

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Joann Flower at 9:00 a.m. on March 7, 1996, in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Carole Jordan, Program Analyst, Department of Agriculture  
Mary Jane Stattelman, Chief Counsel, Department of Agriculture  
Rich McKee, Kansas Livestock Association  
Jamie Clover Adams, Kansas Grain & Feed Association and Kansas Fertilizer & Chemical Association  
Don Snodgrass, Kansas Food Dealers Association (written only)  
Bill Fuller, Kansas Farm Bureau

Others attending: See attached list

**Hearing on Sub. SB 705 - Amendments to statutes regarding weights and measures devices.**

Carole Jordan, Program Analyst, Department of Agriculture, standing in for Secretary Allie Devine, addressed the committee in support of **Sub SB 705**. She provided a brief history of the weights and measures program since January, 1995, when concerns over the integrity of the program began to surface from a number of sources. She reported on the Secretary's contacting of the Attorney General, the KBI's investigation, and the Legislative Post Audit report on weights and measures. Findings showed no evidence of criminal behavior, but many problems with the weights and measures program and the accuracy of weights and measures devices in the state. Ms. Jordan covered the many corrective actions taken by the Department pending permanent program changes to return integrity to the weights and measures program. Lists of the experts consulted, as well as industry representatives, whose input was sought by the Department on the weights and measures program are attached to her testimony.

Kansas law requires that all commercial weighing and measuring devices be tested and certified accurate at least once a year. Ms. Jordan explained that the Department is proposing a public/private program, in which private, licensed service companies will provide a yearly test under the strict supervision of and oversight from the state. She said the Department will use statistical sampling as a quality control program. Statistical sampling will provide analytical, defensible data that can be used to identify and evaluate marketplace problems; to monitor service company and licensed technician performance; to target enforcement measures; and to efficiently manage workloads of state inspectors. This bill will also provide the Department with civil penalty authority to enforce the program. (Attachment 1)

Mary Jane Stattelman, Chief Legal Counsel for the Kansas Department of Agriculture, appeared before the committee in support of **Sub SB 705**. Ms. Stattelman walked the committee through the bill page by page outlining the changes in the statutes the Department is proposing concerning the weights and measures program. (Attachment 2)

Rich McKee, Executive Secretary, Feedlot Division, Kansas Livestock Association, testified in support of **Sub SB 705**. As both buyers and sellers, he said the accuracy of scales was very important to their 7,500 members. KLA was one of the organizations that met several times last year with the Department of Agriculture concerning the regulation of scales. KLA supports passage of **Sub SB 705** as the best option available at this time. (Attachment 3)

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on March 7, 1996.

Jamie Clover Adams, representing both the Kansas Grain & Feed Association and the Kansas Fertilizer & Chemical Association testified in support of **Sub SB 705**. KGFA and KFCA support the concept of privatization of the weights and measures program. It is their opinion that most of the problems outlined in the audit report were caused by lack of oversight and enforcement of the law. Both organizations support the use of random sampling as a cost-effective, reliable method to ensure accuracy of scales and civil penalties for violations. KGFA supports supervision of headhouse scale certification by the Kansas Grain Inspection Department. Ms. Clover Adams said the market itself provides a built-in set of checks and balances since many goods are bought and sold over the same scales. Any inaccuracy impacts the company in the same manner as the producer. She said that many products are sold by weight to entities that also have scales, so inaccuracies are quickly brought to light. She reported that 71 percent of their firms have their scales checked more than once a year as required by law. The Department of Agriculture randomly tested 20 large truck scales within the industry and found only one to be out of tolerance--an accuracy rate of 95 percent. She felt this confirmed that natural checks and balances within the industry helps ensure accurate scales. (Attachment 4)

Don Snodgrass, Kansas Food Dealers Association, representing retailers, distributors, and manufacturers of food products, submitted written testimony in support of **Sub SB 705**. He stated that KFDA members participated in the meetings held last fall by the Department of Agriculture on the weights and measures program and felt all their concerns and comments were taken into consideration. (Attachment 5)

Bill Fuller, Associate Director, Public Affairs Division, Kansas Farm Bureau, appeared in support of **Sub SB 705**. Kansas Farm Bureau appreciates the Agriculture Secretary's efforts to address the weights and measures problems and fully supports this legislation.

In response to a committee question concerning customer cards for reporting inaccurate scales and scanners, the Department said they had considered providing an 800 number. Staff thought either method of reporting could be implemented through rules and regulations. Gary Bothwell, Director, Grain Inspection Department, told the committee that headhouse scales not used for official weights would not need to be checked. There was some committee concern regarding companies that check their own scales and scanners, as well as consumer protection when a scale has been found to be out of compliance but is still in use waiting to be repaired.

The hearing and discussion on **Sub SB 705** will be continued tomorrow.

The meeting adjourned at 10:00 a.m. The next meeting is scheduled for March 8, 1996.



**HISTORY OF THE  
KANSAS DEPARTMENT OF AGRICULTURE'S  
WEIGHTS AND MEASURES PROGRAM  
SINCE JANUARY 10, 1995**

Concerns over the integrity of the program began to surface from a number of sources shortly after Kansas Department of Agriculture (KDA) Secretary Allie Devine took office in January 1995. In February, weights and measures staff openly expressed their dissatisfaction with program administration and procedures during interviews conducted by a staff member of the office of the governor.

In May, officials from USDA's Packers and Stockyards Administration (PSA) office in Kansas City expressed concern about the veracity of the state's inspection program. Results of random livestock scale tests conducted by PSA showed eight of fourteen scales tested were out of compliance despite recently having been tested and approved by private service companies.

The Secretary requested the State Division of Personnel to conduct an internal review of the program. The personnel study, presented June 12, confirmed many of the same concerns expressed earlier to the Secretary.

In June, a representative of the Petroleum Marketers Association conveyed to the Secretary his industry's concern about privatization of petroleum device inspections and its support for returning to a state program.

Faced with this variety of program concerns, the Secretary was obliged to contact Attorney General Carla Stovall. At the direction of the Attorney General, a KBI investigation was ordered in July. The findings, released in December, showed no evidence of criminal behavior but listed recommendations for improved operations of the program.

In September, Legislative Post Audit began a K-GOAL audit of weights and measures. Results, released to the committee and public in January, also showed many problems with the program and the accuracy of weights and measures devices in the state.

**CORRECTIVE ACTIONS**

Many corrective actions were ordered pending permanent program changes. They included the following.

- Directed staff to investigate and analyze the program.
- Research began on proposed petroleum measurement regulations and cooperation with the Department of Revenue.
- Letters, regulatory discussion and meetings with service companies served to undo "gentlemen's agreements" and underscore commitment to Kansas law, rules and regulations, and National Institute of Standards and Technology (NIST) handbooks and tolerances.

*House Agriculture  
Attachment 1  
3-7-96*

- Scheduling of testing, enforcement of requirements for regular testing and improving quality of testing is underway.
- Service companies have been notified that the Department is and will strictly enforce their requirements to submit reports to Topeka within 10 days.
- Field staff have been notified that they can enforce the law by red tagging devices or taking other necessary action. Their input, in turn, has been sought.
- Compliance conferences, conducted by agency legal staff, are being scheduled as necessary.
- Data bases on devices and facilities are being updated; improved computer systems are being analyzed.
- Statistically defensible sampling plans were developed for subprograms; a baseline of compliance data is being created.
- A series of meetings were held with industry representatives to seek their input for program improvements. A list of the names of those participants is provided in Appendix A.
- Consultants from the state of California and the National Institute of Standards and Technology have visited Kansas to advise program planners; other state program directors also have been consulted. A list of the names of those participants is also provided in Appendix A.
- Staff of the Allied Signal Department of Energy Plant in Kansas City have assisted in performing a systems analysis of the weights and measures program. A list of the names of those persons assisting from Allied is provided in Appendix A.
- The Governor's Agricultural Advisory Board has approved proposed corrective measures and statutory changes.

### **KANSAS WEIGHTS AND MEASURES REGULATORY ENFORCEMENT PROGRAM**

Kansas law requires all commercial weighing and measuring devices to be tested and certified accurate at least once a year. Accuracy of weighing and measuring devices has the dual goals of protecting both consumers and businesses through equity in the marketplace.

#### **PUBLIC/PRIVATE PROGRAMS**

Accuracy of small scales, large scales and VTM propane devices in Kansas will be ensured through a public/private program, in which private, licensed service companies provide a yearly test under the strict supervision of and oversight from the state. Below is a short description of devices which will be inspected under this regulatory scheme.

1. Small scales--Small scales are strictly defined as those under 5,000 pounds. The majority, however, weigh amounts under 200 pounds and are located in grocery, hardware, drugstores and the like. There are approximately 11,500 of those devices in the state.
2. Large scales--Large scales weigh amounts over 5,000 pounds and include livestock, grain and truck scales. There are some 8,000 large scales in Kansas.
3. LP/VTM--The definition of LP/VTM includes liquid propane trucks and any motor fuel dispensing device that has a meter. There are some 800 LP gas devices and 3,000 vehicle tank meters.

## **QUALITY CONTROL PROVIDED THROUGH STATISTICAL SAMPLING**

One of the hallmarks of this regulatory program is the use of statistical surveys as a Quality Control Program. Statistical surveys provide analytical, defensible data that can be used to identify and evaluate marketplace problems; to monitor service company and licensed technician performance; to target enforcement measures; and to efficiently manage workloads of state inspectors. The Quality Control Program consists of four components.

First, one random statistical survey of all devices in an entire population of each device will be performed each year. For example, each year the Department will perform one statistical random survey of all small scales in the state. This survey will indicate how the marketplace acts. It would show, for example, what the consumer or business could expect when they do business. Similar surveys would be done for all other types of devices. These surveys would be administered evenly throughout the year to maintain a weights and measures presence in the field at all times. This poses an element of surprise to enhance enforcement. In addition, the results of these surveys will be used to monitor the compliance ratios reported by the service companies and to evaluate the success of the program and accuracy of devices throughout the state.

A second series of surveys would be done of the service company work in each device category. The sample size will be determined at the beginning of the fiscal year and administered on a weekly basis throughout the year. Sample units in the weekly service companies' reports matching the predetermined random interval sampling will be followed up by weights and measures employees within 30 days of the service company's inspection. The results of this survey will monitor the performance of service companies' technicians and provide data, when necessary, to support enforcement actions. Further, this data will be used to detect problems with specific technicians, companies or devices. This data will provide a key analytical tool to target future enforcement.

The third quality control sample will be a random sampling of service companies' records. This survey will monitor the service companies' compliance with record-keeping requirements of the weights and measures program. On-site record-keeping is vital to provide detailed histories of devices, technician, or service company performance to program administration.

Finally, random visits to service companies will assess general compliance with program requirements and training needs. The visits also will provide a time to foster good working

relationships with the companies and solicit feedback from technicians. This function will depend on the availability of funds.

## **ROLES OF INVOLVED PARTIES**

Device owners, service companies, service technicians and state inspectors all have key roles in this regulatory framework. Each of these roles is further defined below and in the proposed statutory revisions.

### **Private Service Company Technicians**

Weights and measures is a highly technical field. To conduct accurate tests, the performer of the device test must be trained. Further, because the private service technician is performing the annual tests required by law and key to assurance of accurate devices in the state, this proposal seeks the authority to require training and education of persons seeking to be licensed technicians.

Under this proposal, only licensed technicians may certify scales for accuracy for use in trade in the state of Kansas. To obtain a license, KDA will require service company technicians to receive both education and hands-on training in scale operation, repair and testing. Education and training programs will be conducted through KDA by experts selected by the Secretary, or through educational programs approved by the Secretary. The Department is seeking authority to seek reimbursement for the cost of education and training programs.

Under the proposal, regardless of previous training and experience, all technicians who wish to be licensed must meet the minimum training and educational requirements. Further, as a condition of licensing, the statutory proposals require licensed technicians to meet continuing education requirements as prescribed by the Secretary through rule and regulation.

After completing training and in order to receive their licenses, technicians must pass a test administered by KDA. Follow-up testing will be required on an annual basis to maintain a valid license. The test, as well as the minimum score necessary to pass the test, will be determined by the Secretary.

Technicians who desire to be licensed to certify the accuracy of specific categories of devices may be required by the Secretary to complete education, training, and testing programs specific to those device categories. Such specialized programs will ensure that technicians have the skills necessary to perform competent testing and certification of highly technical devices. KDA may issue technician licenses in the form of a card which indicates the category of device for which they have received training and testing. Technicians may only certify those devices indicated on their valid KDA license.

Under the proposal, licensed technicians will be required to use a standardized form prescribed by the Secretary to report the results of annual device tests. This form will be sent to the Department for documentation of basic information necessary to develop the data bases used in the Quality Control surveys. After the data is entered into the Department's data bases, the forms will be discarded. This reduces the paperwork and

the manpower necessary to maintain records in the Department. Accurate reporting and data management are vital to the maintenance of this regulatory program.

Under the proposal, the Secretary may fine and/or revoke the license of a technician who shows a pattern of incompetent and inaccurate work, who submits false test reports, who certifies devices in a category for which he or she is not licensed, or who fails to meet the education, training and testing requirements set forth by the Secretary.

### **Private Service Companies**

Another key role of this regulatory plan is the licensing of private service companies. Service companies will be required to hold a valid KDA license and to meet all conditions of service company licensing set out by statute and regulation to qualify for the business of certifying weighing and measuring devices in the state of Kansas. Service companies will continue to pay a \$50 per year license fee required by current law.

To be licensed, a service company will be required to maintain all test reports for three to five years in a form and place designated by the Secretary, to certify that those records are true, and to report to or make those records available for inspection by the Secretary or the Secretary's authorized representative upon request. Licensed service companies, like licensed technicians, will be required to use the specific reporting form as required by the Secretary. These reporting requirements are necessary to maintain the history of devices and work performed to detect patterns of compliance or noncompliance. Further, the reports will be the basis of data used in the Quality Compliance surveys.

Licensed service companies will be required to possess adequate testing equipment and to receive certification of the accuracy of that equipment from a National Institute of Standards and Technology certified laboratory on a yearly basis and may be required to meet other conditions prescribed by the Secretary to ensure the accuracy of weights and measures in the state.

The Secretary may fine and/or revoke the license of any service company that violates the statutes.

Service companies will not be responsible for actually removing devices from service; instead, they will concentrate on ensuring all devices are accurate. Service companies will be required to notify KDA of devices which should be removed from service. These devices include, for example, those which cannot be immediately repaired; those which will not hold weight for an adequate length of time after repair; those which are unrepairable; or those whose owner has refused to make necessary repairs. Once notified, it will be the responsibility of KDA inspectors to tag and remove devices from service. Tags may only be removed by licensed service company technicians in the course of repairing a device. All tags removed by technicians must be forwarded to KDA with the test report.

### **Device Owners**



Under current law, owners of weighing and measuring devices are responsible for ensuring the accuracy of those devices. Devices must be certified for accuracy at least once a year, or more often if necessary to maintain their accuracy. Device owners will be responsible for maintaining all scale purchase, installation, removal from service or test records required by the Secretary in a form and place required by the Secretary. These records must be made available to the Secretary or the Secretary's authorized representative upon request.

Device owners will not be responsible for registering their devices, but will be required to have the device installed and annually certified by a licensed technician. The technician will then be required to notify KDA of the installation and provide all other device information required by the Secretary. This reporting will serve as a form of registration to ensure all devices in the state are in the statistical survey pools and subject to random inspection.

Device owners must comply with any order issued by the Secretary or the Secretary's representative concerning the accuracy of the device. For example, the Secretary or the Secretary's authorized representative will have the authority to remove from service or require repair of any device which is inaccurate. Unrepairable devices, for instance, may be ordered permanently removed from service by the Secretary or the Secretary's representative.

### **State Inspectors**

State weights and measures officials and inspectors are also key to the success of this program. Performance of the service companies' work will be monitored through the Quality Control Program of statistical testing administered by weights and measures employees. Weights and measures officials will conduct marketplace tests, audit service company work, analyze data and provide testing and training opportunities for service company technicians.

### **PUBLIC INSPECTIONS**

Under this proposal, scanners and bulk products or packages will be inspected only by Kansas Department of Agriculture officials. No private service companies will be involved. A short description of the devices subject to total public inspection is outlined.

Scanners--in supermarkets, department and a variety of other stores--are a relatively new addition to the responsibilities of weights and measures officials. Assuring that prices scanned are the same as advertised is the function of price verification inspections. The inspection is not truly of the device, but rather of the accuracy of the price data regularly input into the store or chain's computer database. In turn, each scanner at a check-out counter is tied to the computer data base. The state's population of scanners, estimated by the numbers of establishments, is at around 7,000 and growing rapidly. The state is still developing its inventory of these devices. No service companies do price verification inspections.

Bulk sales/packages--it is almost impossible to estimate the population of this category, but it affects grocery stores, delicatessens and other establishments where bulk products are repackaged for individual sale. No private companies inspect bulk products or packages.

Because of the large numbers of scanners and bulk products or packages, statistical testing provides the best and most economically feasible method of inspection to ensure accuracy. Like the Quality Control Surveys discussed previously, the state will design a random statistical test based on the universe of scanners and packages. Analysis of data gathered through statistical testing will allow the Department to best allocate its resources to regions or stores where abuses are found. State inspectors will conduct statistical tests, follow up on consumer complaints and conduct investigations.

## **FUELS--QUALITY AND QUANTITY**

In addition to the regulatory programs outlined above, the Department will conduct fuel quality and quantity tests. Under this proposal, state inspectors of state-contracted inspectors will test all motor fuel and diesel meters in the state annually for quantity accuracy. State inspectors or state-contracted inspectors will conduct enforcement actions such as removing devices from service. Further, only these inspectors could certify devices for accuracy and use in commerce. These inspectors would also investigate consumer complaints and collect fuel samples. Again, these inspections would be done on a statistically random basis to monitor the marketplace and target enforcement. (A state-contracted inspector would be a person who has contracted to do the inspections for the state. These persons, under the terms of the contract, would not be allowed to repair devices.)

Under this proposal, service technicians must be licensed and trained, just as are those under the scale program. Service companies also must be licensed by the state.

The fuel quality laboratory testing will be done by a contracted private laboratory. There are no state facilities in Kansas capable of conducting these tests.

It is proposed that this program be funded by increasing the current one cent per barrel inspection fee, now assessed at the distributor's level, to one and one half cents. Further, the fee would be collected on all motor fuels and not just gasoline. This fee would generate approximately \$885,000.

## **OTHER POINTS**

### **Civil Penalty**

The agency is seeking civil penalty authority to enforce the programs outlined. Civil penalties for violation of this portion of the weights and measures law will range from \$100 to \$5,000 per violation. The Secretary will adopt rules and regulations which set out a graduated system of fines, from lesser amounts assessed for violations with minimal affect on device accuracy, to greater fines for violations with greater affect or which are based on fraudulent acts. Device owners' and service companies' good faith effort to comply with the law will be taken into account in all cases.

## **Budget and Personnel**

It is estimated that the current Governor's Budget of approximately \$675,000 and staffing of 15 full-time employees will be sufficient to operate the inspections of small scales, scanners, bulk sales and packages, large scales and VTM/propane devices. The Department, however, continues to work internally and with the Governor to obtain funding for equipment needs. Any additional requests will be outlined in a Governor's Budget Amendment this legislative session.

## **Headhouse Scales**

Headhouse scales are those at the top of elevators. The number of such scales is small. Under the new program, weighmasters with the Kansas Department of Grain Inspection will witness tests of the headhouse scales performed by private service companies. If questions as to the accuracy of the tests arise, inspectors with the Kansas Department of Agriculture will be called in to recheck the scales.

Appendix A

**EXPERTS CONSULTED  
ON THE  
WEIGHTS AND MEASURES PROGRAM**

Ken Butcher, Physical Scientist  
National Institute of Standards and Technology

Tina Butcher, Physical Scientist  
National Institute of Standards and Technology

Debbie Ripley, Computerization Expert  
National Institute of Standards and Technology

David Quinn  
Fairbanks Scales

Darrell Guensler, Director  
Division of Measurement Standards, California Department of Agriculture

Joe Rothleder, Meteorologist  
Division of Measurement Standards, California Department of Agriculture

Daryl Tonini  
Scale Manufacturers Association Inc.

Tom Coleman, Training Expert  
National Institute of Standards and Technology

John Hollifield  
USDA Packers and Stockyards, Kansas City, Kansas

Ken Jensen  
Allied Signal Department of Energy Plant, Kansas City, MO

Jim Wycoff  
Allied Signal Department of Energy Plant, Kansas City, MO

Experts from various state weights and measurements departments and petroleum quality and quantity programs in a special executive board meeting of the National Conference on Weights and Measures, January 22, 1996.

In addition to many industry groups, the Kansas Oil Marketers, the Kansas Motor Carriers and the Kansas Petroleum Council were consulted.

ATTENDEES OF DECEMBER 1995 DEVICE MEETINGS

CONTACT PERSON	COMPANY NAME	ADDRESS	CITY	ZIP CODE
Steve Rarrick	Attorney General's Office	301 W. 10th	Topeka Ks	BUILDING MAIL
Teresa Salts	Attorney General's Office	301 W. 10th	Topeka Ks	BUILDING MAIL
Casey Boequin	C & L Scales	1105 N.E. Chester Ave	Topeka KS	66616
Chelmar E. Finger	C & J CALIBRATION SERVICE	400 Cherokee	Holton KS	66436
Marvin G. Spees	CAPITAL CITY OIL, INC.	916 Adams, Box 618	Topeka KS	66601-0618
Stephen Langford	Cardinal Scale Mfg. Co.	P.O. Box 151	Webb City MO	64870
Bob Gunja	City of Kansas City, Kansas Weights & Measures Division	701 N. 7th Street, Room 612	Kansas City KS	66101
Brenda Kincaid	City of Kansas City, Kansas Weights & Measures Division	701 N. 7th Street, Room 612	Kansas City KS	66101
Donna Gandey	DOUBLE CHECK CO., INC.	Box 300347, 4000 Raytown Rd.	Kansas City MO	64130
Terry L. Sells	DOUBLE CHECK CO., INC.	Box 300347, 4000 Raytown Rd.	Kansas City MO	64130
LeRoy Durst	DURST SERVICE CO.	P.O. Box 791, 514 N. Grand	Hutchinson KS	67504
Brad Enlow	ENLOW SALES CO.	P.O. Box 1546	Manhattan KS	66502
Frank J. Ferrara	FLOW CONTROL SALES & SVC., INC.	1932 Linn Street	N. Kansas City MO	64116
Rick Hughes	FLOW CONTROL SALES & SVC., INC.	1932 Linn Street	N. Kansas City MO	64116
Jack Unterreiner	FLOW CONTROL SALES & SVC., INC.	1932 Linn Street	N. Kansas City MO	64116
Gene & Louise Gamble	GENE'S SCALE SERVICE	1600 E. Highway 96	Scott City KS	67871
Mike Townsend	GOOD MEASURE CORPORATION	1906 Linn Street	North Kansas City MO	64116
Roger Marshall	HAMILTON SERVICE CO., INC.	7237 Verde Drive	Kansas City KS	66109
Dale Lies	HAMMEL SCALE CO.	1530 N. Mosley	Wichita KS	67214
Russ Ronnebaum	HAMMEL SCALE CO.	1530 N. Mosley	Wichita KS	67214
Ralph E. Taylor	HAMMEL SCALE OF K.C., INC.	612 Kansas Avenue	Kansas City KS	66105
David Clarkson	HOBART SALES/JOPLIN	Box 358, Rt. 3	Joplin MO	64802

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CONTACT PERSON	COMPANY NAME	ADDRESS	CITY	ZIP CODE
Gary Bothwell	Kansas State Grain Inspection	110 NE Lyman P. O. Box 8368	Topeka, KS	BUILDING MAIL
Steve Kearney	Kansas Oil Marketers Association	P. O. Box 8479	Topeka, KS	66608
Joe Lieber	Kansas Cooperative Council	700 S. Kansas, Suite 615	Topeka, KS	66603
Mark Mackey	Kansas Livestock Marketing Association	7509 Tiffany Springs Pkwy.	Kansas City, MO	64153-1390
Tom Meyer	Kansas State Grain Inspection	110 NE Lyman P. O. Box 8368	Topeka, KS	BUILDING MAIL
Tom Palace	Kansas Oil Marketers Association	P. O. Box 8479	Topeka, KS	66608
Dedra Platt	Kansas Dept. of Revenue	2nd Floor, Docking State Office Bldg.	Topeka, KS	BUILDING MAIL
Tom Tunnell	Kansas Grain and Feed Association	P. O. Box 2429	Topeka, KS	66601-2429
Ray Rhoads	Kansas Dept. of Revenue	2nd Floor, Docking State Office Bldg.	Topeka, KS	BUILDING MAIL
Chris Wilson	Kansas Seed Industry Association	4210 Mam-Teau Dr.	Wamego KS	66547
Douglas Kearn	NATIONAL BEEF	Box 539, 2000 E. Trail	Dodge City KS	67801
Larry Latham	OTT OIL CO.	Box 707, 1315 Beverly Drive	Salina KS	67402
Jerry Alexander	P.B. HOIDALE CO./WICHITA	Box 12104, 3737 West Harry	Wichita KS	67277
C. L. & Leigh Musil	PRECISION SCALES	Box 183	Brewster KS	67732
Richard Holman	Ray's Petroleum Equipment, Inc.	555 NW Broad	Topeka KS	66608
Don and Colleen Reinert	Reinert Propane, Inc.	Box 266	Inman, KS	67546
Larry G. Widmer	SALINA SCALE, INC./WICHITA	1037 S. McComas	Wichita KS	67213
Mark Ellenberger	Sends	1781 SW Wanamaker	Topeka Ks	66614
Stan Brown	T & E Oil Co.	P.O. Box 1303	Hutchinson Ks	67504-1303
Ben J. Schultz	T & E Oil Co.	Box 4360, 3935 N. Broadway	Wichita KS	67204
Duane R. Michaelis	TEXACO REFINING & MKTG, INC.	P.O. Box 632, S. Haverhill Rd.	El Dorado KS	67042
Matt Goddard	UNITED SCALE SERVICE	525 Sigler Street	Webb City MO	64870
Richard E. Goddard	UNITED SCALE SERVICE	525 Sigler Street	Webb City MO	64870
John Hollifield	USDA P&SA	12351 W. 96th	Lenexa KS	66210

CONTACT PERSON	COMPANY NAME	ADDRESS	CITY	ZIP CODE
Victor E. Perry	VAN DYKE SCALE, INC.	Box 6244, 2825 Raytown Road	Kansas City MO	64126
Ronald D. Weese	VAN DYKE SCALE, INC.	Box 6244, 2825 Raytown Road	Kansas City MO	64126
Jim Waggle	W.H. Scale Company	4145 N.W. 25th Street	Topeka KS	66618
Monica Williams	WILLIAMS PIPE LINE CO.	2728 Patton Road	St. Paul MN	55113
Jacob Jenkin	YOXALL PUMP SERVICE	327 S. First	Osborne Ks	67473
John Yoxall	YOXALL PUMP SERVICE	Rt. 1, P.O. Box 124	Woodston KS	67675

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STATE OF KANSAS



BILL GRAVES, GOVERNOR  
Alice A. Devine, Secretary of Agriculture  
901 S. Kansas Avenue  
Topeka, Kansas 66612-1280  
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KANSAS DEPARTMENT OF AGRICULTURE

TESTIMONY

TO THE

HOUSE AGRICULTURE COMMITTEE

by

Mary Jane Stattelman, Chief Counsel

Presented March 7, 1996

Re: Substitute for Senate Bill No. 705

Good morning, Chairperson Flower and Members of the Committee. My name is Mary Jane Stattelman and I am Chief Legal Counsel for the Kansas Department of Agriculture. I am happy to be here today to present information to you about Substitute for Senate Bill 705.

- Page 1 – Sec. 1 – civil penalty provision – range from \$100 to \$5,000. Subsection (b) requires the following to be taken into consideration when determining the amount of the penalty: 1) extent of harm; 2) nature and persistence of the violation; 3) length of time over which the violation occurs; 4) any corrective action taken and 5) any and all other relevant circumstances. The following subsections outline the notice and appeal process. Subsection (g) allows the civil penalties and amounts collected under the consumer protection act to go to the weights and measures fee fund.
- Page 2 – line 29 – Sec. 2 – authorizes the grain inspection department to enter into a contract with KDA so that they can assist us in the head house scales program.
- Page 8 – line 2 – state that the administrator shall be unclassified
- Page 13 – line 29 – subsection (d) allows for owners of a device to check their own device, but allows the secretary to charge a fee for expenses incurred if we must reinspect these devices.
- Page 14 – line 1 – specifically prohibits service companies from condemning a device
- Page 15 – line 5 – Sec. 24 – outlines the unlawful acts



- Page 18 – line 27 – subsection (a) provides that a violation of the weights and measures law shall be actionable under the Kansas consumer protection act.
- Page 19 – line 6 – Sec. 27 – Service companies are required to notify the agency within the time frames established by the secretary regarding the removal of tags or if they discover a device which cannot be repaired or serviced so to meet the tolerances and specifications required under this act.
- Page 21 – line 15 – subsection (c) requires the technical representatives to be licensed. To be licensed the technical representative must pass an annual exam and attend continuing education seminars. These seminars can be either KDA seminars or industry seminars. This section authorizes KDA to charge a fee to the attendees of a KDA seminar – only to recoup expenses.
- Page 24 – line 27 – subsection (d) requires the service companies and the device owners to keep a their office or site of the device all installation, repair, and service reports in an accessible and legible manner for a length of time prescribed by the secretary pursuant to rules and regulations.

Thank you for your attention. I would be glad to try and answer any questions you may have about Substitute for Senate Bill 705.



*A Century of Service  
1894-1994*

**Testimony**

presented by

**Rich McKee**

Executive Secretary, Feedlot Division

regarding

**Sub. Senate Bill 705 - Weights and Measures**

before the

**House Agriculture Committee**

March 7, 1996

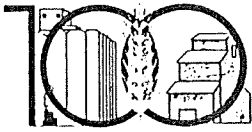
The Kansas Livestock Association (KLA) is comprised of over 7,500 members that have operations in all regions of the state. Most all of the commodities produced by KLA members are sold based on weight. Please know a majority of KLA members are both buyers and sellers. Therefore, the accuracy of scales is very important.

*KLA supports Sub. Senate Bill 705 and respectfully requests the House Agriculture Committee give favorable consideration to this measure.*

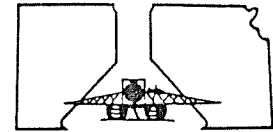
KLA was one of many organizations that met several times last year with the Department of Agriculture concerning the regulations of scales. The meetings allowed all interested parties to consider different ideas of how to regulate the accuracy of scales. Compliments are due the Department of Agriculture for soliciting input from the public on this important issue.

It is our opinion this bill, at this time, represents the best option available. We respectfully request you to give favorable consideration to Sub. Senate Bill 705.

*House Agriculture  
Attachment 3  
3-7-96*



**Kansas Grain & Feed Association  
Kansas Fertilizer & Chemical Association**



**Statement of the  
Kansas Grain & Feed Association  
and the  
Kansas Fertilizer & Chemical Association  
to the  
House Agriculture Committee  
Regarding S.B. 705  
Rep. Joann Flower, Chair  
March 7, 1996**



**KGFA & KFCFA advocate public policies that advance a sound economic climate for agribusiness to grow and prosper so they may continue their integral role in providing Kansans and the world with the safest, most abundant supply of food and fiber.**

*House Agriculture  
Attachment 4*

The following statement is submitted on behalf of both the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). While the two agribusiness associations share staff, they have distinct memberships, separate boards of directors and association programs. KGFA's 1200 members include country elevators -- both independent and cooperative -- subterminal and terminal elevators, feed manufacturers, grain merchandisers and others who serve the industry. KFCA's nearly 500 members are primarily plant nutrient and crop protection retail dealers, but also include manufacturer's representatives, distribution firms, and equipment manufacturers. We appreciate this opportunity to outline our support of S.B. 705.

Scales are used throughout the grain, feed, fertilizer and agriculture chemical industry. The most predominate are the large truck scales used to weigh grain, feed and fertilizer. There are also fertilizer blender scales, platform scales to weigh mini-bulks and bag feed, and scales to weigh ounces of agriculture chemical products. Also, unique to the grain industry are the headhouse scales that weigh grain as it goes into railcars. All of these types of scales are an integral part of doing business and since agriculture inputs and commodities are sold by weight, scale accuracy is of the utmost importance to a firm's bottomline.

KGFA and KFCA support the concept of privatization of the weights and measures program. It is our belief that the bulk of the problems outlined in the Legislative Post Audit report were caused by lack of oversight and enforcement of the law, as well as virtually no consideration of program and system design to confidently predict device accuracy. KGFA and KFCA also support the use of random sampling as a cost-effective and reliable method to ensure the accuracy of scales across the state.

S.B. 705 addresses the many facets of the weights and measures program. It establishes civil penalties for violations of the entire statute not just the portions dealing with petroleum. KGFA and KFCA support this proposal (New Section 1). Both Associations are especially supportive of (b)(5) which allows the Secretary to consider any and all relevant circumstances when determining the

amount of the penalty. A situation may arise when a scale owner trusts the expertise of the service company on methodology of scale testing and later finds that it is not appropriate. KGFA and KFCA believe that (b)(5) would allow the Secretary to take this type of situation into consideration.

S.B. 705 also establishes licensing, testing and continuing education requirements for all service company technicians. KGFA and KFCA support these provisions. We believe these requirements will bring a greater professionalism to the scale service industry. Within the fertilizer and agriculture chemical application industry, applicators must be licensed and many are voluntarily part of the certified crop advisor (CCA) program that consists of a national exam, a state exam and 40 hours of continuing education in four areas every two years. Given our experience with such programs, we do not believe the requirements of S.B. 705 to be overly burdensome. Both Associations also suggest that weights and measures inspectors be held to the same high standards.

KGFA supports supervision of headhouse scale certification by the Kansas Grain Inspection Department (KGID). Section 2 (b) gives the Secretary of Agriculture and KGID the authority to enter into an agreement to begin having KGID weighmasters observe private scale companies test headhouse scales. This is important to the grain industry because the issuance of Class I and Class II weight certificates<sup>1</sup> hinge on the headhouse scale being tested twice per year and certified by a neutral third party. Prior to 1992, the American Association of Railroads (AAR) employed field personnel who went around and made sure headhouse scales were tested each year. Elevators were required to pay a \$250 annual fee for this service and felt it was too high. So, KGFA worked with the National Grain and Feed Association and the Kansas City Board of Trade to amend

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<sup>1</sup> In order to minimize risk, elevators that load railcars obtain either a Class I or Class II weight certificate. These certificates are used to insure no overweight charges by the railroad – which are hefty – and so that elevators do not have to rely on weights issued when the railcars reach their destination. Further, if there is a railcar accident, these certificates are used for repayment. KGID personnel -- weighmasters -- supervise the loading of these railcars and then issue the certificates.

the grain trade rules and allow a neutral third part -- the Kansas Department of Agriculture (KDA) -- to perform this service. When it was privatized last year, KDA oversight continued to be acceptable.

Further, certified weights are required under Uniform Grain and Rice Storage Agreements (UGRSA) which are renewed annually. They too changed the language of the agreements to allowed for a neutral third party to certify headhouse scales were accurate. Consequently, State of Kansas involvement in the headhouse scale program is imperative to the orderly marketing of grain under the grain trade rules. Further, KGID estimates that over the past three years, they have issued certificates on an average of 132,683 cars of grain and earned an average of \$535,256 annually. Supervision of weight certification by the KGID weighmasters will meet the third party requirement of the grain trade rules and UGRSA, as well as provide KDA with compliance assurance.

In closing, KGFA and KFCA would also point out that the grain and agriculture input industries are somewhat unique relative to scales -- the market itself provides a built-in set of checks and balances since goods are bought and sold over the same scales. Consequently, any inaccuracy impacts the company in the same manner as the producer. Further, since most products are sold by weight and go to entities that also have scales, inaccuracies are quickly brought to light. This natural system of checks and balances is bolstered by the fact that nearly 80%<sup>2</sup> of the industry has only one large truck scale and therefore must buy and sell over that scale. Further, 98% of the industry reports they buy and sell over the same scale. Another unique fact about the grain, feed, fertilizer and agriculture chemical industry is that 71% of the firms have their scales check more than once per year as required by law. Normally, firms check their scales before each harvest. The average scale check period is every 7.65 months and if one examines those who only have their scale checked annually, it is apparent that they are in an area of the state that only has one harvest.

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<sup>2</sup> KGFA and KFCA conducted a statistically valid random sample of the industry to obtain the facts contained in this report.

The conclusions drawn from the demographic information outlined above are substantiated by the actual testing of large truck scales. The KDA tested 20 large truck scales within the industry and only one was out of tolerance – a 95% accuracy rate. The sample used in this test was randomly selected and reflected the demographics of the industry. It confirms that natural checks and balances within the grain, feed, fertilizer and agriculture chemical industry insure accurate scales.

If you have questions, please contact Jamie Clover Adams, Vice President Government Affairs at 913-234-0461.



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FRANCES KASTNER

March 7, 1996

HOUSE AGRICULTURE COMMITTEE

SUPPORTING SB 705

We appreciate the opportunity to present testimony before your committee today in support of SB 705.

Our membership consists of retailers, distributors, and manufacturers of food products. We participates in all the meetings which Secretary Devine held last fall and included representatives of the various industries involved in the Weights and Measures Program.

All of our concerns and comments were taken into consideration in the drafting of the language you have before you, and we are in support of it.

We sincerely hope you will recommend SB 705 favorably, and let the Secretary get on with correcting any problems within the Weights and Measures program.

*Don Snodgrass*  
Don Snodgrass  
Lobbyist, KFDA

*Frances Snodgrass*  
Frances Kastner, Director  
Governmental Affairs, KFDA

*House Agriculture  
Attachment 5  
3-7-96*