

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

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

9:02 a.m./p.m. on January 17, 1990 in room 423-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Legislative Research Department
Lynne Holt, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Alan Alderson, Implement Dealers, Topeka
Bill Fuller, Kansas Farm Bureau, Manhattan
Hyde S. Jacobs, Assistant to Dean of
Agriculture, Kansas State University
Larry Woodson, Division of Inspections,
Kansas Board of Agriculture
Chuck Johnson, Kansas Seed Industry, Mentor

Chairman Roenbaugh introduced new committee member, Steve Wiard, who replaced Delbert Gross.

The Chairman then introduced Alan Alderson who will be unable to attend tomorrow's committee meeting and wished to request a bill introduction. The bill is defined as "An Act concerning certain contracts to maintain stocks of outdoor power equipment". (Attachment I). Representative Roenbaugh assured Mr. Alderson the committee would take action on the request at tomorrow's meeting.

Representative Roenbaugh then opened hearings on HB 2582 with Raney Gilliland, Research, briefing the committee on the bill. Mr. Gilliland explained the changes in the bill.

Bill Fuller, Farm Bureau, stated the members of Farm Bureau recognize the problems associated with enforcing the Kansas Seed Law. He further stated the farm and ranch members of his organization strongly believe the Kansas Seed Law should protect both the buyer and the seller of seed. Their concern is labeling and testing, and restricted weed seed. This protection can be accomplished either by amending HB 2582 or by working HB 2489 that is currently tabled in this committee. (Attachment II). A question and answer period was held.

Hyde S. Jacobs, KSU, recommended that the provisions of HB 2582 be adopted. (Attachment III). Questions and answers followed his testimony.

Larry Woodson, Division of Inspections, Kansas Board of Agriculture, stated they are of the opinion that additional assistance would enhance their ability to carry out the intent and purpose of the law. He further stated their mission is to assure the purchaser of agriculture seed that a quality product is being received. To accomplish this goal, the product should be tested and labeled to verify variety, germination and purity. (Attachment IV). A question and answer period followed.

Chuck Johnson, Kansas Seed Industry, testified if law is enforced as written, it will be a help, not only to sellers, but also to buyers of seed. He also stated the loss of private breeders is a serious thing. Questions and answers followed testimony. (Att. V)

The Chairman announced that due to time constraint, the hearings on HB 2582 would be continued tomorrow.

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

_____ BILL No. _____

By _____

AN ACT concerning certain contracts to maintain stocks of outdoor power equipment.

BE IT ENACTED . . .

Section 1. As used in this act:

(a) "Outdoor power equipment" means and includes equipment, machinery, attachments or repair parts therefor, used for lawn, garden, golf course, landscaping or grounds maintenance.

(b) "Retailer" means any person, firm or corporation engaged in the business of (1) selling outdoor power equipment to the ultimate consumer thereof, and (2) repairing or servicing outdoor power equipment.

(c) "Contract" means either a written or parol agreement for a definite or indefinite period between a retailer and a supplier whereby (i) such retailer agrees to maintain a stock of parts or machines or equipment or attachments with any supplier of outdoor power equipment; and (ii) the arrangement contemplates the establishment or maintenance by the retailer of a location within the State of Kansas at which outdoor power equipment or repair parts therefor and services for the same are displayed, and offered or demonstrated for sale.

(d) "Net cost" means the amount of money actually paid by a retailer to the supplier.

(e) "Current net price" means the price listed in a supplier's price list or catalogue in effect on the date of termination of a contract, less any applicable trade and cash discounts.

(f) "Supplier" means any person, partnership, corporation, association, or any other form of business enterprise engaged in the business of manufacturing, assembly or wholesale distribution of outdoor power equipment. The term "supplier" and the provisions of this act shall also apply to the transferee of any such supplier if such transferee acquired substantially all of the assets of such supplier.

Section 2. Whenever any retailer enters into a contract with a supplier and such supplier or retailer terminates, cancels, fails to renew, or in fact

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substantially discontinues such contract, such supplier shall pay to such retailer (or credit to such retailer's account, if and only to the extent that the retailer has outstanding any sums owing the supplier), unless the retailer should desire to keep such merchandise, a sum equal to ninety percent of the net cost of all new, unused, undamaged and complete outdoor power equipment, including transportation charges which have been paid by such retailer, and ninety percent of the current net price of new, unused and undamaged repair parts, provided such parts had previously been purchased from such supplier, during the twenty-four (24) month period immediately preceding the date of notification of the termination, and held by such retailer on the date of the cancellation of such contract. Any parts which were purchased prior to the beginning of the twenty-four (24) month period immediately preceding the date of notification of the termination shall be returned for ninety percent of the retailer's original purchase cost. Upon the payment of the such sum, the title and right of possession of such outdoor power equipment and repair parts shall then pass to the supplier making such payment, and such supplier shall be entitled to the possession of such outdoor power equipment and repair parts. All payments required to be made under the provisions of this section must be made within ninety days after the return of the machinery or repair parts. After ninety days, all payments or allowances shall include interest calculated from the date of return at the rate prescribed in K.S.A. 1988 Supp. 16-204.

(b) The provisions of this act shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into, renewed, amended or transferred by a supplier to a transferee on or after July 1, 1990, and shall apply only to outdoor power equipment and repair parts purchased after the effective date of this act. Any contract in force and effect on July 1, 1990, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to this act.

(c) The provisions of this section shall not be construed to affect in any way any security interest which the supplier may have in the inventory of the retailer, and any repurchase hereunder shall not be subject to the provisions of the bulk sales law.

Section 3. The provisions of this section shall not require the repurchase from a retailer of:

- (a) Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;
- (b) any repair part which is in a broken or damaged package;
- (c) any single repair part which is priced as a set of two or more items;
- (d) any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning;
- (e) any inventory for which the retailer is unable to furnish evidence, satisfactory to the supplier, of title, free and clear of all claims, liens and encumbrances;
- (f) any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- (g) any machinery, equipment and attachments which are not in new, unused, undamaged, or complete condition;
- (h) any repair parts which are not in new, unused, or undamaged condition;
- (i) any machinery, equipment or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;
- (j) any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;
- (k) any inventory which was acquired by the retailer from any source other than the supplier or transferee of such supplier; or
- (l) any part that has been removed from an engine or short block or piece of equipment or any part that has been mounted or installed by the retailer on an engine or on equipment.

Section 4. The provisions of section 2 of this act shall be supplemental to any agreement between the retailer and the supplier, covering the return of outdoor power equipment and repair parts therefor. The retailer may elect to pursue either the contract remedy, the remedy provided herein, or any other remedies permitted by law including proceedings under the Kansas Consumer Protection Act, and an election by the retailer to pursue his contract remedy shall not bar his right to any remedy provided herein as

to the outdoor power equipment and repair parts not affected by the contract or other remedies.

Section 5. Any term of a dealership agreement which restricts the procedural or substantive rights of a retailer, either expressed or implied, and which is inconsistent with the terms of this act (including but not limited to a foreign choice of law or a foreign forum selection clause), shall be void and unenforceable and shall not waive any rights which are provided to any retailer by this act.

Section 6. In the event any supplier, after such supplier or the retailer cancels, fails to renew or in fact substantially discontinues such contract, fails or refuses to make payment to such retailer as required by the provisions of section 2 of this act, such retailer shall be liable in a civil action to the retailer for costs of litigation and attorneys fees and for one hundred percent of the net cost of such machinery, plus transportation charges which have been paid by the retailer and one hundred percent of the current net price of the repair parts.

Section 7. In the event of the death or upon the retirement at sixty-two years of age or older of a retailer or majority stockholder of a corporation operating as a retailer, the supplier shall repurchase the merchandise of the retailer from the retailer or the retailer's heir or heirs under the same terms and conditions as if the contract were then terminated by the supplier. Nothing in this section shall require the repurchase of any outdoor power equipment or repair parts therefor following such a death if the heir or heirs and the supplier jointly agree to enter into a new contract to operate the retail dealership.

Section 8. If any section of this act, or any part of any section thereof, shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the remaining portions thereof.

Section 9. This act shall take effect and be in force from and after its publication in the statute book.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE AND LIVESTOCK

RE: H.B. 2582 -- Kansas Seed Law

January 17, 1990
Topeka, Kansas

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

Chairperson 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 appreciate this opportunity to speak on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Our members recognize the problems associated with enforcing the Kansas Seed Law. 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 a lack of labeling and testing.

The Kansas State Board of Agriculture outlined their enforcement problems to us in the summer of 1988. 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 at the 1988 Annual Meeting adopted policy.

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We asked this Committee to introduce a bill during the 1989 Session. That request was honored and a hearing on **H.B. 2489** was conducted on March 2, 1989. A number of you had reservations about the proposal and **H.B. 2489** was tabled.

Our members have since reviewed the issue. The 437 voting delegates representing the 105 County Farm Bureaus at the 1989 KFB Annual Meeting **repealed the section asking for "seller registration."** We believe this action eliminates the major concern this Committee expressed last session. KFB Policy now states:

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 sell only tested and labeled seed. Farmers who make occasional private treaty sales, or who advertise by erecting signs on their own property shall not be required to register or be licensed by 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 are simply asking that those who operate a **business** of selling seed sell **tested** and **labeled** seed ... seedsmen and farmers. We are suggesting the criteria for determining which

sellers are **commercial business** be limited to those who **advertise in the public media**. This does **NOT** keep a farmer from advertising by direct mail, erecting signs on his property, posting notices on grain elevator bulletin boards, etc. This does **NOT** eliminate private treaty farmer-to-farmer sales of nontested and unlabeled seed. In fact, **we will strongly object to any amendment that would further restrict or repeal the "farmer exemption."** Frankly, we are concerned that in the long run, continuation of the "farmer exemption" will be jeopardized if these kinds of responsibility changes are not approved.

Unfortunately there is widespread misunderstanding about the so-called "farmer exemption." K.S.A. 2-1421(c) states:

(c) Except as provided in subsection (a)(8) of this section, 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 weed seed.

Allow us to make two points. First, the law does **not** say "farmer," rather it says "grower of agricultural seed." As a result, this provision allows **all** producers of agricultural seed to sell seed which is **not** tested and **not** labeled. Second, the "farmer exemption" is often thought to allow sale of seed without any restrictions. This, in fact, is **not** the case. The seed must be:

1. Produced by the grower;
2. Free from noxious weed seed;
3. Labeled and certified if it is a variety protected by the Federal Plant Variety Protection Act.

Our farm and ranch members strongly believe the Kansas Seed Law should protect both the buyer and seller of seed. We ask you to amend the Kansas Seed Law as outlined in KFB Policy concerning labeling and testing, and restricted weed seed (see Attachment 2). This can be accomplished either by amending **H.B. 2582** which you are considering today or work **H.B. 2489** that is currently tabled in this Committee. We believe our requests are reasonable, particularly when you examine the seed laws of other agricultural states (see Attachment 3). We do not believe Kansas can continue to tolerate a seed law that permits planting of crop seed which contains weed seed, while at the same time spending millions of dollars to control restricted and noxious weeds.

Thank you for your attention to these challenges and consideration of our suggested amendments. At this time, we will attempt to respond to any questions you may have.

1988

Please
Respond

* 50 RESPONSES *

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 out 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

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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 bromegrass, tall fescue, wheatgrasses and lespedeza shall not exceed 150 per pound. In smooth bromegrass, 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-

STATE	PERMIT OR REGISTRATION REQUIRED		TESTING AND LABEL REQUIRED		FARMERS REQUIREMENTS IF EXEMPT FROM LABELING OR REGISTERING/PERMIT
	FARMERS	DEALERS	FARMERS	DEALERS	
Nebraska	NO	NO	YES	YES	No exemption from labeling for farmers/growers.
Missouri	YES \$5	YES \$5	NO	YES	<ol style="list-style-type: none"> 1. Can advertise however cannot state germination or other tests in advertisement. 2. Cannot use a common carrier to deliver seed. 3. Cannot sell seed by any public sales service. 4. Must be of their own production.
Oklahoma	YES	YES	YES	YES	No exemption from permit or labeling for farmers/growers.
Colorado	NO	YES	NO	YES	<ol style="list-style-type: none"> 1. Must sell own premises. 2. Cannot use common carrier. 3. Cannot advertise.
Iowa	NO	YES	YES	YES	No exemption from labeling for farmers/growers.
Texas	NO	YES	NO	YES	<ol style="list-style-type: none"> 1. Must be of their own production on own farm. 2. Cannot advertise in public media outside their own county. 3. Cannot be sold through someone other than the farmer. 4. Cannot ship by common carrier.
South Dakota	NO	YES	NO	YES	<ol style="list-style-type: none"> 1. Must be grown, sold and delivered on the farmer's premises. 2. Cannot take to community sales for sale. 3. Cannot publicly advertise. 4. Cannot contain noxious weeds.
North Dakota	NO	YES	NO	YES	<ol style="list-style-type: none"> 1. Must be of their own production. 2. Cannot advertise. 3. Cannot use a third party as an agent or broker.
Illinois	NO	YES	YES	YES	No labeling exemption. Exempt from permit for own seed sold on own premises.
Arkansas	NO	YES	YES	YES	No labeling exemption.
Kansas	NO	NO	NO	YES	<ol style="list-style-type: none"> 1. Can advertise. 2. Can use common carrier. 3. Must grow and sell on premises. 4. Must be free from noxious weeds.

**House Committee on Agriculture and Small Business
Kansas Seed Law
January 17, 1990**

**Testimony Prepared by
Hyde S. Jacobs
Assistant to the Dean of Agriculture**

I am Hyde S. Jacobs, Assistant to the Dean of Agriculture at Kansas State University.

In testimony before the Special Committee on Agriculture and Livestock, September 22, 1989, it was noted that the Kansas Agricultural Experiment Station (KAES) maintains active plant breeding programs for the state's major crops -- wheat, sorghum, corn, soybeans and alfalfa, as well as for crops like barley, sunflowers, millet, dry beans, and melons. Important points in that testimony are summarized below.

Newly released varieties can significantly influence the yield, acreage, and profitability of the crop. They represent valuable, intellectual, and economic property. Consequently, proper steps are taken to protect the integrity of variety or germplasm releases in accord with well developed guidelines.

The release of a new variety, clone or germplasm, follows definite rules: (1) All releases must represent a significant improvement over existing plant materials and (2) All releases must be distinguishable from existing plant materials to allow for plant variety protection. In general, KAES variety and germplasm releases are released on a nonexclusive, nonroyalty basis.

Because public funds are used to produce new varieties and germplasm, KAES routinely applies for plant variety protection for new releases so KAES, USDA, and other experiment stations can continue to utilize them in their breeding programs. Thus, plant variety protection was applied for new releases like Newton, Arkan, Dodge, Norkan, and Karl.

When plant variety protection is extended under Title 5 of the Plant Variety Protection Act, the varieties are sold only by name and as a class of certified seed. Under federal law, the protective provisions of the Plant Variety Protection Act apply as soon as the owner applies for a certificate of Plant Variety Protection.

However, Kansas law pertinent to varieties protected under the Plant Variety Act is not enforceable until the Plant Variety Protection Certificate is actually issued. This discrepancy in the date of effective protection under state and federal law results in significant confusion and negatively impacts growers, processors, and grain merchandisers.

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For example, Arkan was released by KAES because of its excellent yield of high quality grain. Arkan became the most widely grown variety in the state, in spite of becoming the focus of a controversy over classification of several newly released wheat varieties including Arkan.

Kansas State University first applied for Plant Variety Protection for Arkan in June, 1983. Under federal law, Arkan became a protected variety as of that date. However, the Plant Variety Protection Certificate for Arkan was not actually issued until 1989. During this six year interim, the Plant Variety Protection Provisions of Kansas law were not enforceable. This resulted in significant confusion and financial loss.

H.B. 2582 would correct this discrepancy by making the Plant Variety Protection provisions of Kansas law applicable as soon as a certificate of Plant Variety Protection was applied for or issued. This change in Kansas law would remove the discrepancy in the date of effective protection between state and federal law.

It is our recommendation that the provisions of H.B. 2582 be adopted.

PRESENTATION TO THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

January 17, 1990

HB-2582

Good Morning Madam Chairperson and members of the House Committee on Agriculture and Small Business. My name is Larry D Woodson, Director, Division of Inspections, Kansas Board of Agriculture.

I do wish to express our appreciation to all the Representatives that studied the Seed Law during the Interim Committee Hearings. We appreciate your interest and support. We are still of the opinion that additional assistance would enhance our ability to carry out of the intent and purpose of the law.

H.B. 2582 does address amendments to the Seed Law to correct the scientific names of Hoary Cress and Bur Ragweed. It also makes it unlawful to sell agriculture seed if a certificate of plant variety protection has been applied for or issued under public law 91-577.

Relative to technical changes of H.B. 2582, Bur Ragweed, *Franseria Tomentosa*, should be amended to read *Ambrosia Grayi*. (Page 2 line 8 & 9)

With regard to the addition of the "applied for" statement on page 5 line 11, we recognize this is intended to provide plant variety protection at an earlier point in time and was requested by Kansas State University. This language is in agreement with the Plant Variety Protection Act (PL-91-577) but

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is in conflict with Title V, Section 501 of the Federal Seed Act (53 STAT.1275). It also reverses an earlier decision by legislature in 1985.

A potential legal concern expressed by our legal counsel occurs when protection is provided at time of application. In the event that Plant Variety Protection is not granted, what then?

H.B. 2582 does not provide any funding for enforcement of the law. The only fees being collected are those being collected by the laboratory for the testing of private samples sent to the laboratory by farmers and seedsmen. These fees have nothing to do with Seed Regulatory activity. At the present time, regulatory activity under the seed law is financed by the Kansas Fertilizer Fee Fund. (KSA 2-1205)

While I appreciate the difference of opinion on the Seed Law, I do wish to restate the Board's position on the Kansas Seed Law as was presented before the Special Committee last September.

1. The seed law should provide for the registration of all seed dealers at \$10 per registrant
2. Growers that advertise seed for sale should also register and pay a \$10 registration fee
3. All seed sold by dealers or advertised for sale in the media should be tested and labeled

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4. All seed sold by dealers or advertised for sale in the media should be in compliance with noxious and restricted weed requirements.
5. Any revenues realized by registration of seed dealers should be offset by a savings/reduction to the Fertilizer Fees collected.

We feel that our mission is to assure the purchaser of agriculture seed that a quality product is being received. To accomplish this goal, the product should be tested and labeled to varify variety, germination and purity. Failure to test and label allows for the potential dissemination of lower quality seed that may contain noxious or prohibited weeds that may reduce the return on the crop due to lower yields and the increased cost of weed eradication. This could require the use of expensive chemicals which are coming under increased environmental scrutiny.

We conclude by thanking the members of the committee for your time and interest in the Kansas Seed Law. We support the recommendations made by the Interim Committee, but continue to believe more is needed to be compatible and uniform with other states in the region.

We will stand for any questions.

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ATTACHMENT IV-3

STATE	PERMIT OR REGISTRATION REQUIRED		TESTING AND LABEL REQUIRED		FARMERS REQUIREMENTS IF EXEMPT FROM LABELING OR REGISTERING/PERMIT
	FARMERS	DEALERS	FARMERS	DEALERS	
Nebraska	NO	NO	YES	YES	No exemption from labeling for farmers/growers.
Missouri	YES \$5	YES \$5	NO	YES	<ol style="list-style-type: none"> 1. Can advertise however cannot state germination or other tests in advertisement. 2. Cannot use a common carrier to deliver seed. 3. Cannot sell seed by any public sales service. 4. Must be of their own production.
Oklahoma	YES	YES	YES	YES	No exemption from permit or labeling for farmers/growers.
Colorado	NO	YES	NO	YES	<ol style="list-style-type: none"> 1. Must sell own premises. 2. Cannot use common carrier. 3. Cannot advertise.
Iowa	NO	YES	YES	YES	No exemption from labeling for farmers/growers.
Texas	NO	YES	NO	YES	<ol style="list-style-type: none"> 1. Must be of their own production on own farm. 2. Cannot advertise in public media outside their own county. 3. Cannot be sold through someone other than the farmer. 4. Cannot ship by common carrier.
South Dakota	NO	YES	NO	YES	<ol style="list-style-type: none"> 1. Must be grown, sold and delivered on the farmer's premises. 2. Cannot take to community sales for sale. 3. Cannot publicly advertise. 4. Cannot contain noxious weeds.
North Dakota	NO	YES	NO	YES	<ol style="list-style-type: none"> 1. Must be of their own production. 2. Cannot advertise. 3. Cannot use a third party as an agent or broker.
Illinois	NO	YES	YES	YES	No labeling exemption. Exempt from permit for own seed sold on own premises.
Arkansas	NO	YES	YES	YES	No labeling exemption.
Kansas	NO	NO	NO	YES	<ol style="list-style-type: none"> 1. Can advertise. 2. Can use common carrier. 3. Must grow and sell on premises. 4. Must be free from noxious weeds.

Ag. SB
 1-17-90
 ATTACHMENT IV-4

Jan. 17. 1990

House Committee on Agriculture & Livestock
H.B. 2582

Testimony Prepared By:

Chuck Johnson

Johnson's Elevators, Inc.

Member of Kansas Seed Industry Assoc. Board of Directors

I am Chuck Johnson, President of Johnson's Elevators, Inc., with grain and seed locations in Ellsworth and Saline Counties. I am also acting as a spokesman for of the board of directors of the Kansas Seed Industry Association.

The KSIA supports the changes to the Kansas Seed Law as proposed in HB 2582. The clarification of when PVP protection begins, to when applied for and not when granted, and the inclusion of additional noxious and restricted weeds which will help strengthen the present law.

The KSIA also feels the Seed Law could be strengthened in other areas. One would be the registration of everyone who sells seed.

In September of last year, I testified before the Special Joint Committee on Agriculture & Livestock concerning changes in the Kansas seed law. In that testimony I stressed the importance of private wheat breeding programs to the Kansas farmer. The passage of the Plant Variety Protection Act (PVP) of 1970, which gave plant breeders exclusive rights to the varieties they develop, stimulated the creation of a number of private wheat breeding programs, which require sizeable investments of both time and money. These private breeders generate a return on their investments through the payment of royalties created by the sale of their varieties as certified seed. These potential returns have been eroded by the illegal sale of their varieties.

Without a worthwhile return on their investment a program is scrapped. In testimony last September I used the example of the Cargil Bounty hybrid wheat program which had been dropped in 1989. Since that testimony, the Pioneer HRW Wheat program has been discontinued.

Who gets hurt when a private breeding program such as Pioneer drops it wheat breeding program for Kansas? Initially, it is the few dealers who sold Pioneer wheats; in the long run, it is the Kansas wheat farmer who liked to plant Pioneer 2157 or 2154 that will be hurt the most.

The registration of seed sellers would give the Kansas Board of Agriculture the funds needed to increase enforcement of the Kansas Seed Law. It is not our intent to limit the so-called "farmer exemption" or the right of the farmer to use his own seed or to trade it to his neighbors. What we want to stop is the blatant illegal sale of varieties protected by PVP as non-certified seed. If enforcement is not strengthened and there is increased illegal sales activity of PVPA protected varieties, there is the likelihood Kansas will lose other private wheat breeding programs. If this happens, the Kansas farmer is the big loser.

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