

Approved March 28, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Lloyd D. Polson at
Chairperson

9:00 a.m./~~p.m.~~ on March 19, 1986 in room 423-S of the Capitol.

All members were present except: Representative Dean and Jenkins, who were excused.

Committee staff present:

Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Howard Tice, Kansas Association of Wheat Growers
Gerald Persinger, Horton, Kansas
Bill Fuller, Kansas Farm Bureau

Continuation of Hearing on: S.B. 403-Fence laws revised.

Howard Tice distributed to the Committee copies of a pamphlet by Sam Brownback, an attorney and an instructor in the Department of Agricultural Economics at K.S.U., Attachment I; a letter from the Office of the Attorney General, Attachment II, and amendments to S.B. 403, Attachment III. In his prepared testimony Mr. Tice said there is a need for a thorough, careful analysis in order to update, clarify and consolidate the fence laws. His association supports the "fence-in" policy which requires farmers and ranchers to confine their livestock. They support legislation which prevents any increased liability for owners of land or livestock; avoids any burden of modifying existing fences or requiring construction of new fences; and continues the responsibility of the County Commissioners in each county to serve as "fence viewers" for settling disputes regarding fences, Attachment IV.

Gerald Persinger informed the Committee of his experience with partition fences. He asked that S.B. 403, with the amendments proposed by the Kansas Association of Wheat Growers, be approved by the Committee, Attachment V.

Bill Fuller stated the Kansas Farm Bureau is not asking for the fence laws to be amended, however, they would accept S.B. 403 as long as the proposal is not broadened. He noted the similarities of S.B. 403 and Kansas Farm Bureau policy in the willingness to update and clarify the fence laws, adopt a "fence-in" policy, limit any updated construction standards only to "new" fences, and no request for changing "partition fence" policy, Attachment VI.

The hearings on S.B. 403 were closed.

The Committee meeting was adjourned at 10:00 a.m.

The next meeting will be at 9:00 a.m., Thursday, March 20, 1986, in Room 423-S.

GUEST REGISTER

DATE March 19, 1986

HOUSE OF REPRESENTATIVES
COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

NAME	ORGANIZATION	ADDRESS
Jack Sleichter	Farm Bureau	Chillicothe, Mo
Mrs Jack Sleichter		
Gerald Persinger	Wheat Growers	Norton, Mo
Kathleen Persinger	Wheat Growers	Norton, Mo
Kathy Atkisson	Farm Bureau	Stockton, KS
Bob Atkisson	Farm Bureau	Stockton, Kansas
Benny Ediger	" "	Maede, Mo
Helen Ediger	" "	Maede, Mo
Jay E. Ediger	" "	Dodge City, Mo
Darwin Ediger	" "	Maede, Mo
John Blythe	KFB	Manhattan
JAMES BRANT	KFB	ISABEL
Roy Oronshaw	Kansas Farm Bureau	Colby, America
Walt Wilson	Kansas Farm Bureau	Ray, Mo
Edward M. Lee	KAWG	Wichita, Mo
Bill Jullin	Ks. Farm Bureau	Manhattan
Chris Wilson	KS Fertilizer & Chemical Assn	Hutchinson
Earl Karamcha	KFB	Wabeneey
Branie Albee	Farm Bureau	Grinnell
Robert Bell	" "	Grinnell
Bernard Munnich	Farm Bureau	RR Hoisington
Nancy Lewis	Farm Bureau	Hiram, Mo
Charles Bruner	" "	Uniontown, Mo
Don Cameron	Kansas Farm Bureau	Warden City, Mo
Edith Schaefer	" " "	Grinnell, Mo

Gilbert Rundell
John Schlageek
Bob Arbutnot

KFB
KFB

STAFFORD, KS
MANHATTAN, Kan.

T. E. J. L.

AG LAW

S E R I E S

*Kansas
Fence Laws &
The Law of
Trespassing Livestock*

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Cooperative Extension Service
Kansas State University
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3-19-86 Hs. A.S.B.
Attachment I

Kansas Fence Laws and The Law of Trespassing Livestock

No matter how good your fences are, some farm animals are going to escape from their confines and wander onto roads, highways or your neighbor's property. When this happens every stockowner should know whether he will be responsible for the damages caused by his wayward animals.

Kansas has three distinct bodies of law governing the liability of stockowners for damages caused by trespassing livestock. They are: 1) the common law, 2) Fence Laws; and 3) Herd Laws. Unfortunately, it is difficult to determine which body of law controls in a particular situation. In certain circumstances, liability is based on Kansas common law.¹ In other situations liability is based on Fence Laws² and under still other conditions it is based on Herd Laws.³ The confusion is in which body or bodies of law apply in answering the key issue: *When will I be held liable for the damage done by my livestock to someone else's person or property?*

History & Progression of Kansas Law Regarding Trespassing Livestock

The first law in Kansas regarding trespassing livestock was the common law. The rule under common law was:

*"At common law, owners and keepers of livestock were under the duty to **restrain** their animals from trespassing on real property. Persons were held strictly liable for the acts of their trespassing livestock."*⁴

For example, under the common law, if your livestock gets out and damages another's person or property, you are liable for the damages regardless of your attempts to restrain the livestock or condition of your fences. This high degree of responsibility is called *strict liability*. Under the common law, liability is imposed on the owner of the livestock regardless of negligence. You must keep your livestock off the land of others or suffer the consequences.⁵

Even though Kansas enacted the Fence Laws and the Herd Laws after the common law, the common law still controls certain livestock trespassing situations today.⁶ Generally, the common law applies in those situations not covered by Fence Laws or Herd Laws and, where it applies, the

common law imposes its strict liability standard. Thus, the common law only applies when neither a fence law or herd law exists that addresses that particular situation.

From Common Law to "Fence Out" Policy

In 1855, the first edition of the *Statutes of Kansas Territory* contained "an act regulating inclosures." The law makes no reference to the common law but merely states that "all fields and inclosures," must be fenced and the law specifies how a lawful fence must be constructed.⁸ According to one scholar on the subject,

*"There is little doubt, then, that the legislature did intend to deny any right of recovery for trespass except where the landowner had erected a lawful fence."*⁹

Thus, Kansas Fence Laws came into being. Collectively they create a *Fence-Out* Policy because to recover for property damaged by trespassing livestock, the property *first* had to be enclosed by a legal fence. A prerequisite to recovery was that the animals were properly fenced-out. Under the Fence Laws, the first question is whether the damaged property was enclosed by a lawful fence. If it was, the property owner recovers for his damages.

It is understandable why Kansas enacted the *Fence-Out* policy of that day. Kansas was an open range state in 1855 and economics dictated that it would be far more beneficial and less expensive to fence in small fields of growing crops than to attempt to fence in large herds on the wide open prairie.

Even today, Kansas Fence Laws require that property damaged by trespassing livestock must be enclosed by a *legal fence* before the owner of the damaged property can recover. If the property is enclosed by a legal fence, then the livestock owner is subject to strict liability for the damages.¹⁰ No consideration is given to whether the owner of the livestock attempted to restrain the animals. Conversely, if the damaged property is not enclosed by a legal fence, no cause of action can be maintained under the Fence Laws. The injured property owner must seek recovery under the common law or Herd laws.

What is a legal fence? Under Kansas law,¹¹ the minimum legal barbed-wire fence is:

- 1) not less than three wires,
- 2) the third wire from the ground not less than 44 inches nor more than 48 inches from the ground,

- 3) the bottom wire not more than 24 inches nor less than 18 inches from the ground,

- 4) the center wire equi-distant, or nearly so, between upper and lower wires,

- 5) these wires to be well stretched and barbed,

- 6) barbs to average not more than nine inches apart,

- 7) the barbed wire to be composed of two wires not smaller than No. 13, or one wire not smaller than No. 9,

- 8) wires to be securely fastened to posts,

- 9) posts not more than two rods apart,

- 10) posts not less than 20 inches in the ground and set in a workmanlike manner,

- 11) or, the posts may be not more than 48 feet apart, with slats placed perpendicularly, not more than 12 feet apart, between the posts and fastened to the wires.

This, of course, is not a legal fence for swine.

From "Fence-Out" to "Fence-In" Policy

The statewide Herd Laws, which enacted a "Fence-In" policy were enacted in 1929 when the Kansas Legislature passed a statute¹² stating:

"That it shall be unlawful for any neat cattle, horses, mules, asses, swine or sheep, to run at large."

"Neat cattle" does not refer to cattle that dress nicely, but rather to domesticated, straight-backed animals of the bovine genus.¹³

The Legislature in 1929 further enacted sanctions against a livestock owner whose animals run at large. The sanctions,¹⁴ state that:

"Any owner whose livestock shall run at large . . . shall be liable to the person injured for all damages resulting therefrom, and the person so damaged shall have a lien on said livestock for the amount of such damages."

Thus, Kansas in 1929, went from a rancher's open-range state to a farmer's farming state. As the law states, if your livestock was running at large and caused damage, you were responsible for the damage. No mention was made of the need for a legal fence before a damaged property owner could bring suit. A livestock owner was responsible for "fencing in" his stock and if he did not, then the stock ran at large at his peril.

The wording of the Herd laws *seemed* to reenact the common law with its strict liability standard imposed on the livestock owner. Some

support is found in Kansas case law for this position.¹⁵ However, two virtually identical opinions were rendered in 1950 by the Kansas Supreme Court which rejected the idea of a strict liability standard being imposed under Kansas Herd laws.¹⁶ Instead the Kansas high court required some degree of *negligence* on the part of the livestock owner in letting his stock "run at large" before the stock owner could be found responsible for the damages caused by his trespassing livestock.

What kind of negligence on the part of a livestock owner would cause him to be responsible for the damage caused by his stock? Clearly, if any animal is allowed to "run at large," wandering, roving and rambling without restraint, then the owner is responsible for the damage done by such a "gypsy" animal.¹⁷ Likewise, if a livestock owner knows that his animal is out of its confines and does nothing to return it to its pen or pasture within a reasonable time, then the owner is responsible for the damage. Another negligence situation might arise if the livestock owner puts the animal in a location surrounded by a poorly constructed or maintained fence such that escape is relatively easy for the animal.

Strangely enough, when the Herd Laws (Fence-In Policy) were enacted, the Fence Laws (Fence-Out Policy) were not repealed and have not been repealed to date. This leaves three avenues of recovery available in animal trespass cases: 1) the common law where it still applies, 2) Fence Laws and 3) Herd Laws. The tough question is which body of law applies to a given situation.

Stockowner's Duty Today

The livestock owner in Kansas is liable, regardless of fault, for any damage by his stock in the following situations:

1. Where the common law rule still applies.
2. Where the animal has trespassed upon an enclosure surrounded by a lawful fence.
3. Cases falling under the "freighters and drivers" law, which provides that all damage caused to crops adjacent to the road caused by stock owned by freighters and drivers shall be paid by the stockowner.
4. Where swine are being driven along the public highway, in which case the owner is responsible for all damages sustained by any person caused by the swine.¹⁸

To avoid civil liability in other situations the livestock owner must exercise "reasonable care" or "reasonable precautions" in confining his stock. Generally, a stockowner is guilty for damages his animals cause if the stock either gets out or stays out due to the owner's negligence. Some factors to consider in determining the owner's liability are:

1. The quality of the owner's fences,
2. Whether his animals are habitual roamers,
3. Whether the owner caused the animals to escape (for example, by running the animals or shooting around them), and
4. Whether the owner makes immediate attempts to recapture the animals.¹⁹

As previously stated, usually the stockowner must exercise reasonable precautions to avoid civil liability for roaming livestock. But what are reasonable precautions? Fortunately, the Kansas Supreme Court has applied the term in several cases. The case of *Clark v. Carson*,²⁰ is particularly instructive. In the *Clark* case, the defendant, a LaBette County dairy farmer owned several cows that escaped from their confines, one of the cows collided with the plaintiff's automobile. The plaintiff sued the farmer for damages to his car. The cow had been enclosed in a "legal" fence; however, the fence was only in "fairly good shape." Furthermore, several of the cows in the pasture were in heat. The fence surrounding the pasture was deemed inadequate for cows in heat. Also, at two times prior to the accident, a highway patrolman had driven the cows off the highway.

After considering all the evidence, the court ruled that the defendant farmer had not exercised "reasonable precautions" in confining his cows. The farmer was ordered to pay for the damages to the plaintiff's vehicle. (For another interesting case, see *Cooper v. Eberly*, 211 Kan. 657 (1973)).

The facts in the *Clark* case are not unusual. Frequently livestock escape their confines and wander onto a county road or highway. If these animals are involved in a traffic accident causing damage to person or property, a lawsuit could follow with a claim for thousands of dollars. A stockman can minimize his liability exposure by exercising reasonable precautions in confining his animals and if they do get out, by making every effort to recapture the wayward stock.

Partition Fence Controversies

Partition fences are those which separate adjoining lands. The law of Kansas regarding partition fences is found at Kansas Statutes Annotated 29-301 to 29-409. Generally, the owners of adjoining lands are required to build and maintain in good repair all partition fences between them in equal shares. However, if a landowner does not want his land enclosed, he cannot be compelled to build or pay for an equal share of any partition fence.²¹ If he does eventually enclose his land then he must pay for his equal share of any partition fence already erected and also must maintain his share of such a partition fence. After the land is enclosed, if one of the landowners then decides to "throw his land open" and leave it unenclosed he can seek from the adjacent landowner the value of the partition fence which he built.²²

If one person fails to keep his share of a partition fence in good repair and injury results to him because of his defective fence then he cannot recover for damages caused by the adjacent landowner's stock. Furthermore, the person who fails to maintain his share of a partition fence will be held liable to others who are damaged by stock escaping through the defective partition fence, regardless of who owns the livestock!²³

Controversies do arise concerning partition fences. The legislature has provided that the County commissioners shall be the judge and jury in any partition fence dispute. County commissioners called in to resolve such a quarrel are called fence viewers.²⁴

When any irreconcilable controversy arises about the rights and responsibilities of the respective owners of a partition fence, either party may apply to the fence viewers (only two are required to make a binding decision between the parties) to resolve the conflict. The fence viewers will view the controversial fence and then assign to each party, in writing, his equal share or part of the fence to build, maintain or repair. The decision of the fence viewers is final, conclusive and binding upon the parties and all succeeding occupants of the lands.²⁵ If one of the parties decides to disregard the ruling of the fence viewers, the other party may erect, repair or maintain the entire fence and assess the first party for his share of the cost plus interest and attorney's fees if legal action is necessary for collection.²⁶

Railroad Fences

Kansas law²⁷ imposes liability "without regard to negligence" on railroads in Kansas for the wounding or killing of animals by a train. However, the act does not apply to railroads that enclose their tracks with a lawful fence. This law is known as the Railroad Stock Law and is a clear statement by the legislature that railroads are to be responsible for fencing the right of way if they desire to avoid civil liability for the destruction of livestock by passing trains.²⁸

Confinement of Trespassing Livestock Until Landowner is paid for Damages

If a landowner's field is enclosed by a lawful fence, the landowner can take into his possession any livestock trespassing on his enclosed land and detain the animals until he is paid for all damages, including feeding and keeping charges, caused by the animals.²⁹

Conclusion

If a stockowner is aware of his rights and responsibilities under Kansas Fence and Herd Laws he can do much to prevent lawsuits against him for any damage done by wayward animals. Erect and maintain good, legal fences. If your animals get out, do all you can to confine them immediately. Also, review your farm business insurance policy and make certain it covers you if your livestock causes injury or damage to other people or property.

FOOTNOTES

¹ Kansas Statutes Annotated 77-109.

² Kansas Statutes Annotated 29-101 to 29-423.

³ Kansas Statutes Annotated 47-101 to 47-313.

⁴ *Agricultural Law*, by Neil Harl; volume 1, section 3.01, pg. 3-2.

⁵ *Lindsay v. Cobb*, 6 K.A. 2d 171, 172 (1981).

⁶ *Id.*, footnote 2.

⁷ *Kansas Territorial Statutes 1855*, Ch. 83.

⁸ *The Kansas Law of Livestock Trespass* by Casad; (1961) Vol. 10, K.L.R. 55, 57.

⁹ *Id.*, footnote 4 at page 58.

- ¹⁰ Kansas Statutes Annotated 29-402 and 29-403.
- ¹¹ Kansas Statutes Annotated 29-105.
- ¹² Kansas Statutes Annotated 47-122.
- ¹³ Black's Law Dictionary.
- ¹⁴ Kansas Statutes Annotated 47-123.
- ¹⁵ *Miller v. Parvin*, 111 Kan. 444 (1922) (dictum).
- ¹⁶ *Wilson*, 169 Kan. 296 (1950) and *Abbott*, 169 Kan. 305 (1950).
- ¹⁷ *Clark v. Carson*, 188 Kan. 261 (1961).
- ¹⁸ *Casad*, *The Kansas Law of Livestock Trespass* (1961) 10 K.L.R. 55 & *Lindsay v. Cobb*, 6 K.A. 2d 171 (1981).
- ¹⁹ Uchtmann, et al; *Agricultural Law: Principles and Cases* (1981) at page 336.
- ²⁰ *Clark v. Carson*, 188 Kan. 261 (1961).
- ²¹ Kansas Statutes Annotated 29-309.
- ²² Kansas Statutes Annotated 29-311.
- ²³ Kansas Statutes Annotated 29-401. Also see, *Smith v. Ott*, 100 Kan. 136 (1917).
- ²⁴ Kansas Statutes Annotated 29-201.
- ²⁵ Kansas Statutes Annotated 29-304.
- ²⁶ Kansas Statutes Annotated 29-305.
- ²⁷ Kansas Statutes Annotated 66-295 to 66-299.
- ²⁸ *Id*, footnote 4 at page 65.
- ²⁹ Kansas Statutes Annotated 29-408.

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Instructor, Dept. of Agricultural Economics

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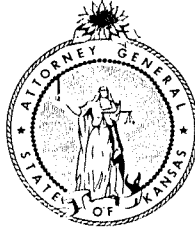
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March 17, 1986

Mr. Howard Tice
Executive Director
Kansas Association of Wheat Growers
827 SW Tyler, Apt. 15
Topeka, Kansas 66612

Dear Mr. Tice:

I am sending this letter as a follow-up to our telephone conversation on March 13, 1986, concerning the proposed rewording of K.S.A. 29-309. In my opinion, the statutory language is unclear and ambiguous; thus, it would avoid further confusion as to who is responsible for the maintenance of a partition fence if the entire statute were rewritten. This will ensure that the legislative intent is clearly spelled out in the statute.

Please feel free to contact me if I can be of additional assistance on this or any other matter.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Barbara P. Allen
Assistant Attorney General

BPA:crw

3-19-86 Hs. ASB
Attachment II

SENATE BILL No. 403

By Special Committee on Agriculture and Livestock

Re Proposal No. 4

12-19

0021 AN ACT concerning domestic animal trespass; requiring the
0022 enclosure of such animals by a legal fence and defining such
0023 fence; amending K.S.A. 29-101, 29-102, 29-105 and 47-122,
0024 47-122 and 66-308 and repealing the existing sections; also
0025 repealing K.S.A. 29-410 to 29-423, inclusive, 47-101 to 47-103,
0026 inclusive, 47-105 to 47-110, inclusive, 47-112 to 47-119, in-
0027 clusive, and 47-301 to 47-313, inclusive.

0028 *Be it enacted by the Legislature of the State of Kansas:*

0029 New Section 1. It is hereby declared that the policy of this
0030 state with respect to domestic animal trespass shall be that all
0031 such animals shall be enclosed by a lawful fence. It is further
0032 declared that, unless otherwise specifically provided by law,
0033 strict or absolute liability for damages for injury to any person or
0034 property resulting from domestic animal trespass shall not arise,
0035 and, in all such cases, the principles of ordinary negligence shall
0036 apply.

0037 Sec. 2. K.S.A. 29-101 is hereby amended to read as follows:
0038 29-101. All ~~fields and enclosures~~ domestic animals, other than
0039 cats and dogs, shall be enclosed with a fence sufficiently close,
0040 composed of posts and rails, posts and palings, posts and planks
0041 or palisades, posts and wire, rails alone, laid up in the manner
0042 commonly called a worm fence, or turf, with ditches on each
0043 side, of stone, or a hedge *in existence on July 1, 1986*, composed
0044 either of thorn or Osage orange.

0045 Sec. 3. K.S.A. 29-102 is hereby amended to read as follows:
0046 29-102. All fences composed of posts and rails, posts and palings,

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Attachment III

0047 posts and planks, or palisades, or of stone, or composed of posts
0048 and wires, or those composed of turf, shall be at least four feet
0049 high. Those composed of rails, commonly called a worm fence,
0050 shall be at least four feet and one-half feet high to the top of the
0051 rider, and shall be thoroughly staked and ridered, or if not staked
0052 and ridered shall have the corners locked with strong rails, stakes
0053 or posts. Those composed of stone shall be at least ~~eighteen~~ 18
0054 inches wide at the bottom and ~~twelve~~ 12 inches wide at the top.
0055 Those composed of turf ~~to~~ shall be thoroughly staked and ri-
0056 dered, and shall have a ditch on the outside not less than two feet
0057 wide at the top and three feet deep. *With respect to* all fences
0058 composed of rails or lumber, the bottom rail, board or plank shall
0059 not be more than two feet from the ground in any township, and
0060 in those townships where hogs are not prohibited from running
0061 at large it shall not be more than six inches from the ground; and.
0062 All such fences shall be substantially built and sufficiently close
0063 to prevent ~~stock~~ domestic animals, other than cats and dogs from
0064 going through. All hedge fences shall be of such height and
0065 thickness as will be sufficient to protect the field or enclosure
0066 enclose domestic animals other than cats and dogs.

0067 Sec. 4. K.S.A. 29-105 is hereby amended to read as follows:
0068 29-105. ~~That~~ (a) *Except as otherwise provided in subsection (b),*
0069 *and* in addition to the fence now declared by law to be a legal
0070 fence, the following shall be a legal fence: A barbed-wire fence,
0071 of not less than three wires, with *the* third wire from the ground
0072 not less than ~~forty-four~~ 44 inches nor more than ~~forty-eight~~ 48
0073 inches from the ground, and *the* bottom wire not more than
0074 ~~twenty-four~~ 24 inches nor less than ~~eighteen~~ 18 inches from the
0075 ground, with *the* center wire equidistant, or nearly so, between
0076 upper and lower wires; ~~said~~ *All such* wires ~~to~~ shall be well
0077 stretched and barbed, barbs to average not more than nine inches
0078 apart; ~~said~~ *and such* barbed wire ~~to~~ shall be composed of two
0079 wires not smaller than No. 13, or one wire not smaller than No. 9,
0080 *or wires having not less than 950 pounds breaking strength. All*
0081 *such* wires ~~to~~ shall be securely fastened to posts, which shall not
0082 be more than two rods apart and not less than ~~twenty~~ 20 inches in
0083 the ground, and set in a workmanlike manner; or the posts may

0084 be not more than ~~forty-eight~~ 48 feet apart, with slats placed
 0085 perpendicularly, not more than ~~twelve~~ 12 feet apart, between the
 0086 posts and fastened to the wires by staples, or with holes in the
 0087 slats: *Provided, That in townships or counties where hogs are*
 0088 *allowed to run at large, there shall be three additional barbed*
 0089 *wires, the lower one of which shall not be more than four inches*
 0090 *from the ground, the other two to be placed an equal distance*
 0091 *apart, or nearly so, between this and the lower wire as required*
 0092 *above.*

0093 (b) *On and after the effective date of this act, a newly*
 0094 *constructed barbed-wire fence to be deemed a legal fence under*
 0095 *this section, shall, in addition to all other requirements of*
 0096 *subsection (a), be constructed of four wires with a post for every*
 0097 *rod of distance with the fourth wire from the ground being not*
 0098 *less than 48 inches from the ground and the first wire from the*
 0099 *ground being not more than 18 inches from the ground.*

0100 New Sec. 5. In addition to fences otherwise declared by law
 0101 to be a legal fence, an electrically charged wire fence with at
 0102 least one 14 gauge wire or its equivalent and which is deemed by
 0103 the fence viewers in whose jurisdiction such fence is located, to
 0104 be equivalent to other legal fences, is hereby deemed a legal
 0105 fence. The board of county commissioners of any county may, by
 0106 enacting a resolution so providing, elect to declare that such
 0107 electrically charged wire fence shall not be a legal fence within
 0108 the jurisdiction of such board. *No utility which furnishes elec-*
 0109 *tricity shall have or incur any liability to any person in the event*
 0110 *of electric power failure to or for any electric fence.*

0111 Sec. 6. K.S.A. 47-122 is hereby amended to read as follows:
 0112 47-122. ~~That~~ It shall be unlawful for any ~~neat~~ cattle, horses,
 0113 ~~mules, asses, swine or sheep,~~ domestic animal, other than dogs
 0114 and cats, to run at large.

0115 Sec. 7. K.S.A. 66-308 is hereby amended to read as follows:
 0116 66-308. (a) *Any person, persons or corporations owning land by*
 0117 *or through which any railroad or any electric interurban line*
 0118 *has been or may be constructed, who has enclosed or may*
 0119 *enclose the same or any part thereof, and adjacent to the line of*
 0120 *such railroad or interurban line, with either a lawful fence or a*

Sec. 6 K.S.A.29-304 is hereby amended to read as follows:
 When any controversy shall arise about the rights of the
 respective owners in partition fences, or their obligations
 to keep up and maintain the same in good repair, and if they
 cannot agree among themselves, either party may apply to the
 fence viewers of the township in which such fence may be
 situated, who, after a reasonable notice to the other party,
 shall proceed on application as aforesaid, to view such
 fence, and assign to each party, in writing his equal share
 or part of such partition fence, to be by him kept up and
 maintained in good repair; which assignment shall be re-
 corded by the register of deeds of the county in a book to
 be provided for that purpose, and shall be final, conclu-
 sive and binding upon the parties ~~and upon all succeeding~~
~~occupants of the lands,~~ and they shall be obliged there-
 after, to maintain their respective portions of said fence.

Sec 7. K.S.A. 29-306 is hereby amended to read as follows:
 All assignments of the fence viewers shall be certified
 and signed by them, and shall contain a certain description
 of the lands divided by such partition fence and the names
 of the owners thereof; and any agreement between them shall
 also contain pertinent description of such lands; and such
 agreement, acknowledged or proved as conveyances of land,
 may be recorded in the office of the register of deeds of
 the proper county in the same manner as an assignment of
 fence viewers. Any such assignment or agreement, duly
 recorded in this article, shall be binding upon the parties.
~~and all succeeding occupants of the lands.~~

Sec. 8. K.S.A. 29-309 is hereby amended to read as follows:
 No person not wishing his land enclosed, and not occupying
 or using it ~~otherwise than in common;~~ in the same manner as
 an adjoining land owner or occupant, or not using a par-
 tition fence to enclose livestock, shall be compelled to
 contribute to erect or maintain any fence dividing between
 his land and that of an adjacent owner; but when he encloses
 or uses his land ~~otherwise than in common;~~ in the same man-
 ner as an adjoining land owner or occupant, he shall contri-
 bute to the partition fence as in this act is provided.
 If the unenclosed land is used for temporary livestock
 pasture for a period not exceeding six months, the live-
 stock shall be enclosed with a legal fence, not to include
 the partition fence. If the livestock remain on the pre-
 viously unenclosed land for a period exceeding six months,
 the land owner or occupant shall then contribute to the
 maintenance of the partition fence as in this act is
 provided

Sec. 9 K.S.A. 29-408 is hereby amended to read as follows:
If any of the animals mentioned in this act shall break ~~into an enclosure surrounded by a fence of the height and sufficiency prescribed by this act; the owner or the enclosure~~ free of their lawful enclosure, and trespass on land owned by another person, the owner or occupant of said land may take into possession such animal trespassing, and keep the same until damages, with reasonable charges for feeding and keeping, and all costs of suit, be paid, to be recovered in any court of competent jurisdiction.

Sec. 6 10

Sec. 7 11

Sec. 8 12

Sec. 9 13

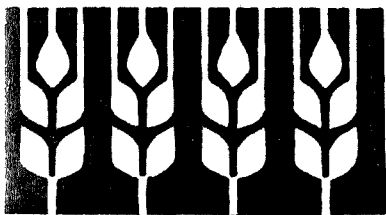
0121 hog-tight fence, may demand of such railroad or interurban
0122 company that it enclose its line next thereto with a lawful fence
0123 or hog-tight fence corresponding in class of fence to that main-
0124 tained by the owner, and maintain the same: ~~Provided, except~~
0125 that the following shall constitute a hog-tight fence for the
0126 purpose of this act: A woven-wire fence not less than ~~twenty-six~~
0127 26 inches high with not less than seven cables and meshes not to
0128 exceed six inches in length. The bottom mesh shall not be more
0129 than three inches wide; the second not more than three and one
0130 half inches wide, the third not more than four inches wide, the
0131 fourth not more than four and one half inches wide, the fifth not
0132 more than five inches wide, and the sixth not more than six
0133 inches wide. The bottom wire of the ~~said~~ woven-wire fence shall
0134 be placed not to exceed two inches from the surface of the
0135 ground. And in addition to the woven wire already prescribed
0136 there shall be not less than three barbed wires placed above ~~said~~
0137 the woven wire. The first barbed wire above the woven wire
0138 shall be placed four inches above the top of the woven-wire
0139 fence. The second barbed wire shall be placed eight inches above
0140 the first barbed wire, and the third barbed wire to be placed
0141 eight inches above the second barbed wire; in all, ~~forty-eight~~ 48
0142 inches. The posts shall be of ordinary size for fence purposes and
0143 set in the ground at least two feet deep and not to exceed ~~sixteen~~
0144 16 feet apart. The barbs on the barbed wire shall not exceed six
0145 inches apart, ~~said~~ such wire to be of not less than No. 13
0146 standard gauge [or wires having not less than 950 pounds
0147 breaking strength].

0148 (b) For purposes of this section, an electrically charged wire
0149 fence described in section 5 of this act shall not be deemed a
0150 lawful fence.

0151 Sec. 7 8. K.S.A. 29-101, 29-102, 29-105, 29-410 to 29-423,
0152 inclusive, 47-101 to 47-103, inclusive, 47-105 to 47-110, inclu-
0153 sive, 47-112 to 47-119, 47-122 ~~and~~, 47-301 to 47-313, inclusive,
0154 and 66-308 are hereby repealed.

0155 Sec. 8 9. This act shall take effect and be in force from and
0156 after its publication in the statute book.

KANSAS ASSOCIATION
OF WHEAT GROWERS



HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

Representative Lloyd Polson, Chairman

Hearing on Senate Bill 403 - Kansas Fence Laws
Tuesday, March 18, 1986

Mr. Chairman, and members of the committee, I am Howard Tice, Executive Director of the Kansas Association of Wheat Growers. I appreciate this opportunity to appear here today in support of Senate Bill 403.

The Kansas Fence Laws, for the sake of clarity alone, need to be changed. Not only is the language outdated, but agricultural practices are different than when some of the statutes were enacted. I would like to quote from a Kansas State University Extension Service pamphlet authored by Manhattan Attorney Sam Brownback, who is an instructor in the KSU Department of Agricultural Economics as well. I have copies for each of you, of the pamphlet, entitled Ag Law Series, Kansas Fence Laws & the Law of Trespassing Livestock.

On page one, it states that Kansas has three distinct bodies of law governing the liability of stockowners for damages caused by trespassing livestock. They are [1] the common law [2] Fence Laws, and [3] Herd Laws. The paragraph goes on to say, "Unfortunately, it is difficult to determine which body of law controls in a particular situation."

Continuing with the pamphlet, "The first law in Kansas regarding trespassing livestock was the common law." -- "At common law, owners and keepers of livestock were under the duty to restrain their animals from trespassing on real property. Persons were held STRICTLY LIABLE for the acts of their trespassing livestock." This means that under common law, which, without Senate Bill 403 will apply in certain cases, livestock owners can be held liable for damages caused by trespassing livestock regardless of attempts to contain them, or the condition of fences. We think this is grossly unfair, and we applaud the interim committee for including the principles of ordinary negligence in New Section 1 of Senate Bill 403.

The Kansas Fence Laws came into being in 1855, creating a "FENCE OUT" policy which stated that in order for a person to recover damages caused by trespassing livestock, the property in question had to be enclosed by a legal fence. That was understandable in 1855, when it was far more beneficial and economical to enclose small fields of growing crops, than to attempt to fence in large herds on the wide open prairie. However, this situation is changed, and the fence laws need to reflect that change.

A "FENCE IN" policy for Kansas came into being in 1929, with enactment of the Herd Laws. Kansas was no longer an open-range rancher's state, it had become, and still is a farming state. Growing crops are the dominant form of agriculture in Kansas, with wheat the number one crop. The Herd Laws, did indeed, address the changes in agriculture in Kansas.

Under the Herd Laws, it seemed that the STRICT LIABILITY of common law would be the prevailing standard, but the Supreme Court began in 1950, to require some degree of negligence on the part of the livestock owner before he could be found liable for damages caused by his trespassing livestock. However, without Senate Bill 403's New Section 1, lower courts could still rule cases on the basis of STRICT LIABILITY, and unless the case were appealed, the ruling would stand.

The Extension Service pamphlet makes an interesting statement on the fourth page. It says, "Strangely enough, when the Herd Laws (Fence-In Policy) were enacted, the Fence Laws (Fence-Out Policy) were not repealed and have not been repealed to date.

Page six of the pamphlet refers to the partition fence section of the Fence Laws. Generally, it says, owners of adjoining lands are required to build and maintain in good repair, all partition fences between them in equal shares. It goes on to say, "However, if a landowner does not want his land enclosed, he cannot be compelled to build or pay for an equal share of any partition fence. If he does eventually enclose his land, then he must pay for his equal share of any partition fence already erected and also must maintain his share of such a partition fence."

Unfortunately, the wording of K.S.A. 29-309 is so out of date that it has caused a good deal of confusion around the state when farmers, who do not use, or gain any benefit from a partition fence, have sought the protection of this section. When I refer to a large number of cases where this confusion has surfaced, I am quoting Mr. Brownback, who as the pamphlet he authored would indicate, has a great deal of interest in fence laws, and has followed them quite closely. We will present testimony from one of our members and former directors, who has had this experience.

Due to the confusion caused by the wording of K.S.A. 29-309, we have suggested an amendment to this bill to make it easier for the fence viewers, and the courts, if necessary, to rule according to the intent of the law. In reviewing the Fence Laws, I noted some other problems that you may wish to address as well, and have therefore, included "housekeeping" amendments in the balloon you have before you.

Taking the balloon in order, our suggestion is to simply strike the words, "and upon all succeeding occupants of the lands" in K.S.A. 29-304, and the words, "and all succeeding occupants of the lands." in K.S.A. 29-306. There are two reasons for suggesting these minor corrections. One is to facilitate communication. It has been said by both sides in the partition fence controversy, that good communication between neighbors is essential in solving fence disputes, and in the vast majority of cases, prevents fence viewings or lawsuits. If one neighbor is allowed to stand on an agreement or assignment that is years, and perhaps decades old, communication is stalled. Perhaps more important; however, this language is clearly in contradiction to the language in K.S.A. 29-301 which requires the owners of adjoining lands to keep up and maintain partition fences in equal shares, "so long as both parties continue to occupy or improve such lands."

While these housekeeping amendments are not our primary objective, it would appear to be sensible to consider them since the Fence Laws are being changed, so that all of the confusion can be dealt with at the same time.

Our primary objective is to clarify, not to change, K.S.A. 29-309. I must emphasize that our objective is to clarify the existing principle of the law. That is not only the observation of the Kansas Association of Wheat Growers, but of Sam Brownback as well. In conversations with the Attorney General's office concerning this section, after a review of the section, we were told that they agreed that it does need to be clarified. With that in mind, I am offering the amendment shown on the balloon as Section 8.

You will note that in the first ten lines, the change is quite simple. It would remove the words "otherwise than in common," and substitute "in the same manner as an adjoining land owner or occupant." Since the primary goal of Senate Bill 403 is to clarify the state's policy toward trespassing livestock, as evidenced by New Section 1, we added language that specifically deals with land owners who have livestock enclosed on one side of a partition fence, and neighbors who do not use the fence to enclose livestock.

In the interim hearing, temporary pasturing of livestock was discussed, and we saw a possibility for some land owners to abuse this section, so we added the language which makes it clear that livestock temporarily pastured on crop land must be enclosed in compliance with the fence-in policy, and that the land owner or occupant may not use the neighbor's partition fence for this purpose. Since six months is the normal period for such temporary pasture, that figure was used for the maximum time period allowed as temporary pasture under the law before the land owner would be compelled to share maintenance on the partition fence.

The amendment we are proposing to K.S.A. 29-⁴⁰⁸~~309~~ simply updates the language of this section to comply with the "FENCE-IN" policy stated in both the Herd Laws, which are on the books presently, and are the statutes most recently enacted, and New Section 1 of Senate Bill 403 as passed by the Senate.

I would like to emphasize again, that the amendments proposed by the Kansas Association of Wheat Growers will not change existing law. They will only clarify it, and make it more usable, by fence viewers, by the courts, and by Kansas farmers and ranchers.

This issue has proven to be an emotional and controversial one, far more than it should be, but given the history of disputes between cattlemen and farmers, dating back to the early days of our state's history, it is not too surprising.

As I begin to conclude my testimony, I would like to address some of the concerns that were stated, both this summer, and in the hearings on the Senate side.

It was stated that it is fair to compel a neighbor to share in maintenance of a partition fence because that neighbor may someday put livestock on his side of the fence. We do not agree with that contention. In the case of Mr. Gerald Persinger, who you will hear from, the land in question has not held livestock for 75 years. That is simply too long a time for a land owner to pay for his neighbor's fence on the off chance that he may someday pasture livestock on his side. In addition to that, present law, as noted in the Extension Service pamphlet referred to earlier, already requires that if livestock are placed on previously unenclosed land, that land owner or occupant immediately becomes responsible for his share of the partition fence maintenance. We have also sought to make it completely clear concerning temporary pasturing situations, in our amendments, that a neighbor may not abuse K.S.A. 29-309 to take advantage of an adjoining land owner.

Concern has been raised that major changes in the Fence Laws would increase liability for livestock owners. I must point out that with the current, confusing language of K.S.A. 29-309, and the existence of other contradictions between the Fence Laws and the Herd Laws, land owners who do not own livestock could be held liable for damage done by a neighbor's trespassing livestock if a partition fence is ruled as defective. New Section 1 of SB 403 removes the threat of STRICT LIABILITY from the stockman, and mandates that the principles of ordinary negligence shall apply. We feel the land owner who does not have livestock on his side of the fence should be entitled to similar consideration. If K.S.A. 29-309 is not amended, liability for someone's else's trespassing livestock remains.

We were also told that if a crop farmer is compelled to pay an equal share in fence maintenance, he will be more careful with his tillage and harvesting equipment, but if he is relieved of that responsibility, he might become careless. This is simply a smokescreen to divert attention away from the heart of the matter, but I will address it. First of all, the principles of ordinary negligence will apply if such a case does occur. The neighbor who damages the fence will have to pay for it. If livestock get out, it will be the responsibility of the person damaging the fence. Again, I say the principles of ordinary negligence protect the stockman. If careless equipment operation causes fence damage, that same principle would place the liability on the operator of the equipment. That should be an even greater incentive to be careful of the fence. Another incentive is the amount of damage that could be done to costly equipment, and while some have tried to deride this statement, I will stand on the comments made by KAWG President Del Wiedeman, and other members of our Executive Board, that such equipment damage is indeed probable, and indeed more costly than damage to a fence.

I was also told by one Senator, he agreed with our contention that farmers who are unable to claim the protection of K.S.A.-29-309 due to the confusing language, are not being treated fairly by the law. However, he was concerned that major changes in this section might cause an increase in liability insurance costs to farmers and ranchers, or possibly lower the availability of such insurance. KAWG President Del Wiedeman is an experienced insurance man, and assures me that premiums on this type of insurance are such a minor part of a farmer's insurance package that that concern is unfounded.

Another concern that was mentioned was that clarifying K.S.A. 29-309 might result in railroads being freed from responsibility for fencing rights-of-way. According to Mr. Brownback's pamphlet, the Railroad Stock Law is "a clear statement by the legislature that railroads are to be responsible for fencing the right of way if they desire to avoid civil liability for the destruction of livestock by passing trains." ~~In addition, Section 7 of SB 403, offered by the railroads themselves, should prevent any such interpretation.~~

Our Association's resolutions, passed last December, state as follows:

Be it resolved that a land owner not wishing his land enclosed should not be bound to build and maintain fences between himself and his neighbor, if he does not use the fences. There should be no requirements that property be protected from livestock owned by others. The herd law should be applicable statewide.

And The KAWG proposes that electric fences be considered legal fences if properly maintained.

This policy statement is the basis for our position on this issue.

I would like to also state the resolution concerning Fence Laws of our friends in another farm organization:

There are inconsistencies and conflicting philosophies in the numerous fence laws scattered throughout the Kansas statute books. We believe there is a need for a thorough, careful analysis in order to update, clarify and consolidate our fence laws. We support the "fence-in" policy which requires farmers and ranchers to confine their livestock. We will support legislation which:

1. Prevents any increased liability for owners of land or livestock;
2. Avoids any burden of modifying existing fences or requiring construction of new fences; and
3. Continues the responsibility of the county commissioners in each county to serve as "fence viewers" for settling disputes regarding fences.

I believe that Senate Bill 403, with the amendments we have proposed will meet the goals of both these policy statements.

As it passed the Senate, the bill removes the STRICT LIABILITY principle, and states the policy of ORDINARY NEGLIGENCE. Our amendments do nothing to change that, nor do they increase liability for the stockman in any other way. However, by clarifying existing law, through the use of up to date, specific language, our amendments would insure that land owners who are not stockmen, or who do not pasture livestock on certain fields, would have protection from STRICT LIABILITY in the same manner as the stockman.

The KLA, and recently the Farm Bureau have opposed our amendments. They are two large, and powerful farm lobbies. However, might does not always make right. If they are successful in convincing this committee, and the Legislature to pass Senate Bill 403 without amending the partition fence section, the stockman will be able to have his cake and eat it too. He will have successfully reduced his liability for damage caused by trespassing animals, and at the same time, kept a higher level of liability in place on land owners who do not pasture livestock, and he will continue to enjoy the luxury of having his neighbor pay for half his fencing costs.

The issue is not whether one farm organization is larger than another. It is not whether there may or may not be increased litigation, or insurance premiums. The issue is fairness. If it is fair to reduce the liability of the stockman through the principle or ORDINARY NEGLIGENCE, it is fair to clarify existing law to give equal protection to crop farmers.

I quote the Extension Service pamphlet again in conclusion, "If a stockowner is aware of his rights and responsibilities under Kansas Fence and Herd Laws, he can do much to prevent lawsuits against him for any damage done by wayward animals. Erect and maintain good, legal fences. If your animals get out, do all you can to confine them immediately. Also review your farm business insurance policy..."

I urge your support for SB 403, and the KAWG amendments.

TESTIMONY OF MR. GERALD PERSINGER

Relating to Senate Bill 403

House Agriculture Committee

March 19, 1986

Mr. Chairman, and members of the committee, my name is Gerald Persinger. I am a grain and livestock producer from Norton, Kansas. I appreciate this opportunity to testify today on the confusion concerning the fence laws of our State of Kansas.

Two years ago, I bought an unenclosed, all broke quarter of land I had rented for 25 years. It joins two enclosed quarters of grassland, each belonging to the same party. Their cattle were getting out quite often, not only on this quarter of our land, but traveling as far as five miles and destroying some of our crops and that of others along the way. After they had been out for several days in a row, I went to the owner and asked him to fix his fence and take care of his cattle. He told me he would fix only half. I told him I didn't feel it was my responsibility to maintain a fence to keep his cattle in, nor did I feel it was up to me to maintain a fence I was not using.

The previous owners of the quarter I bought had not contributed to the fence for 75 years. My adjoining landowner went to the County Commissioners and asked for a fence viewing. The fence viewers came out and later reported that they had ruled we had to repair and maintain the right half of what they called a partition fence. We presented them with a set of fence laws, but they would not change their minds.

All their rulings have been recorded on my abstract. At the time of the viewing, the County Commissioners, the fence viewers, stated it would be a pretty good fence if it were stretched up, and I said, "Yes, but he would have to get out of the pickup to do that."

We legally "threw the land open," according to KSA 29-311, but the County Commissioners refused to recognize this, saying they did not intend to modify their actions.

In the meantime, the adjoining landowner was telling neighbors he was going to make it so expensive for me that I would not say anything about his cattle getting out. He took out the entire line fence, and put in a four wire, large post fence, and is planning to sue me for half the labor and material. The commissioners had said we had to repair and maintain the existing fence.

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This party's cattle were getting out in other areas of their pasture, crossing county roads many times, and getting onto our crops on rented land. We asked the sheriff what to do about it, and he said to shut the cattle up and he would take it from there. He was referring to the provisions of KSA 29-408.

We followed the sheriff's instructions, and notified him that we had the cattle, at which time he asked us if our land was fenced. When we told him no, he called the owner of the cattle, telling him where we had shut the cattle up, and for him to go and get them. He did this without our knowledge, and without asking for damages done to our crops.

Another Norton County farmer, Jon Boxler had a similar experience. A man bought a farm next to his unenclosed land with the intention of improving and reselling it. The new land owner went to the County Attorney concerning the building of a fence. The County Attorney then informed Mr. Boxler that he would have to contribute to the fence, whether he used it or not, until the law is changed.

Today, we have many absentee landlords who do not own any livestock and do not need or want a fence. In fact, they would rather not have one as they raise taxes, catch tumbleweeds, and provide breeding places for insects. These unwanted fences therefore, become an economic burden to the farmer that does not use or want them.

I feel that it should be the responsibility of livestock owners to repair and maintain the fences that keep their livestock in.

The trouble with the Kansas fence laws, in my opinion, is the lack of clarity. They are so confusing that few people take the time to read them all.

In an Attorney General's opinion concerning my case, the confusing language contributed to a ruling that went against me, when I attempted to use KSA 29-309 to prove that I should not be responsible for half the maintenance of the partition fence I mentioned earlier. The ruling, # 83-43, stated that since I was using the land otherwise than in common with the adjoining land owner, I was liable for an equal share of the fence maintenance. In other words, I would only be eligible to use this statute if I was using the land in common with the neighbor, in which case, I would be using the fence, or there would be no fence at all. This means that the language of the statute is in direct conflict with the intent of the statute.

Supreme Court case 23-820, Miller vx. Parvin 11RCL 873 states that "The adoption of herd law is a readoption of the common law."

The common law placed the responsibility wholly upon the owner of animals, to keep them from trespassing on a neighbor's property. At common law, a land owner was not bound to maintain fences between himself and his neighbors, except by prescription or agreement, nor could he, without such prescription or agreement, be held to contribute to the expense of fences erected by his neighbors. Each owner, at his peril is bound to keep livestock on his own land, whether the lands of his neighbors are fenced or unfenced.

I believe the confusion that exists as to whether common law, fence law, or herd law applies, will be cleared up with the provisions of New Section 1 of Senate Bill 403. I also believe that the amendments offered by the Kansas Association of Wheat Growers will clear up the confusion that exists concerning KSA 29-309, and KSA 29-408.

I would ask you to pass this bill, including the KAWG amendments.



PUBLIC POLICY STATEMENT

HOUSE AGRICULTURE AND SMALL BUSINESS COMMITTEE
Representative Lloyd Polson, Chairman
March 19, 1986

RE: S.B. 403 - Updating Fence Laws (Interim Proposal No. 4)

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division
KANSAS FARM BUREAU

* * * * *

Mr. Chairman and Members of the Committee:

I am Bill Fuller, Assistant Director of the Public Affairs Division of Kansas Farm Bureau. I am speaking on behalf of the farmers and ranchers who are members of Kansas Farm Bureau. We appreciate this opportunity to express our views on S.B. 403 ... a bill resulting from Interim Committee study which attempts to update fence laws through amendments and repealers.

First, we commend the Interim Committee for the courage to study and make recommendations on this complex issue which has been avoided for so many years. It appears our members share goals and concerns similar to the Committee. The delegates representing the 105 County Farm Bureaus at the 67th Annual Meeting of KFB adopted this resolution:

Fence Laws

There are inconsistencies and conflicting philosophies in the numerous fence laws scattered throughout the Kansas statute books. We believe there is a need for a thorough, careful analysis in order to

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update, clarify and consolidate our fence laws. We support the "fence-in" policy which requires farmers and ranchers to confine their livestock. We will support legislation which:

1. Prevents any increased liability for owners of land or livestock;
2. Avoids any burden of modifying existing fences or requiring construction of new fences; and
3. Continues the responsibility of the county commissioners in each county to serve as "fence viewers" for settling disputes regarding fences.

It is obvious S.B. 403 and KFB policy have a number of similarities:

1. Willingness to update and clarify the fence laws;
2. Adoption of a "fence-in" policy;
3. Limit any updated construction standards only to "new" fences; and
4. No request for changing "partition fence" policy.

We believe it is appropriate to repeal the list of outdated and "fence-out" statutes. However, the case law, developed over the years by many court cases, will be lost. Therefore, we all must be prepared to accept the possibility of increased litigation for a period of time after these statute changes are made. Similar to your desire, our members insist any changes in the fence law should not increase liability to owners of land or livestock. We strongly urge this committee and your staff to carefully analyze the proposed changes to avoid such problems.

We have several questions concerning certain provisions of the bill:

1. If "fence-in" is adopted as the policy of the state, will the railroads challenge their current "fence-out" responsibilities on a Constitutional question concerning equal treatment under the law???
2. "Newly constructed barbed-wire fence:" (lines 0089 to 0090) ...
 - a. Does this refer only to where **no** fence existed before???
 - b. Is this limited only to replacing an existing fence **with all new materials**???
 - c. Does it include replacing an existing fence using **some** posts and/or wire from the **old** fence???
 - d. How much materials from the **old** fence can be used in constructing the new fence (less than half or none - wire or posts)???
 - e. Adding 1 or 2 wires and/or adding steel posts to an existing line of hedge posts ... is this considered a newly constructed or only fence maintenance???
3. "Declaring an electric fence a legal fence" (lines 0099 to 00104) ... When a farmer erects an electric fence around 3 sides of his field, is the railroad required to construct an electric fence or a permanent 4-barbed wire fence along its right-of-way???

In closing, I must point out that KFB is not asking for the fence laws to be amended. However, in our desire to cooperate with the Legislature, we believe we can accept S.B. 403, as long as the proposal is not broadened.

Thank you for this opportunity to express the views of the farmers and ranchers of Kansas Farm Bureau. I will attempt to respond to any questions you may have.