional Cooperative Research Committee, and the Agriculture Law Association.

EXPLANATION OF THE PROBLEM. The grain industry is generally a highly regulated industry for the reason that farmers require a safe reliable place to store and market their grain. In Kansas the public warehouses for grain are licensed and bonded pursuant to the Kansas Warehouse Act, K.S.A. Chapter 34, Articles 2 and 4 and the United States Warehouse Act, 7 U.S.C. Sec. 241 et seq. The current status which require licensing and bonding of

2015
copy
3-6-85
10:00

warehouses do not guarantee the warehouseman's financial reliability or absolutely assure that the farmer will receive payment for grain delivered to a duly licensed and bonded warehouse. Despite some recent highly publicized exceptions, the state and federal warehouse acts have been largely responsible for the reliability of public grain warehouses. I do understand that the current state act is being studied. I do not intend to take issue with the current warehousemen's acts, except to point out that in the highly regulated grain industry there is a conspicuous segment of the industry which is subject to no regulation - those who deal in grain, purchase and take title to grain, and sell to third parties, but who do not take possession of the grain for storage - grain dealers. Under current law, or the lack of any statutory or regulatory authority, all that is required to open business as a grain dealer is a telephone and a note pad, and neither of those is essential. It is not a capital intensive industry. No particular experience or expertise is required.

Such grain dealers may serve a valuable purpose in the industry. Somewhat like brokers they get buyers and sellers of grain together, and match contracts. A grain dealer buys grain from an elevator, or from a farmer, for example, 1000 pounds of milo at \$3.00 per c.w.t. The grain dealer then sells the milo to two feedlots, 500 pounds each at \$3.50 per c.w.t., so that, excluding freight, he has a gross margin of \$.50 per c.w.t. or \$50.00. The grain dealer "brokers" the grain between several, perhaps

numerous buyers and sellers, but the grain dealer does take title to the grain. The grain dealer does not charge a commission, rather he intends to make a profit on his margins. Unlike my example the first contract may have been with the feedlots, or other buyers. If the contracts do not exactly match, the dealer may or may not hedge his long or short position on a board of trade. The dealer can also speculate by either maintaining a long or a short position in grain, or by speculating in the futures market. The problem arises in my example from the fact that the dealer frequently does not, and all too often can not, pay his seller, until the dealer's buyer pays for the grain. If the dealer's buyer defaults, or if the dealer pays other creditors with the proceeds of sale, or if the dealer simply absconds, then the seller will not get paid.

Unfortunately, the problem is not entirely hypothetical. The ultimate losers are the farmers. The farmer is a direct loser if he sold to the dealer. The farmer may also be a loser if his elevator sold to the dealer. In the recent bankruptcy of grain dealers, farmers and elevators lost millions of dollars. In the case of farmers cooperative the losses are passed directly to farmers and patrons in the form of reduced patronage allocations. Fortunately, no elevator has yet been forced into bankruptcy because of recent losses to grain dealers, but most of the elevators, which incurred such losses, have shown overall losses in their own operations. The net worth and working capital of several elevators has been seriously depleted. The financial

stability of some elevators has been threatened. To whatever extent the current warehouse acts have been effective, to whatever extent the tightening and strengthening of the warehouse acts can be effective in reducing the risks of elevator bankruptcies, the risks to Kansas farmers of elevator bankruptcies will remain, as long as elevators are forced to be the ultimate "guarantors", while the grain dealers with which the elevators may deal are not subjected to similar licensing and bonding requirements.

You should understand that today's grain dealers can be very competitive in bidding to farmers against or in competition with the grain elevator. The grain dealer may have no (or only insignificant) fixed costs. By necessity the grain dealer must deal in large volumes of grain. We are not asking or suggesting that the State's statutes can or should remove all risks. We are stating that the state has a legitimate interest in requiring that all persons who deal in grain have some elementary expertise, exercise legitimate business practices, and have some minimal financial integrity.

In 1984 three large grain dealer firms were forced into bankruptcy: Fleming Grain Company in Wichita, The Sanburg Company in Kansas City, and Midway Grain Company in Salina. All three were involuntarily forced into bankruptcy. The initial losses to farmers and elevator total eight million dollars. I personally caused the petition in bankruptcy to be filed in one

instance and assisted in the other two. I represent approximately thirty (30) farmers cooperatives which have filed claims in bankruptcy of more than one million dollars. One client has a potential loss of \$350,000.

The ultimate causes of the failures of the three grain dealer firms were different. While those causes have not been substantiated in Court, it is public record that one of the companies lost \$2.5 million by speculating in commodities futures, the Kansas Bureau of Investigation is investigating one of the companies for possible fraudulent transfers of corporate funds to principal shareholders, and one of the companies simply lost money from the day it started business. As I discussed above, the payment for grain was dependent upon the float. Checks were actually written in advance of receipt of the funds necessary to cover the checks. These grain dealers were able to "flourish" as long as the float continued.

THE PROPOSAL. I drafted the proposal that is before you, Senate Bill 336. To a large extent the draft is based upon and fashioned after current Kansas Warehouse Acts. I intended that the language should be as familiar as possible to the Legislature, to the Kansas Grain Inspection Department, and to the Kansas grain industry. The major provisions of my proposal which are distinct from the warehouse act are:

Sec. 2 "grain dealer" definition

Sec. 3 exceptions

- Sec. 4 licensing
- Sec. 5 bonding
- Sec. 7 registration of agents
- Sec. 12 purchase limits
- Sec. 13 prompt payment

Section 2 defines "grain dealer", "As used in this act: 'Grain Dealer' means any person, corporation, firm, partnership or other business entity which is engaged in the business of buying or purchasing grain (as defined at K.S.A. 34-233) within this state, and selling or offering such grain for resale to third parties".

Section 3 provides the exceptions. I intended that the definition would be as all inclusive as possible. The exceptions are (a) farmers, (b) brokers - who do not take title to or possession of the grain (c) truckers and other shippers - who do not take title to the grain (d) to the purchase of grain for the purchaser's own use, (e) to licensed public warehousemen.

Section 4 requires the licensing of all grain dealers.

Subsection (a) requires a written application, and while the content of the application form is largely left to the director, the act does require a disclosure of the principal owners of the licensee. Subsection (b) requires the applicant to submit a financial statement. My intention is that the financial condition of the applicant would become of public record.

Subsection (c) requires a minimum net worth of \$25,000.

Subsection (d) prohibits the issuance of a license to persons who have been convicted of crimes of dishonesty.

Section 5 requires all grain dealers to post a bond of the greater of \$10,000 or twice the highest months value of grain handled by the applicant, and subsection (d) allows the director to increase the bond requirements.

Section 7 provides for the registration of grain dealer's agents. My purpose was to bring some measure of integrity to the industry, and to encourage such agents, who might be employed by a dishonest or failing grain dealer to abandon or quit his position or risk losing his ability to find future employment as such an agent. A grain dealer's agent's registration could be denied if the agent has "a record as an individual or in connection with any grain dealer, copartnership, corporation, association, or other business unit showing unsatisfactory debts, or operation or orders with respect to prior dealings in grain", Section 7 (e) (1).

Section 12 prohibits the grain dealer from purchasing grain with a total dollar purchase price in excess of the bond required or posted pursuant to Section 5. My intention is that the bond shall have some significance and, unlike the bond requirements of other states the bond will be for some reasonable amount.

Subsection (b) also prohibits the grain dealer from granting a security interest in or to grain purchases or receivables in a dollar amount in excess of the bond requirements.

Section 13 requires the licensed public grain dealer to make payment for grain within 20 days, except that the Section does permit the grain dealer to withhold payment if there is a dispute regarding title to the grain. The 20 day payment period is arbitrary. The current standard in the industry is probably not more than 10 days, and in certain circumstances as short as 3 to 4 days or less.

CONCLUSION. I do not pretend that the bill under consideration is the only solution to the problem of grain dealer business failures. I do intend to communicate the fact that there is a need for the licensing and bonding of grain dealers. In my opinion grain dealers can provide a valuable service to the Kansas grain industry. It is also my opinion that licensing and bonding should be in the best interest of existing grain dealers. Absolute free entry into the business of a public grain dealer should not be permitted. Many businesses which have a far lesser impact on the economy of this state are subject to stringent licensing requirements. If we are truly concerned about the welfare of farmers in this state, and about the grain industry in this state, then licensing and bonding requirements should be imposed upon grain dealers.



Kansas Farm Bureau, Inc.

2321 Anderson Avenue, Manhattan, Kansas 66502 / (913) 537-2261

2615
copy
3-6-85
10:00

STATEMENT
of
KANSAS FARM BUREAU
to

SENATE AGRICULTURE COMMITTEE
Senator Jim Allen, Chairman

RE: S.B. 336--Public grain dealer licensing & regulations

by
Bill R. Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

March 6, 1985

"Farmers, truckers, elevators and grain trading companies in six states are trying to collect about \$7 million owed them by three Kansas grain dealers forced into bankruptcy court during the past two months." (See attached newspaper clipping). This \$7 million in losses resulting in grain dealer failures the past few months is more than twice the combined losses of all grain warehouse failures since 1967, even when you add in the expected losses in the current Twombly Grain Company disaster.

Mr. Chairman and Members of the Committee, we are pleased to have this opportunity to support the intent of S.B. 336 on behalf of the farmers and ranchers who are members of the Kansas Farm Bureau. Our statement is based on a section of a resolution adopted by the voting delegates at the most recent annual meeting of the Kansas Farm Bureau:

attachment C
3/6/85

Kansas Farm Bureau

Resolutions 1985

Adopted by the Voting Delegates Representing 105 County Farm Bureaus at the 66th Annual Meeting of Kansas Farm Bureau in Wichita, December 4, 1984.

Agricultural Commodity Storage

We urge farmers to be informed as to the payment risk involved in contracting for future sales of agricultural commodities already delivered to an elevator or feedyard.

We believe all commercial elevators and grain warehousing facilities in Kansas should be licensed and bonded by the state, and or federal government, and inspected by the Warehouse Division of the State Grain Inspection Department a minimum of twice each year. Grain brokerage firms should be bonded and have proof of financial responsibility.

We believe that if a check has been issued for payment of grain within 14 days of the declared insolvency, and if the check has not cleared the bank, the party to whom the check was issued should be considered eligible for a share of the bond.

Kansas has strict grain warehouse laws requiring licensing, bonding and inspections. Grain dealers are not regulated by the state in any way. We believe that grain dealers (brokers, truck grain buyers and other non-warehouse grain buyers) should operate under business requirements similar to those imposed upon grain warehouses, including bonding and proof of financial responsibility.

We support giving the Kansas Grain Inspection Department the authority to stop a grain dealer from doing business at the first signs of trouble. We believe that a license fee should be set by the Director of KGID and a bond of a minimum of \$25,000 with a maximum of \$100,000 would be appropriate. In addition, applicants for license as a public grain dealer should meet the same criteria as a warehouse license holder as to financial statement, net worth requirements of \$25,000 and a background of no convictions for the past 10 years of embezzlement or violation of the U.S. Warehouse Act.

We would ask the Committee to consider striking subsection ^b(a), lines 0046 through 0048. We believe there are also risk of losses by brokerage firms who do not take possession of the grain and merely act as middlemen.

In closing, we support the effort to regulate grain dealers. We trust any legislation approved will provide real protection to Kansas grain producers. We caution against passing any law which will only result in a feeling of false security and with little protection. Thank you!

Creditors seek \$7 million from grain dealers

WICHITA (AP) — Farmers, truckers, elevators and grain trading companies in six states are trying to collect about \$7 million owed them by three Kansas grain dealers forced into bankruptcy court during the last two months.

More than 400 creditors from Kansas, Missouri, Nebraska, Colorado, New Mexico and Texas are pursuing claims against Fleming Grain Co. Inc., Wichita; The Sandburg Co. Inc., Overland Park; and Midway Grain Brokerage Inc., Salina.

Court records show the claims involve both small and large operations ranging from independent truck drivers to fleet trucking companies and small country elevators to large nationwide grain giants such as Cargill and Pillsbury.

Many of the creditors are owed money by more than one of the now defunct grain dealers. Goodland Co-op Equity Exchange, Goodland, is typical with a potential loss of about \$285,000 because of money owed it by Fleming and Sandburg.

"Hopefully, we can show a profit to offset that," said Alan Stewart, the co-op's manager. "It's a terrible load."

The genesis of the crashes that led to the filing of the three involuntary bankruptcy cases was in late July when Fleming's bank, Kansas State Bank and Trust Co. of Wichita, froze its accounts.

Fleming has reported a debt of about \$4.7 million. It admits owing \$4.1 million to 85 elevators, farmers and grain merchants and more than \$600,000 for trucking, trading fees, supplies and services.

John Fleming, president of the 5-year-old company, said its financial problems "are quite a complicated deal."

He said the company sustained major losses while hedging grain on the commodity futures market.

It is common for elevators and other grain merchants to "hedge" by selling grain they have purchased on the commodity futures market in an attempt to make a profit. In a hedge, the merchant has to pay his broker a percentage of the contract's worth, called a margin. If the contract's worth increases, then the broker issues a margin call requiring the

hedger to pay more margin to keep the contract alive.

Fleming was unable to pay its margin calls, according to company officials.

"The market went against us and the bank's bailing out was the big problem," Fleming said.

Court records show KSB&T froze Fleming accounts totalling \$1.25 million on July 26. The company was \$1.5 million in debt at the time, according to court records.

Word of Fleming's predicament spread quickly through the grain trade during August. The common practice of allowing a grain merchant 30 days or more to pay was abandoned.

"It created a shock wave out here in the country," Goodland Co-op's Stewart said. "Everybody got on the phone to companies that owed them money and said 'Pay us!'"

"It was like a run on the bank," said Richard M. Blackwell, the Salina lawyer who represents Midway. "All through August it kept happening. People kept coming in and asking for their money."

Sandburg foundered first. Its response to the involuntary bankruptcy case filed against it listed 172 creditors with claims totalling about \$2 million. Some of the larger claims include First National Bank of Olathe, \$546,884; the Goodland co-op, \$155,276; grain merchants and elevator operators J. Lynch and Co., Salina, \$233,806; and Wright-Lorenz Grain Co., Salina, \$190,182.

Midway wrote its creditors a letter and asked them to hold off for 60 days. But 11 elevators filed state district court suits seeking about \$265,000. Eventually, creditors also filed an involuntary bankruptcy case against Midway.

Blackwell said the company won't fight the case. He said Midway owes about 50 creditors around \$500,000.

The people owed by the grain companies may eventually get part of their money, depending on the assets that can be liquidated in each case, lawyers for both sides said.

But the potential losses come at a time when there is fierce competition in the grain trade with each company's profit margins already being cut to the bone. In some instances, the creditors readily ad-

mit they were attracted to doing business with the three companies, none of which was more than 5 years old, because the firms offered as much as five or six cents a bushel more than older established dealers.

Once burned, the creditors and their colleagues who escaped the crash of the three companies have decided to be twice shy about doing business with grain dealers who don't pay as soon as they purchase grain.

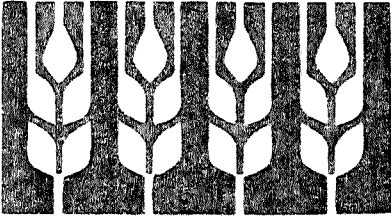
Stewart said the Goodland Co-op, like many co-ops, now tries to do business only within the co-op system. He said he deals with one other grain company, but it wires money before even picking up grain.

The memory of the problems with Fleming, Sandburg and Midway is going to affect trading patterns for years, Stewart said.

"With a depressed economy like we're having, I don't know what it's going to do to people," he said. "But I'm never going to forget about it."

"It's always going to be in the back of my mind."

KANSAS ASSOCIATION
OF WHEAT GROWERS



TESTIMONY

Senate Committee on Agriculture

Wednesday, March 6, 1985

SENATE BILL 336

My name is Howard Tice. I am Executive Director of the Kansas Association of Wheat Growers. I appreciate this opportunity to present the views of our members in support of this bill to regulate grain dealers.

First of all, I would like to refer to our official resolution, enacted at the KAWG convention this past December. The resolution points out that a number of brokerage firms and grain merchandisers have begun operation in Kansas with very unstable financial footing, and that a substantial number of producers and grain elevators have suffered considerable losses as a result of bankruptcies and other financial difficulties involving these operations.

In an effort to protect the financial interests of our producer-members, the KAWG has resolved to work for legislation which would prevent brokerage firms or grain merchandisers from operating in the state and buying grain unless they are licensed, bonded, and audited in a way similar to that required of elevators.

We believe Senate Bill 336 adequately addresses the concerns expressed in our resolution.

Currently, every enterprise in the state involving large financial transactions is covered by rules and regulations designed to safeguard the public against loss from either illegal acts, or financial failure. Many other enterprises that deal in relatively small dollar amounts are likewise regulated.

The dollar amounts involved in the currently unregulated dealers addressed in this bill are commonly quite large, and as a result, the losses experienced by producers and elevators are also quite large. It is a matter of record, that the losses from grain broker failures greatly exceeds any grain elevator bankruptcy.

In conclusion, we feel the need is great, for comprehensive rules and regulations to bring this segment of our industry in line with the rest of agri-business, and to protect our citizens against further losses such as we have seen from unregulated grain dealers. We, therefore urge this committee to report favorably on Senate Bill 336.

attachment D
3/6/85

LOIS
COPY
3-6-85
10:00



2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

Statement of the
KANSAS LIVESTOCK ASSOCIATION
to the
Senate Agriculture Committee
Senator Jim Allen, Chairman
with respect to
Senate Bill 336 -- Regulation of Public Grain Dealers
presented by
Rich McKee
Executive Secretary
Feedlot Division
March 6, 1985

Mr. Chairman and members of the committee, as you know the Kansas Livestock Association represents livestock producers involved in literally every segment of agriculture - not only in all segments of the livestock industry, but in virtually every type of grain production as well. I also know that you are very cognizant of the fact that virtually every farmer or rancher is not only a seller of agricultural commodities, but in numerous instances is also a buyer of agricultural commodities. KLA appreciates the opportunity to share the views of our membership with you in regard to the question of regulating public grain dealers.

The short version of our position is that the Kansas Livestock Association is strongly opposed to the implementation of state regulations like those embodied in SB 336 which seek to register, license, bond, inspect and regulate those entities which do not fall under the definition of a "public warehouseman" and are basically cash purchasers of grain.

Here's why we oppose this bill which would create a major change in state policy and, for the first time ever, bring under state regulation a large number of commercial feedyards and farmer feeders in Kansas:

This bill would restrict commerce because there is a tremendous volume of grain purchased for the livestock feeding industry which is sold by individuals and companies who make their living by providing farmers with a valuable service of purchasing their grain and then applying their own labor and transportation expertise in order to move that grain as efficiently as possible to the area where demand is greatest. We do not believe this activity requires regulation by the state of Kansas. This bill, with its unreasonable bonding requirements (new section 5... and especially lines 158 thru 162) would place a cost of doing business on these entrepreneurs which, in our opinion, would be unbearable. By no means do we consider ourselves to be experts, but we understand that a bond requires approximately a \$5 premium for every \$10,000 of bond amount. In what would be an admittedly extreme

3/6/85 attachment E

case, we know of a cash grain trader here in Kansas who has done as much as \$14,000,000 worth of business in one month. It takes no mathematician to see that that bond would be extremely expensive. Additionally, we would ask you to consider that the bonding companies normally require a net worth of 3 times the amount of the bond. Let's just take a small operator, someone who only does approximately \$100,000 worth of business per month: the bond amount required by the bill would be \$200,000 - possibly not a large amount in the minds of some - however, keep in mind that the net worth requirement to a bonding company would be 3 times the bond amount, or \$600,000. We submit to you Mr. Chairman and members of the committee that it doesn't take a very large operator to handle \$100,000 worth of grain in a month - that's equivalent to about 30 - 35 thousand bushels at \$3.00 a bushel - in order to have a net worth requirement of \$600,000.

We ask the committee to consider that an extremely large volume of grain is purchased from farmers and resold to feedyards by individual business men who might own a truck or two or three who could not even come close to satisfying a \$600,000 net worth requirement. Therefore, it appears to us that the requirements of this bill could put many of these people out of business and further restrict the marketing options of Kansas farmers and ranchers.

Another point we would like to make is that simply bonding a particular type of business entity is not a fail safe or a guarantee that no losses will occur. We would hold in example, the public grain warehouse industry which already has the highest bonding requirements of any state in the Union, yet where problems do occur from time to time.

Members of the committee will also notice that section 6 on page 6 requires that the Kansas State Grain Inspection Department make investigations of the applicant for the license provided for by this bill and include an examination of the applicants books and records, account procedures and procedures for internal control. It's our recollection that testimony from previous years has indicated that the State Grain and Inspection Department personnel are trained for grain inventory inspections and not on accounting procedures and internal control procedures and the like. It also appears to us that, because of the provisions contained in new section 4 relating to auditing of cash grain purchasers' books by certified public accountants and independent public accountants, the Kansas Society of CPA's may be considering this bill as specific industry. We would ask that you remember who always ends up bearing such costs ... grain producers. Additionally, the budget demands that this particular bill would make on the state treasury certainly bears some scrutinization.

Frankly, Mr. Chairman and members of the committee, our association does not perceive that we have a problem in this area. SB 336, we respectfully submit, is an over-reaction. There have only been a mere handful of instances where cash grain purchasers have failed to make full payment ... certainly not an alarming number and not enough to justify imposing more red tape and more state bureaucracy on the industry. At a time when the agricultural community is in the midst of one of the most serious economic circumstances in history, we would hope that this legislative body would not decide to increase the cost of doing business for farmers and ranchers. For years, KLA has supported legislation that would provide for the establishment of non suspendible jail sentences and other tougher criminal penalties for individuals who are convicted of fraud, embezzlement, or failure to pay for grain. We ask this committee to keep in mind that the additional cost of the measures contained in SB 336 will eventually be born by farmers and not substantially address the matter of non payment. Keep in mind as well, that an audit is simply a "picture" of that particular entities financial status at one particular point in time. The financial position of any entity can change dramatically in an extremely short period of time due to commodity price changes, bases fluctuation, weather, etc.

In conclusion, we commend members of this committee and the legislature for reviewing possible alternatives in order to deter criminals and make marketing of agricultural products more efficient. In our humble opinion, SB 336 does not accomplish that goal. As always, we stand ready to work with the legislature on other proposals that may arise.

3-6-85
RD-
L 019
COPY

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Concerning Senate Bill 336 and the
regulation of public grain dealers.

Presented to the Senate Committee on
Agriculture, Senator Jim Allen, Chairman;
Statehouse, Topeka, Wednesday, March 6,
1985.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I am here representing our member-firms and the highway transportation industry concerning the provisions of Senate Bill 336. We respectfully oppose the bill.

Section 3 of the bill under paragraph (c) clearly exempts

"any person who accepts delivery of grain for transportation only, if such person is a licensed public carrier, does not offer grain for sale and does not accept payment or contract or agree to accept payment for grain as an agent of the owner."

That language is intended to exempt a "licensed public carrier" whom we interpret to be a for-hire or common or contract carrier. The segment of our industry which apparently would not be exempt from this extraordinarily burdensome bill involves the private carrier who engages in the buying and selling of grain and uses a private carrier authority to transport his grain products.

3/6/85 attachment F

There are any number of private carriers based in Kansas who supply grain or purchase grain to or from Kansas shippers. There also would be a large number of private carriers based in locations other than Kansas who might haul grain into Kansas for resale or purchase grain from Kansas producers or elevators and haul such grain to markets outside this state.

As we read the bill, these private carriers of such grain products would be required to secure a license to engage in business as a public grain dealer.

I do not appear before this committee as any expert in the grain business or as a critic of those who wish to establish more accountability in the proper handling of grain sales.

We do wish to share with the committee some of our concerns on the provisions of this bill.

We sincerely believe the proposed legislation goes far beyond the dimensions of any problems encountered in such grain sales in our state.

The application requirements are indeed comprehensive including the provisions on page 3 of the bill calling for a report of audit or review conducted by an independent certified public accountant or an independent public accountant which is to accompany the applicant's financial statement.

The \$25,000 total net worth requirement outlined also on page 3 of the bill is not clear in its application.

The powers granted to the director of the Kansas state grain inspection department are immense -- not the least of which is the power to determine the license fee for such public grain dealers.

We find the bond requirements outlined on pages 4 and 5 of the proposed bill extremely burdensome. Again I am not a bond expert but the amount of the bond seems beyond the practical reach of many smaller private carriers, for example. We note also that the bond is to be with a good corporate surety qualified under the laws of the state of Kansas.

What would be the requirement for out-of-state private carriers who might be from a state which has a workable grain dealer law in place and who might already be sufficiently "bonded" in that state or other jurisdiction?

We also note the director is given a great deal of latitude in connection with the bond requirements set forth in paragraph (d) of New Section 5 on page 5 of the bill.

We would call to the Committee's attention the requirement for the director to make "an investigation of the applicant and inspection of the business practices and procedures used or to be used by the applicant, including the applicant's books and records, account procedures and the procedures for internal control."

What if the applicant is an out-of-state private grain carrier? How is the "investigation" to be made and at whose expense?

We would question the propriety of granting the director such broad investigative powers in any instance.

Apparently such public grain dealer licenses are to expire one year from the date of issuance unless the director wishes to extend the expiration date of the license more than one year but not longer than two years. License renewals would involve much of the same information as the initial application requires.

We also would question how the out-of-state public grain dealer's posting of the public grain dealer license in a conspicuous place in the office room of the licensed public grain dealer would serve any useful purpose.

We have any number of additional questions relating to the revocation or suspension of a public grain dealer's license and the power granted to the director in this instance; of how a private carrier would qualify his drivers to be an agent under this proposal; how the director again is to "investigate" any person for which an application for registration as a licensed grain dealer's agent is filed; the record-keeping requirements outlined in section 8 of the bill; the power again granted to the director in section 9 of the bill, the penalties outlined in sections 11, 14 and 16; ; how the provisions of section 15 would be imposed on a private carrier based out-of-state; and finally, the effective date of the act which is indicated as publication in the statute book (or July 1, 1985). It would seem impossible to implement this legislation by that early deadline.

These are some of the obvious problems we can quickly call to your attention. This committee can judge the need for a workable set of guidelines to establish accountability in handling grain sales. We believe this bill is not workable and that such a proposal would add major artificial costs to the agricultural community at a time when the best minds of this legislature and the country as a whole are trying to find ways to cut costs and help rural America survive. Someone will have to pay the costs created by Senate Bill 336. We sincerely believe there must be a better answer and therefore ask that you not recommend Senate Bill 336 for passage.

####