

Approved _____
Date Mar. 15, 1989

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Susan Roenbaugh at
Chairperson

9:07 a.m./p.m. on March 2, 1989 in room 423-S of the Capitol.

All members were present except: Representatives Gross and Solbach.
Representatives Freeman and Rezac who were excused.

Committee staff present: Norman Furse, Revisor of Statutes Office
Raney Gilliland, Legislative Research Department
Lynne Holt, Legislative Research Department
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee:

PROPONENTS:

Bill Fuller, Assistant Director, Public Affairs
Division, Kansas Farm Bureau
Chris Wilson, Director of Governmental Relations,
Kansas Fertilizer & Chemical Association
Sam Brownback, Secretary of Agriculture, Kansas
State Board of Agriculture
Glen Searcy, Supervisor, ACAP Division of Inspec-
tions, Kansas State Board of Agriculture
Representative Fred Gatlin

OPPONENTS:

Mike Beam, Executive Secretary, Cow-Calf/Stocker
Division, Kansas Livestock Association

Chairman Roenbaugh declared the meeting open for hearings on House Bill 2489, a bill concerning registration of seed dealers, amending the Kansas Seed Act.

The first conferee on the agenda was Bill Fuller, Assistant Director, Public Affairs Division, Kansas Farm Bureau. (Attachment 1) Mr. Fuller purported to be in favor of the bill, however, he objected to any amendment to restrict or repeal the "farmer exemption." His organization feels the farmer should continue to have the freedom to sell seed that is not tested and is unlabeled under the conditions outlined in current law.

Chris Wilson, Director of Governmental Relations, Kansas Fertilizer & Chemical Association, testified in behalf of the bill. (Attachment 2) Their organization feels the bill would clarify who is a seed dealer and those persons could then be assessed fees to fund the seed inspection program. Currently, the seed program is funded by a portion of the tonnage tax on fertilizer inspections.

The Chair acknowledged Sam Brownback, Secretary of Agriculture, Kansas State Board of Agriculture, as the next proponent of the bill. (Attachment 3) He expressed the concern of the State Board of Agriculture that they be given the opportunity to inspect all seed before it is planted to prevent impure seed being sold to and planted by unknowing recipients.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S, Statehouse, at 9:07 a.m./~~p.m.~~ on March 2, 1989

Glen Searcy, Supervisor, ACAP Division of Inspections, Kansas State Board of Agriculture, next spoke in behalf of the bill. (See Attachment 3-3) He said it was the intent of the Board to tighten up some loopholes which other individuals, who are not farmers in Kansas, have been using to sell seed in Kansas.

Mr. Searcy suggested several amendments and deletions (See Testimony) as recommended by the Board of Agriculture. With the suggested amendments regarding inspection, it was felt that the Board of Agriculture would require one additional field inspector to help in inspections, one clerical person to process the registrations, one part-time administrator to oversee the administration of the law and various office supplies, printing, and office equipment.

Representative Fred Gatlin spoke briefly in behalf of the bill.

Mike Beam, Executive Secretary, Cow-Calf/Stocker Division, Kansas Livestock Association, expressed the opposition of the Kansas Livestock Association to House Bill 2489. (Attachment 4) According to the proposal, he said, farmers would be exempt from the licensing requirement but prohibited from advertising seed. On this basis and the belief that legislation such as proposed herewith is unnecessary, the Association urged that the bill not be approved for passage.

Representative Mollenkamp requested of the Board of Agriculture a report on the number of requests that are put in by people who sell seed that do not meet the specification requirements.

Hearings were closed by the Chair on House Bill 2489.

The Chairman appointed a subcommittee to meet concerning recommended deletions and amendments to this bill to ready it for final action of the Committee. She appointed Representative Bryant (Chairman), Representative Ensminger, and Representative Reinhardt and invited other interested parties. Chairman Roenbaugh requested a report on their efforts be presented at the next meeting on March 3, 1989.

The meeting was adjourned by the Chairman at 9:58 a.m.

The next meeting of the House Agriculture and Small Business Committee will be on March 3, 1989, at 9:00 a.m. in room 423-S.



PUBLIC POLICY STATEMENT

HOUSE AGRICULTURE AND SMALL BUSINESS COMMITTEE

RE: H.B. 2489 -- amendments to Kansas Seed Law

March 2, 1989
Topeka, Kansas

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

Chairman Roenbaugh and Members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We are speaking on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Many of our members recognize the problems that have resulted in the Kansas Seed Law becoming nearly unenforceable. That means agricultural seed that is being sold too often contains noxious and restricted weed seed. That also means that farmers are not getting the seed they expect because of inadequate labeling.

The Kansas State Board of Agriculture outlined their enforcement problems to us last summer. We took this information to the State Resolutions Committee of Farm Bureau. They authorized a section of the Policy Development Questionnaire provided to membership be devoted to this issue (see attachment 1). The responses caused the Committee to submit a proposed resolution to our membership for consideration.

The voting delegates representing the 105 County Farm Bureaus at the 70th Annual Meeting of Kansas Farm Bureau in Topeka on December 6, 1988 adopted the following policy:

AG & SB
03-02-89

Seed Law

The Kansas Seed Law should protect both the buyer and seller of seed.

We will oppose any effort to prohibit any Kansas farmer from selling agricultural seed that is grown in Kansas on land operated by that farmer.

To provide more protection to the buyer of seed, we will support these changes in the law:

1. Require sellers of agricultural seed who advertise in the public media to register with the State Board of Agriculture. Farmers who make occasional private treaty sales, or who advertise by erecting signs on their own property shall not be required to register with the State Board of Agriculture.
2. Require registered sellers of agricultural seed who advertise in the public media to offer for sale only tested and labeled seed.
3. Establish a prohibition on the sale of agricultural seed containing "restricted" weed seed which is above the tolerance level allowed in current law, such prohibition to be similar to the current prohibition on the sale of agricultural seed containing any noxious weed seed.

We continue to support compliance with the Plant Variety Protection Act (PL 91-577).

We want to provide a higher level of protection to the "buyer" of seed. We believe H.B. 2489 will accomplish that goal. However, we recognize the possibility the bill goes farther than a few farmer growers who sell seed may desire, and the likelihood the bill is not as restrictive as some dealers would prefer. In fact, some may suggest "all" sellers of seed should register. We would oppose that proposal. In addition, we would strongly object to any amendment to restrict or repeal the "farmer exemption," lines 77-86. We believe farmers should continue to have the freedom to sell seed that is not tested and is unlabeled under the conditions outlined in current law and provisions proposed in H.B. 2489.

We believe H.B. 2489 is a balanced and fair resolution to the issue of being able to enforce the Kansas Seed Law. We respectfully ask for your approval of this bill. We will attempt to respond to any questions you may have. Thank you!

1988

Please

* 50 RESPONSES *

Respond

Policy

Development

Questionnaire

Help develop Farm Bureau policy

Please take the time to answer the questions in this questionnaire and RETURN THIS FORM BY AUGUST 26, 1988 to your County Farm Bureau office. Your answers will assist your County Policy Committee in developing sound recommendations which best reflect the thinking of farmers and ranchers in your county.

COUNTY POLICY CHAIRMAN: *Please tabulate results of individual Questionnaire responses—Then send the YELLOW COPY ONLY with consensus answer/response for your County Farm Bureau.*

Name _____ County _____

Seed Law

The State Board of Agriculture points to several occurrences that have caused the Kansas Seed Law to become nearly unenforceable. The result has been the sale, sometimes even the planting, of contaminated and mislabeled seed by farmers. Examples cited by the Board of Agriculture include:

1. A person bought what was thought to be alfalfa seed at a dispersal sale, then advertised and sold the bags which were found to be 70 percent dodder.
2. CRP grass seed purchased from an out-of-state firm was not properly labeled, and was found to contain Johnsongrass.

The problem has been caused by several factors:

1. More seed is now sold through brokers and distributors, sometimes several, all over the U.S. This makes it difficult to trace seed sales since Kansas law does not require registration of seed sellers.
2. There is a very high demand for grass seed to be used on CRP acres resulting in more out-of-state seed entering Kansas. The "grower premises" language in the law allows sellers who have property in Kansas to sell in our state unlabeled, non-tested seed produced on the "grower's premises", which may actually be land owned or operated by the "grower" in another state.
3. An opinion by the Kansas Attorney General halted plans by the State Board of Agriculture to require those who advertise in the media to test and label their seed. This provision is a common thread that runs through the laws of several states that have farmer exemptions.
4. Infestations by some of the "restricted weeds" are causing serious problems and are not limited under the "farmer exemption." Current law limits the number of restricted weed seeds per pound of agricultural seed when sold by dealers.

In 1985, the Kansas Legislature updated the Kansas Seed Law, which was first passed in 1935. Farm Bureau policy in 1985 stated: "We will oppose any effort to prohibit a farmer from selling agricultural crop seed that is grown on land operated by that farmer."

Even though the Legislature made extensive revisions in the law, the "farmer exemption" was preserved. Current law states: "It shall not be a violation of this act for the grower of agricultural seed to sell on the grower's premises for planting or seeding purposes, agricultural seed which is not tested and labeled when the seed is produced by the grower and is free from noxious weeds."

This provision has protected the opportunity to sell seed without government regulation for those farmers who sell seed. However, the State Board of Agriculture claims that farmers who buy seed now have little protection. A number of proposals have been suggested to narrow the "farmer exemption" and provide more protection to the buyer of seed:

5. Should all sellers of seed be required to register with the State Board of Agriculture (including brokers, distributors, dealers and farmers)? YES 9 NO 38
6. Should only the sellers of seed who advertise in the public media be required to register with the State Board of Agriculture? (This would not include farmers who make private treaty sales or who advertise by erecting signs on their own property). YES 35 NO 12
7. Should sellers who advertise in the public media be required to sell tested and labeled seed (again not including farmers who make private treaty sales or who advertise by erecting signs on their own property)? YES 43 NO 6
8. Should the "grower premises" language in current law be limited to the State of Kansas to stop unlabeled and non-tested seed from other states being sold in Kansas? YES 46 NO 2
9. Should a prohibition similar to that which regulates dealers, be established on the sale of any seed containing "restricted" weed seed above the tolerance level allowed in current law? (Currently there is a prohibition on any noxious weed seed). YES 46 NO 2
10. Make no change in existing law. Continue to allow all seed growers to sell non-inspected and unlabeled seed on the grower's premises when the seed is produced by the grower and is free from noxious weeds? YES 10 NO 33

2-1415

AGRICULTURE

ferred, the entire remaining unpaid balance of such account plus any accrued interest and penalties shall become due and payable prior to the sale or transfer of ownership of the property, and upon collection shall be paid to the noxious weed eradication fund.

History: L. 1973, ch. 4, § 2; L. 1982, ch. 5, § 3; L. 1987, ch. 8, § 2; July 1.

**Article 14.—SALE AND DISTRIBUTION
OF AGRICULTURAL SEEDS**

2-1415. Definitions. As used in this act:

(a) "Agricultural seed" means the seed of grass, legume, forage, cereal and fiber crops, or mixtures thereof, but shall not include horticultural seeds.

(b) "Person" means any individual, member of a partnership, corporation, agents, brokers, company, association or society.

(c) "Conditioned" means cleaned, or cleaned and blended, to meet the requirements of agricultural seed for the purpose of being planted or seeded.

(d) "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, and includes, among others, wheat, oat, vetch, sweet clover and alfalfa.

(e) "Variety" means a subdivision of a kind, which is characterized by growth, yield, plant, fruit, seed or other characteristics by which it can be differentiated from other plants of the same kind.

(f) "Hard seed" means the seeds which because of hardness or impermeability do not absorb moisture or germinate under seed testing procedure.

(g) "Label" means the statements written, printed, stenciled or otherwise displayed upon, or attached to, the container of agricultural seed, and includes other written, printed, stenciled or graphic representations, in any form whatsoever, pertaining to any agricultural seed, whether in bulk or in containers, and includes declarations and affidavits.

(h) "Secretary" means the secretary of the state board of agriculture.

(i) "Weed seed" means the seeds of plants considered weeds in this state and includes noxious weed seed and restricted weed seed, determined by methods established by rule and regulation under this act.

(j) "Noxious weed seed" means the seed of Kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea repens*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), leafy spurge (*Euphorbia esula*), quackgrass (*Agropyron repens*), bur ragweed (*Franseria tomentosa*), pig-nut (*Indian rushpea*) (*Hoffmannseggia densiflora*), Texas blueweed (*Helianthus ciliaris*), Johnson grass (*Sorghum halepense*), sorghum alnum, and any plant the seed of which cannot be distinguished from Johnson grass, and musk (nodding) thistle (*Carduus nutans* L.).

(k) "Restricted weed seed" means weed seeds or bulblets which shall not be present in agricultural seed at a rate per pound in excess of the number shown following the name of each weed seed: Silverleaf nightshade (*Solanum elaeagnifolium*) 45, horsenettle, bull-nettle (*Solanum carolinense*) 45, dock (*Rumex spp.*) 45, oxeye daisy (*Chrysanthemum leucanthemum*) 45, perennial sowthistle (*Sonchum arvensis*) 45, giant foxtail (*Setaria faberi*) 45, cheat (*Bromus secalinus*) 45, hairy chess (*Bromus commutatus*) 45, buckthorn plantain (*Plantago lanceolata*) 45, wild onion or garlic (*Allium spp.*) 18, charlock (*Sinapsis arvensis*) 18, wild mustards (*Brassica spp.*) 18, treacle (*Erysimum spp.*) 18, wild carrot (*Daucus carota*) 18, morning glory and purple moonflower (*Ipomoea spp.*) 18, hedge bindweed (*Calystegia spp.*, syn. *Convolvulus sepium*) 18, dodder (*Cuscuta spp.*) 18, except lespedeza seed which may contain 45 dodder per pound, pennycress, fanweed (*Thlaspi arvense*) 18, wild oats (*Avena fatua*) 9, climbing milkweed, sandvine (*Cynanchum laeve*, syn. *Gonolobus laevis*) 9, jointed goatgrass (*Aegilops cylindrica*) 9, black nightshade complex (*Solanum ptycanthum*, *S. americanum*, *S. sarrachoides*, *S. nigrum*, and *S. interius*) 9, wild buckwheat, black bindweed (*Polygonum convolvulus*) 9, velvetleaf, butter-print (*Abutilon theophrasti*) 9, and cocklebur (*Xanthium spp.*) 9. The total number of the restricted weed seed shall not exceed 90 per pound except native grass, smooth brome-grass, tall fescue, wheatgrasses and lespedeza shall not exceed 150 per pound. In smooth brome-grass, fescues, orchard grass, wheatgrasses, and chaffy range grasses, hairy chess or cheat shall not exceed 2,500 per pound. For the purposes of this section the following weedy *Bromus spp.* shall be considered as common weeds and collectively referred to as "chess": Japanese chess (*Bromus japonicus*); soft chess (*Bromus mollis*) and field chess (*Bromus arvensis*).

(l) "Advertisement" means all representations, other than those on the label, dissemi-



KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

816 S.W. Tyler St. P.O. Box 1517 A/C 913-234-0463 Topeka, Kansas 66601-1517

STATEMENT OF THE KANSAS FERTILIZER & CHEMICAL ASSOCIATION
TO THE HOUSE AG & SMALL BUSINESS COMMITTEE

REP. SUSAN ROENBAUGH, CHAIRMAN

REGARDING H.B. 2489

MARCH 2, 1989

Madam Chairman and Members of the Committee, I am Chris Wilson, Director of Governmental Relations of the Kansas Fertilizer & Chemical Association (KFCA). KFCA is the professional trade association of the Kansas agrichemical industry. We appreciate the opportunity to comment in support of H.B. 2489, amending the Kansas Seed Act.

The fertilizer retail members of our Association are regulated under the Kansas Fertilizer Law, which is administered by the Agricultural Commodity Assurance Program (ACAP) of the State Board of Agriculture. The fertilizer inspection program is funded through a 30 cent per ton tax. This tonnage tax generates approximately a half a million dollars per year. It is estimated that only half of that goes for expenses of administering the fertilizer program. The remainder of the fees generated by the tonnage tax is used to pay for other costs, such as the administration of the Seed Law.

Since the current Seed Law makes it impossible to determine who is a seed dealer and to assess fees to seed dealers to fund the program, the fertilizer tonnage tax has been used. H.B. 2489 would clarify who is a seed dealer and those persons could then be assessed fees to fund the seed inspection program.

H.B. 2489 provides protection for farmers selling seed to neighbors, and at the same time provides consumer protection to farmers buying seed from those who truly are in the business of selling seed.

We urge your favorable consideration of H.B. 2489 .

#

*Ag. & SB
03-02-89*

PRESENTATION TO THE HOUSE COMMITTEE ON
AGRICULTURE AND SMALL BUSINESS
H.B. 2489

Good morning Madam Chairperson, and members of the House Committee on Agriculture and Small Business. My name is Sam Brownback, secretary of the Kansas State Board of Agriculture

H.B. 2489 addresses amendments to the Kansas Seed Law to include a provision to require sellers of seed who advertise by means of television, radio, newspaper, magazine or other publication which is not distributed to the general public without cost, to test and label the seed as required by law and to register with the Kansas State Board of Agriculture.

The seed law was established to protect buyers of agricultural seed by requiring seed sellers to test their seed and provide the buyer with copies of that test in the form of a label. The Board of Agriculture is charged with inspecting this seed and analyzing it to assure that the information on the label is correct. Monitoring individuals who sell this seed has been a problem and has been compounded with the Conservation Reserve Program (CRP). There are many more individuals who have entered the business of selling seed due to this program. Many of these individuals are not known to the Kansas State Board of Agriculture and are not part of the routine calls field inspectors make at known seed dealers. Some of these individuals do not have knowledge of the Kansas Seed Law and numerous violations have occurred. The Board of Agriculture does

Ag & SB
03-02-89

ATTACHMENT 3

not become aware of these sales and violations until after the seed is sold and is planted. Regulatory action is impossible to initiate when documentation is not maintained and the seed is not available to be sampled. If these sellers of seed were known to the Board of Agriculture, violations could have been prevented, as well as reducing additional cost to the farmer.

I have a sample of grass seed that has been analyzed to show what ramification uninspected seed can have. This seed was officially sampled as a result of a complaint on another lot of seed. This seed was labeled but was being sold through individuals who do not routinely sell seed. There is 688 pounds of seed in this lot at a cost to the farmer of \$4,708.00 just for the seed. The seed was to be planted on 68.8 acres at 10 pounds to the acre. This lot of grass seed contains the following restricted weed seed in these amounts: Giant Foxtail, 551 per pound and Velvetleaf, 26 per pound. If planted on these 68.8 acres the farmer could expect 5,510 giant foxtail and 260 velvetleaf per acre or 379,088 giant foxtail and 17,888 velvetleaf on the whole 68.8 acres. Eradication of these weeds can be done at an approximate cost of \$5.10 per acre (1 lb/acre atrazine at \$2.10 plus \$3.00 for application) or \$350.88 for the whole 68.8 acres. Because of seed dormancy for foxtail and velvetleaf, herbicide would have to be applied to the acreage for five (5) years at a total additional cost of \$1,754.40 to the farmer. In Kansas in 1988 expenditures for noxious weed control at county levels cost approximately \$15,406,085. This particular seed seller and lot of seed would never have been inspected by the Kansas State Board of Agriculture had it not been for a complaint received on another different lot of seed. There were a total of 8 lots of seed at this dealer's facility when our inspector called on it. All 8 lots were sampled and all were in violation with excessive weed seed. One of the lots even contained

field bindweed at six per pound.

The Kansas State Board of Agriculture needs to be given the opportunity to inspect this seed before it is planted.

Glen Searcy

H.B. 2489 does not prevent farmer to farmer sales without testing or labeling, it simply clarifies some gray areas in the law. It is not the Board of Agriculture's intent to prevent these sales. It does, however, tighten up some loopholes that other individuals, who are not farmers in Kansas, have been using to sell seed in Kansas under this exception. We (the Kansas State Board of Agriculture) do ask that this bill further clarify these gray areas by amending line 77 and adding " and (a)(9)" after (a)(8). This would spell out exactly who is exempt from testing and labeling.

The Kansas State Board of Agriculture also asks that lines 95, 96, and 97 be deleted. This section reads: "The provisions of subsection (a) of this section shall not apply to any person who sells only seed received on consignment for another seed dealer." We feel that this provision would make the Kansas Seed Law unenforceable in that any individual, in or out of state, could consign their seed to someone in the state without registering or knowledge to the Kansas State Board of Agriculture. Furthermore, this seed could be in violation of state requirements and cause hardships on farmers who purchase it.

A third amendment the Board of Agriculture requests is that lines 102 thru

106 be deleted and paragraph (d) be rewritten to create a special revenue fund called the "Seed Inspection Fund". The monies received by this law can then be used to support the enforcement of the Kansas Seed Law.

Cost on the industry is minimal at \$10.00 per dealer. It is estimated that there are 7500 seed dealers in Kansas. The \$75,000.00 this amendment will cost agriculture, when compared to the savings on the over \$15 million currently being paid for eradication of weeds, seems minor. Furthermore, farmers who choose to sell their seed and advertise by means other than those specified in the law will have no cost to them.

Impact on the agency will require one additional field inspector to help cover the state field inspections, one clerical person to process the registrations, one part time administrator to oversee the administration of the law and various office supplies, printing, and office equipment.

If you have any questions, I or our staff will be glad to answer them for you.



2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358

Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

March 2, 1989

TO: House Agriculture and Small Business Committee
Representative Susan Roenbaugh, Chairperson

FROM: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

RE: STATEMENT CONCERNING HB 2489

The Kansas Livestock Association (KLA) is a trade organization made up of 10,000 members located in all of the 105 counties. KLA, founded in 1894, has members who are actively involved in numerous aspects of livestock production that include cow-calf/stocker producers, feeders, sheep producers, swine operators, and general farming and ranching enterprises.

Thank you Madam Chairman and committee members for giving us the opportunity to submit our views about HB 2489. The Kansas Livestock Association is opposed to this bill.

Our association has historically opposed efforts to repeal or weaken the so called "farmer exemption" outlined in subsection C on lines 77-80. This bill may likely impact farmers and ranchers selling seed on their own premises.

As I read the proposal, it makes it illegal to advertise seed (by television, radio, newspaper, magazine, or other publication) if it has not been tested and labeled. This advertising would also be prohibited for anyone who has not registered as a seed dealer with the Kansas State Board of Agriculture. With HB 2489, a farmer may continue to sell seed on his own farm if it's 1) produced by him/her; 2) free of noxious weed seed; and 3) is below the tolerance level of restricted weed seeds. A farmers in this instance would be exempt from the licensing requirement, but prohibited from advertising seed.

Agg SB
03-02-89

ATTACHMENT 4

Example:

A Stafford county producer typically plants rye in the early fall for grazing purposes. After drilling, he sees he has an extra 200 bushels. The producer decides to run an ad in the Hutchinson paper in hopes he can sell it and not worry about storage for another year. This bill prohibits him from advertising his rye seed unless he registers with the Kansas State Board of Agriculture.

What about farmers who are not aware of this advertising prohibition. I'm confident many people would run an ad unaware it's against the law. Do we enforce this law or turn our heads and concentrate on more suspicious "unscrupulous", seed salesmen?

Madam chairman and committee members, our association members have not asked for increased regulatory action on the seed industry. Regardless of a seed law, most operators recognize the importance of clean, tested and high quality seed. They choose to buy from reputable firms regardless of our seed law. I have to question if HB 2489 is really necessary and hope this committee will not approve it for passage. Thank you.