

Approved: 3-5-96
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Chairperson David Corbin at 10:00 a.m. on February 20, 1996 in Room 423-S of the Capitol.

All members were present except: Quorum was present.

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

Conferees appearing before the committee:
Allie Devine, Secretary, Kansas Department of Agriculture
Mary Jane Stalleman, Chief Counsel, Kansas Department of Agriculture

Others attending: See attached list

A motion was made by Senator Sallee to approve the minutes of February 14 as corrected. Senator Wisdom seconded the motion. Motion carried.

SB 705 - concerning weights and measures devices.

Chairperson Corbin called on Secretary Devine. Secretary Devine introduced Mary Jane Stalleman, Chief Counsel, from her department to explain the bill.

Mary Jane Stalleman explained the main provisions that the Secretary referenced and presented an outline of the main features of the bill (Attachment 1). She responded to questions.

Secretary Devine responded to questions regarding devices, and repair of devices when they have been discovered out of tolerance. She discussed getting the equipment they will need to see that the job gets done. She talked about the provisions to hire a manager for a new division for weights and measures, and why she was requesting that it be an unclassified position.

Hearing was closed on **SB 705**.

Chairperson Corbin called for action on the bill. Secretary Devine requested that it be delayed until they could prepare a technical amendment. Staff was directed to draft an amendment providing for the administrator of the Weights and Measures program to be an unclassified position.

SB 704 - concerning quality and quantity of petroleum products.

Secretary Devine's testimony from February 19 included her testimony on **SB 704**. She stated the program was a public operated program, with people contracted to carry out the program. The key to the legislation is an increase in the fuel cost per barrel on gasoline and would be extended to include diesel fuel. The bill has a technical amendment on page four. She discussed the dedication of the fees from the fuel program. **SB 704** contains a proviso for setting up this fee fund. She responded to questions on this section of the bill.

The hearing on **SB 704** will continue at the next meeting. The meeting adjourned at 11:00.

The next meeting is scheduled for February 20, 1996.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2 20 - 96

NAME	REPRESENTING
Greg Tjerman	KDOA
Carole Jordan	KDOA
Mary Jane Stattelman	KS Dept. of Ag
STEVE BARRICK	A.G.
BILL R. FULLER	Kansas Farm Bureau
TOM PALACE	KS OIL MARKETERS
Terry Piosta	Rep. 123 District
Julie Wriggitt	Earle
Ken Peterson	KS Petroleum Council
Diane Shumer	KS Coop Council
STEVE KEARNEY	KS OIL MARKETERS ASSN
Marty Vanier	KS Ag Alliance
Lestie Kaufman	Kansas Farm Bureau
DEBRA PLATT	KS DEPT. OF REVENUE
Martin Hoover	Hoover's Capitol Reports
Tom WHITAKER	KS MOTOR CARRIERS ASSN
DAVID B SCHLOSSER	PESTE MCGILL & ASSOC.
GAREN SWENSON	KDA
Jim Swan	Mid Am Lumber Bldg

STATE OF KANSAS

BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture
901 S. Kansas Avenue
Topeka, Kansas 66612-1280
(913) 296-3558
FAX: (913) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE

TESTIMONY

TO THE

SENATE AGRICULTURE COMMITTEE

by

Mary Jane Stattelman, Chief Counsel

Presented February 20, 1996

Re: Senate Bill Nos. 704 and 705

Good morning, Chairman Corbin 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 Senate Bills 704 and 705.

Yesterday, Allie Devine, Secretary of Agriculture gave an overview of Senate Bill 704 and Senate Bill 705. Today, I would like to briefly explain the main provisions that the Secretary referenced. Attached you will find an outline of the main features of these bills.

Thank you in advance for your time and attention to these matters. I will be glad to try and answer any questions you may have as we review the following outlines.

SB No. 705 – SCALES, VTM, PROPANE AND ADMINISTRATION

1. 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 4) 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.
2. Page 2 – 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.
3. Page 3 – Sec. 3 – cleanup language (from state sealer to secretary)
4. Page 3 – Sec. 4 – covered in the Handbooks referenced in Sec. 11
5. Page 3 – Sec. 5 – cleanup language (from state sealer to secretary)
6. Page 3 and 4 – Sec. 6 – cleanup language (state sealer to secretary)
7. Page 4 – Sec. 7, 8, and 9 – criminal statutes – cleanup to refer to current terminology of Class A nonperson misdemeanor. Strike the penalty language since the criminal statutes set out the range of penalties.
8. Page 5 and 6 – add the definition of service company and technical representative
9. Page 6 – Sec. 11 – adopts 1995 version of the NIST Handbooks – these are the basic standards that are being used by industry
10. Page 9 – Sec. 13 – authorizes the secretary to enter into contracts and exempts the contracts from the bid laws. This will allow the department to act in a quicker fashion to address the problems of the program and therefore get the program turned around faster.
11. Page 9 – Sec. 14 – cleanup language (board to secretary)
12. Page 12 – line 35 – 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.
13. Page 13 – line 7 – specifically prohibits service companies from tagging a device
14. Page 13 – Sec. 21 – line 15 – grants an authorized repair period to be up to 30 days as opposed to previously the repair period was 30 days whether that amount of time was needed or not.
15. Page 13 – Sec. 22 – cleanup language (definition of secretary includes "authorized representative"

16. Page 14 – Sec. 22 – line 3 – allows for an action to be filed in Shawnee county or where the device is located.
17. Page 14 – Sec. 23 – replaces the word "false" with the phrase "does not meet the tolerances and specifications required under this act."
18. Page 14 – Sec. 23 – outlines the unlawful acts
19. Page 18 – Sec. 27 – Service companies are required to notify the agency within time frames established by the secretary regarding the removal of tags and if they discover a device which cannot be repaired or serviced so to meet the tolerances and specifications required under this act.
20. Page 18 – Sec. 28 – This section applies to scales, lp and vtm
21. Page 19 – Sec. 29 – basically cleanup language, except for line 38 which states a service company will be void unless renewed prior to the expiration date.
22. Page 20 – Subsection (c) requires the technical representatives to be licensed and 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.
23. Page 23 – line 23 – 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.
24. The rest is cleanup and then the original transfer language of the head house scale program.
25. Effective date is upon publication in the Kansas Register.

SB 704 -FUELS

1. Page 1 - "New Section 1" - allows a gas pump owner to repair his own device. However if the state must come out to reinspect the device then the owner has to pay the states' expenses.
2. Page 1: Sec. 2. Civil penalty provision - allows for penalties of \$100 to \$5000. Subsection (b) requires the following to be taken into consideration - the extent of the harm caused, the nature and persistence of the violation, the length of the violation, any corrective action and any other relevant circumstances. The secretary shall adopt rules and regulations which set out a graduated penalty section.
3. Page 1 - line 40 - Subsection (c) allows that once a civil penalty has been assessed the KDA can enforce it as a judgement. This is the same as found in the KDHE statutes regarding adult care homes.
4. Page 2 - line 20 - Subsection (g) allows for amounts received pursuant to the consumer protection act to be deposited in the weights and measures fee fund - this was proposed by the AG's office.
5. Page 2 - line 25 - New Sec. 3 is the petroleum products inspection law (i.e. fuel quality)
6. Page 3 - line 13 - after the words "importer" add the word "exporter"
7. Page 3 - line 14 - after the word diesel strike the words "within this state" and add the words "including government sales"
8. Page 3 - line 15 - the fee is increased from \$.01 to \$.015 and the fee applies to gasoline and diesel.
9. Page 4 - line 4 - Sec. 6 - Subsection (c) allows the money collected to be used by KDA for fuel quantity and fuel quality
10. Page 4 - line 20 - Subsection (d) allows for the monies to be split between the weights and measures fee fund and petroleum inspection fee fund until the weights and measures fee fund reaches \$250,000. After the fund reaches \$250,000 all of the monies from the fee are to be credited to the petroleum inspection fee fund.
11. Page 4 - line 39 - Sec. 7 - provides for a violation of this act to be actionable under the consumer protection act.
12. Page 5 - line 2 - after the word "act. Add the statement " Any penalty recovered under the consumer protection act for violations of this section and amendments thereto or any rules and regulations adopted thereunder shall be remitted to the state treasurer, deposited in the state treasury and credited to the weights and measures fee fund.
13. Page 8 - subsection a(9) - line 35 - omit the section.

14. Page 8 – subsection a - line 42 – add the following as (12) and (13):
 - (12) to sell, use, remove, or otherwise dispose of, or fail to remove from the premises specified, any weighing or measuring device or package or commodity contrary to the terms of any order issued by the secretary;
 - (13) to violate any order issued by the secretary pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto; and

15. Page 9 - subsection (c) line 6 - the whole subsection should be stricken and insert the following language from New Section 2 (b) and (c):
 - (b) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; (4) any corrective actions taken; and (5) any and all relevant circumstances.
 - (c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weight and measuring device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

16. Page 9- line 32 - Sec. 16 – Fuel Quantity

17. Page 9 -line 35 - subsection (a) – definition of dispensing device – does not include vtm or propane because they are not part of the totally public program. These devices have been regulated in SB 705 as part of the random statistical program.

18. Page 10 – definition of a technical representative – the definition focuses on the individuals who certify the accuracy of the device not the laborer

19. Page 10 – line 18 - Sec. 17 – Service companies would receive a license to do business and pay a \$50 fee. This is not a new process or a new fee.

20. Page 11 – line 9 - Sec. 17 (c) – Requires the technical representatives to take an annual examination and attend continuing education seminars. The seminars do not have to be KDA seminars – but if they are an industry seminar the secretary would need to approve the seminar for the technical representative to get credit for attending. This section also authorizes the secretary to charge a fee to the attendees. The fee can only be enough to cover the necessary expenses incurred in providing the seminar.

21. Page 11 – Sec. 18 – only KDA or a city or county inspector can conduct annual tests on the dispensing devices

22. Page 12 - line 14 - The sentence starting with the words "The test" should be put back into the section and should read as follows: " The test weights and measures used by the ~~testing~~ service company shall have been approved and sealed by the ~~state sealer~~ secretary pursuant to K.S.A. 83-214 and amendments thereto, every 365 days. ~~within the 12 calendar months~~

~~preceding the date of the test.~~ Except at the option of the of the city or county which has an established department of public inspection of weights and measures, annual tests and inspections shall be at the expense of the owner or operator."

23. Page 12 – line 27 - Sec. 18(b) requires reports to be sent by the city or county or someone contracted by the secretary to perform the test to the secretary at least within 10 days after the test has been done. Also omits reference to the service companies since they will not be doing annual testing of these devices.
24. Page 13 – line 5 - Sec. 18(c) requires a service company who attempts to repair or service a device that cannot be truly repaired to report the device to the secretary.
25. Page 13 – line 19 - Sec. 18(d) requires the service companies and the owners to keep the records. This section also requires the records to be kept in a legible and accessible manner for a period of time as established by the secretary.
26. Page 14 – Sec. 20 – revocation, suspension or denial of a service company or technical representative's license when the company or person has violated any of the statutes or regulations, failed to perform work in a competent manner or has committed an unlawful act (K.S.A. 83-219)
27. Page 15 - Sec. 25 - effective date is upon publication in the statute book.