

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 17, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative David Haley - Excused
Representative Andrew Howell - Excused
Representative Rick Rehorn - Excused
Representative Clark Shultz - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Derek Schmidt, Legislative Liaison & Special Counsel, Office of the Governor
Rex Beasley, Assistant Attorney General, Consumer Protection Antitrust Division
Allie Devine, Kansas Livestock Association
Leslie Kaufman, Kansas Farm Bureau

Hearing on **HB 2855 – restraint of trade, penalties**, was opened.

Derek Schmidt, Legislative Liaison & Special Counsel, Office of the Governor, appeared on behalf of the Governor. He informed the committee that antitrust standards are already in current law but the enforcement mechanisms and remedies are inadequate. The proposed bill would strengthen those inadequacies making Kansas' antitrust laws useful for the 21st Century. (Attachment 1)

Rex Beasley, Assistant Attorney General, Consumer Protection Antitrust Division, appeared in support of the proposed bill. He offered several amendments of which the most controversial one suggested that the Attorney General's office be able to investigate a company when it is believed that an antitrust law has been or is about to be violated. (Attachment 2)

Allie Devine, Kansas Livestock Association, supported the updated provisions because it simply modernizes many terms and procedures used today. She opposed the amendments suggested by the Attorney General's office. (Attachment 3)

Leslie Kaufman, Kansas Farm Bureau, also appeared in support of the concepts in the proposed bill but hoped that the suggested change by the Attorney General's office would not give that Office the ability to abuse its power. (Attachment 4)

Hearing on **HB 2855** was closed.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for February 21, 2000.

**Testimony of Derek Schmidt
Legislative Liaison and Special Counsel
Office of the Governor**

**Presented To House Judiciary Committee
February 17, 2000**

In Support of HB 2855

Chairman O'Neal and members of the Committee, thank you for the opportunity to testify today in support of HB 2855. My name is Derek Schmidt, and I serve in the Office of the Governor as Legislative Liaison and Special Counsel.

As you know, there has been considerable discussion this year of issues relating to antitrust and similar types of regulation of the free market. There are other proposals pending in the Legislature to impose new standards that certain businesses must meet if they operate in Kansas. For example, there is legislation pending that would effectively prohibit packers from owning cattle. There is other legislation pending that would replicate certain provisions of federal law, such as the Packers and Stockyards Act, and enact them in state law. And there are still other proposals that would rewrite Kansas antitrust law in an attempt to impose new standards of conduct for many large businesses operating in our state.

Each of these proposals reflects a broader concern in our society about economic consolidation and how the power of large corporations can affect small businesses, including but not limited to small agricultural producers. There is an anxiety among some on Main Street, and among some on the farm, that we all are aware of.

Mr. Chairman, the challenge for this Legislature, and for the State of Kansas, is to ensure that our reaction to that anxiety is thoughtful, balanced and appropriate. We must be particularly cautious to ensure that any changes we make in the law of the State of Kansas do not harm our people through the law of unintended consequences.

No law of this State can change the fact that we all live in a dynamic global economy, which contains forces beyond the control of any one country, much less the control of any one or any few states. There is great opportunity for Kansans as we develop new markets around the world that support our jobs here at home. We must remember that although some Kansans are struggling under competition from large corporations, other Kansans benefit greatly from the presence in our state of the aircraft industry, the beef packing industry, the telecommunications industry, the engineering services industry, the e-commerce merchandising industry, and many other industries that rely on their corporate and economic strength to compete successfully in global markets. We must ensure that any actions we take do not make Kansas a hostile environment for these and similar businesses.

To seek the right balance among our State's many interests and certain concerns about the global economy, world markets, and corporate power, Governor Graves has proposed HB 2855. This proposal would significantly revise, update and strengthen the antitrust provisions that currently are part of Kansas law. In a phrase, the Governor is proposing to make our 19th Century antitrust laws relevant and useful in our 21st Century economy.

In crafting this proposal, the administration was guided by five principles:

- First, we should ensure that when market abuses and illegal acts occur – when there is collusion, conspiracy, or other unlawful action to manipulate the market to the detriment of consumers or of competitors – then there is an effective legal mechanism in place by which the State can act to protect its citizens.
- Second, we should not single-out specific industries for additional market regulation. Our antitrust laws should be generally applicable, to the maximum extent possible.
- Third, Kansas antitrust law should not needlessly duplicate federal efforts. Kansas taxpayers already pay for significant antitrust protection from federal agencies that include the U.S. Department of Justice, the Federal Trade Commission, and the U.S. Department of Agriculture. We should not ask the same taxpayers to pay again for redundant efforts by the State of Kansas – particularly when federal enforcement is more appropriate and more effective in opposing most illegal, anti-competitive practices.
- Fourth, we should, as a matter of policy, seek to minimize State intrusion into the marketplace. We must take care to ensure that State action is narrowly tailored to oppose illegal acts of market manipulation, not merely used as a method for the Legislature, the Governor, the Attorney General, or any other official or subdivision of the State to impose its political will or to determine market outcomes.
- Fifth, as the Governor said in his State-of-the-State address, “We cannot spend money we do not have.” The administration has not proposed adding State General Fund money to expand antitrust enforcement. That is a budgetary decision made in light of other priorities, including programs to help the frail elderly, K-12 and Regents education, and others.

Guided by those five principles, we began the crafting of HB 2855 by reviewing the current antitrust law that is on the books in Kansas. The administration believes the *standards* established in current law are sufficient to prevent illegal market manipulation. For example:

- It is already illegal in this State “to create or carry out restrictions in trade or commerce. . .or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.” K.S.A. 50-101.
- It is illegal in this State “to prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities...” K.S.A. 50-101.
- It is illegal in this State to fix prices. K.S.A. 50-101.
- It is illegal in this State to collude to control supplies. K.S.A. 50-101.
- It is illegal in this State to agree or arrange to “...advance, reduce or control the price or the cost to the producer or to the consumer” of certain articles imported into Kansas or grown in Kansas.” K.S.A. 50-112.

- It is illegal in this State to make any agreement by which “any shipper of seeds, grains, hay or livestock is defrauded out of any portion of the net weight of any consignment of grain, seeds, hay, or livestock...” K.S.A. 50-131.
- It is illegal in this State to conspire to monopolize any line of business. K.S.A. 50-132.
- It is illegal in this State to conspire “for the purpose of preventing the producer of grain, seeds or livestock or hay, or the local buyer thereof, from shipping or marketing the same without the agency of any third person, firm or corporation...” K.S.A. 50-132.
- It is illegal in this State to discriminate in commodity prices “between the different sections, communities, or cities of this state” for the purpose of destroying competition. K.S.A. 50-149.

In short, Mr. Chairman, antitrust activities are already declared by law to be illegal in this state.

At the same time, it became apparent to us that although the *standards* in current law are sufficient, the enforcement mechanisms, the remedies, and certain other provisions of current law are woefully inadequate. Current Kansas antitrust law is best described as a “hodgepodge” of specific provisions that were enacted over a period of years. The earliest portion of the law dates from 1889 (See, e.g., K.S.A. 50-112), and most of the law has not been updated since 1923. Frequently, new provisions were piled atop older provisions without reconciling the two. The result is a statute that contains many antiquated, archaic, ill-coordinated and burdensome provisions, including but not limited to the following:

- Any Kansas corporation found in violation of Kansas antitrust law automatically forfeits its charter. Non-Kansas corporations face no such mandatory forfeiture. K.S.A. 50-103.
- If the attorney general or any county attorney becomes aware of any violation of Kansas antitrust law but does not prosecute the violation, the prosecuting attorney forfeits his or her office and shall be fined \$100 to \$1,000. K.S.A. 50-109. If it is a *county attorney* who fails to prosecute, the county attorney may also face a jail sentence of at least ten (10) but not more than ninety (90) days. K.S.A. 50-118.
- Peace officers have a specific duty to report violations of this act, and any failure results in a \$100 to \$500 fine and forfeiture of office. K.S.A. 50-119.
- If any other state or county official gains knowledge of any violation of this act, and fails to report it to the appropriate prosecuting attorney along with the names of witnesses to the violation, that official forfeits his office and faces a fine of \$100 to \$1,000. K.S.A. 50-109.
- The attorney general can compel testimony to investigate violations of this act only by conducting an “inquisition,” which requires the immunizing of the witness prior to gaining the testimony. K.S.A. 50-153.

Therefore, the proposed HB 2855 retains the *standards* established in current law but comprehensively rewrites, updates and modernizes other provisions of the law now on the books. Its key changes are as follows:

- Gives the attorney general modern investigative powers, including administrative subpoena power, to replace the inquisition authorities in current law. Inquisition powers, which require the enforcing attorney to immunize the witness before taking testimony, are of little or no use in antitrust enforcement.
- Allows Courts to impose a civil penalty up to \$5,000.00 for each day a violation of this statute occurs. This figure mirrors the civil penalties available in the Kansas Consumer Protection Act and is more appropriate than the lower penalties in current law, which range from \$100 to \$1,000 in various parts of the current statute. HB 2855 also clarifies that the penalty can be imposed, cumulatively, for each day a violation occurs.
- Creates explicit authority for the Attorney General to recover the state's investigation costs in successful litigation.
- Gives the attorney general and the Court a "menu" of remedies available for tailoring an appropriate remedy after liability is found. This is in contrast to current law, which contains a more limited range of remedies and which makes certain remedies, such as the forfeiture of a corporate charter, mandatory in certain circumstances.
- Permits Kansas courts to exercise jurisdiction over nonresident entities that violate this statute to the maximum extent allowed by the United States Constitution. We should make absolutely clear the Legislature's intent that persons or entities that violate this act in Kansas are subject to the jurisdiction of Kansas courts to the maximum extent allowed by due process.
- Concentrates all enforcement power in the attorney general rather than in county and district attorneys. The reality is that local prosecutors are not spending time and resources prosecuting complex antitrust cases – and they are not likely to. To establish certainty, we should make clear that to the extent the State of Kansas is involved in antitrust litigation, the attorney general will be the state's litigator.
- Permits enforcement actions to be filed in Shawnee County District Court. This makes sense in connection with consolidation of enforcement authority in the attorney general.
- Consolidates the "hodgepodge" provisions of current law, as set forth in Article 1 of Chapter 50, into a single statute called the Kansas Restraint of Trade Act. This consolidation makes clear that all state antitrust actions are governed by one uniform set of procedural rules, one uniform set of available remedies, and one uniform set of investigative powers.
- Makes the entire statute civil and repeal the miscellaneous criminal penalties in the current law. There has not been a criminal antitrust case in Kansas in recent memory, and there is not likely to be one in the future. Almost all of the criminal penalties in current law are misdemeanors. The reality is that antitrust violations that rise to the level of criminal activity are likely to attract the attention of federal law enforcement, which has much more substantial criminal penalties available.
- Puts all enforcement litigation under the Code of Civil Procedure. Current law, much of which was enacted prior to the establishment of a uniform Code of Civil Procedure, contains an eclectic mix of procedures for litigating various violations. HB 2855 would put all antitrust litigation under modern process.

- Repeals 32 outdated and unused sections in current law.
- Requires the attorney general to report annually on her antitrust investigations and enforcement activities as part of her currently required annual report on consumer protection activities.

The administration believes this modernization of Kansas antitrust law is the proper, balanced approach to this issue. We look forward to working with the Committee on this matter.

Thank you.



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699

CONSUMER HOTLINE
1-800-432-2310

Testimony of
Rex G. Beasley, Assistant Attorney General
Consumer Protection/Antitrust Division
Office of Attorney General Carla J. Stovall
Before the House Committee on Judiciary
February 17, 2000
House Bill 2855

Chairperson O'Neal and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall to testify in support of House Bill 2855. My name is Rex Beasley, and I am the Assistant Attorney General assigned to handle the antitrust matters for the Consumer Protection/Antitrust Division of the Attorney General's office.

Antitrust laws are not anti-business. To the contrary, by prohibiting certain conduct that restrains trade and unfair methods of competition antitrust laws are pro-business. The Attorney General is pleased to see that the Governor has taken the initiative in proposing much needed modifications to the antitrust laws of Kansas.

In Kansas, the long term adverse economic effects of restraints of trade were recognized in the late nineteenth century. Kansas had the foresight to enact its first restraint of trade laws before Congress enacted the Sherman Antitrust Act of 1890. Our current antitrust laws contain fundamental principles designed to protect against restraints of trade, provide procedures for enforcing those principles and remedies for violations. The fundamental principles should not be changed, but some of the procedures established for enforcement and the remedies are outdated and in need of modernization. We fully support the Governor's proposal, but as discussed below, would offer some amendments to the bill.

House Bill 2855 adds three new sections (New Section 1, New Section 2, and New Section 3) and provides that article one of chapter 50 of the Kansas Statutes Annotated and sections 1 through 3, and amendments thereto, may be cited as the Kansas restraint of trade act. Kansas antitrust laws, and the authority of the Attorney General to enforce them are scattered throughout the various articles in chapters 50 and 75 of the Kansas Statutes Annotated. House Bill 2855 appears to be an attempt to bring those all together under article 1 of chapter 50 of the Kansas Statutes

House Judiciary
2-17-2000
Attachment 2

Annotated. Accordingly two isolated antitrust provisions found in K.S.A. §50-801 and K.S.A. §75-713 should be moved into article 1 of chapter 50 of the Kansas Statutes Annotated. We didn't provide a balloon for this proposal, but believe the revisor could assist in this regard.

In order to effectively enforce our antitrust laws the Attorney General needs the authority to properly investigate anti-competitive conduct. House Bill 2855 establishes modern investigative authority more in line with that available to Attorneys General in other states and clarifies the enforcement procedure. Although the bill reaffirms the Attorney General's current authority to subpoena witnesses and matter, the inclusion of investigative authority to propound, and require answers to, written questions could result in a savings of time and money. This is the reason we have proposed an amendment at page 7, line 4, on our attached balloon amendments.

We also propose a minor amendment at page 6, line 43, where the bill currently proposes amendments to K.S.A. §50-153 by addressing the authority of the Attorney General to investigate whenever there is reason to believe that the act has already been violated. The introductory language reads " Whenever the attorney general has reason to believe that any provision of this act has been violated, the attorney general, any deputy attorney general, or assistant attorney general, may:" (emphasis added). In that regard, the proposed change contained in House Bill 2855 is similar to the existing language in the statute. Unfortunately, neither the current language nor House Bill 2855 address the need of the Attorney General to investigate the potential anti-competitive effect of actions or conduct which have been announced but not yet implemented. The bill does, however, authorize the Attorney General to seek temporary restraining orders. One of the stated purposes of temporary restraining orders, as provided in K.S.A. §60-902, is to stop the commission or continuance of some act. Accordingly the bill grants the authority to seek a restraining order to prevent an act which would substantially lessen competition, or tend to create a monopoly, but grants authority to investigate only after the act has been accomplished. We would therefore ask that the language in our balloon amendment be added to page 6, line 43, to state: "(a) Whenever the attorney general has reason to believe that any provision of this act has been, *is, or is about to be violated*, the attorney general, any deputy attorney general, or assistant attorney general, may:"

We agree that the civil penalty under current law is outdated and needs to be increased. Current law in K.S.A. §50-145 provides for a mandatory civil forfeiture of \$100 for each and every day an antitrust violation is committed or continued. House Bill 2855 provides in New Section 3 for a civil penalty of not more than \$5,000 for each day a violation has occurred. We believe a minimum mandatory forfeiture or penalty of at least \$100 per day should be included in the bill as a deterrent, especially since the bill will eliminate the criminal nature of violations of the law. Our proposal at page 1, line 28 of our attached balloon amendments, would therefore include a mandatory minimum penalty of \$100 per day.

House Bill 2855 removes county and district attorneys from antitrust enforcement and makes the Attorney General the sole public official responsible for enforcing antitrust violations. While the Attorney General is willing to accept new responsibilities, those new responsibilities coupled with the public's growing concern and demand for greater antitrust enforcement will create a further

strain on the already limited resources currently available to the Attorney General for antitrust enforcement, and underscore the need for additional resources to protect the public from damages caused by illegal conduct which restrains trade.

As you may know, the main problem our office has in investigating antitrust issues is the lack of resources. There is, however, an avenue to give the Attorney General's efforts to protect the public from illegal restraints of trade the opportunity to become self-sufficient. K.S.A. §75-715 provides for a special revenue fund into which moneys recovered by the Attorney General on behalf of the state for violation of any federal or state antitrust law or laws is deposited. Pursuant to K.S.A. §75-716 the money is for the payment of any expense incurred by the Attorney General in the prosecution of antitrust actions. Ten percent of the money recovered in antitrust actions goes into the fund; but only temporarily. K.S.A. §75-716(b) cleans out that fund at the end of each fiscal year. If that provision could be eliminated it would greatly enhance the ability to enforce the antitrust laws of this state and create the opportunity to do so without the need for public funding. Simply stated, those choosing to engage in illegal conduct in violation of the antitrust laws should pay for the enforcement of those laws. This concept is currently utilized successfully in other states. We have provided a proposed balloon amendment to accomplish this result at page 7, line 3. This proposal is currently being considered by the Senate in Senate Bill 587.

Thank you again for the opportunity to provide information on this very important topic. I would be happy to respond to any questions you may have on these issues.

HOUSE BILL No. 2855

By Committee on Judiciary

2-3

2-4

9 AN ACT concerning the restraint of trade; amending K.S.A. 50-103, 50-
10 109, 50-110, 50-131, 50-132, 50-133, 50-137, 50-139 and 50-153 and
11 repealing the existing sections; also repealing K.S.A. 50-104, 50-105,
12 50-106, 50-107, 50-114, 50-118, 50-119, 50-121, 50-122, 50-123, 50-
13 124, 50-125 and 50-126, 50-127, 50-128, 50-129, 50-130, 50-134, 50-
14 138, 50-140, 50-141, 50-142, 50-143, 50-144, 50-145, 50-146, 50-150,
15 50-151, 50-152, 50-154, 50-155 and 50-156.

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 New Section 1. The provisions of article 1 of chapter 50 of the Kan-
19 sas Statutes Annotated, and amendments thereto, and the provisions of
20 sections 1 through 3, and amendments thereto, may be cited as the Kansas
21 restraint of trade act.

22 New Sec. 2. The attorney general may conduct research, hold public
23 hearings, make inquiries and publish studies relating to antitrust, monop-
24 olies, combinations and other subjects relating to restraint of trade.

25 New Sec. 3. (a) The commission of any act or practice declared to
26 be a violation of the Kansas restraint of trade act shall render the violator
27 liable to the state for the payment of a civil penalty in a sum set by the
28 court of not ~~more than \$5,000 for each day such violation shall have~~ *less than \$100 nor*
29 occurred.

30 (b) Any person who willfully violates the terms of any court order
31 issued pursuant to the Kansas restraint of trade act shall forfeit and pay
32 a civil penalty of not more than \$10,000 per violation, in addition to other
33 penalties that may be imposed by the court, as the court shall deem
34 necessary and proper. For the purposes of this section, the district court
35 issuing an order shall retain jurisdiction, and in such cases, the attorney
36 general may petition for recovery of civil penalties.

37 Sec. 4. K.S.A. 50-103 is hereby amended to read as follows: 50-103.
38 ~~Any corporation holding a charter under the laws of the state of Kansas~~
39 ~~which shall violate any of the provisions of this act shall thereby forfeit~~
40 ~~its charter and franchise, and its corporate existence shall cease and de-~~
41 ~~termine, and any stockholder, director, officer, agent, representative or~~
42 ~~consignee of any such corporations shall be subject to the penalties herein~~
43 ~~prescribed.~~ (a) *The attorney general may bring an action:*

1 (1) To obtain a declaratory judgment that an act or practice violates
2 this act;

3 (2) to obtain a temporary restraining order prohibiting violations of
4 this act;

5 (3) to enjoin violations of this act;

6 (4) to recover reasonable expenses and investigation fees;

7 (5) to obtain civil penalties as authorized by this act;

8 (6) to forfeit the charter and for the dissolution of the corporate ex-
9 istence of any corporation holding a charter under the laws of the state
0 of Kansas;

11 (7) to enjoin any person, company or corporation within or without
12 this state, which has violated or is violating this act, and their officers,
13 agents, representatives or consignees, from doing business within this
14 state, either directly or indirectly;

15 (8) to recover actual damages on behalf of any person or persons by
16 reason of violations of this act; or

17 (9) to void any contract or agreement in violation of any of the pro-
18 visions of this act.

19 (b) In any action brought by the attorney general, the court may
20 without requiring bond of the attorney general:

21 (1) Make such orders or judgments as may be necessary to prevent
22 violations of this act;

23 (2) make such orders or judgments as may be necessary to enforce
24 any remedy available to the attorney general; or

25 (3) grant other appropriate relief.

26 Sec. 5. K.S.A. 50-109 is hereby amended to read as follows: 50-109.

27 ~~It shall be the duty of the attorney general of the state and the county~~
28 ~~attorneys in their respective counties to diligently prosecute any and all~~
29 ~~persons violating any of the provisions of this act, and it shall be the duty~~
30 ~~of all state and county officials having notice and knowledge of any vio-~~
31 ~~lation of the provisions of this act to notify the county attorney of their~~
32 ~~respective counties and the attorney general of the state of the fact of~~
33 ~~such violation, and to furnish them with the names of any witnesses by~~
34 ~~whom such violations can be proved. If any such officer or officers shall~~
35 ~~fail to comply with the provisions of this section the officer or officers~~
36 ~~shall upon conviction be fined in any sum not less than one hundred~~
37 ~~dollars nor more than one thousand dollars, and such conviction shall be~~
38 ~~a forfeiture of the office held by such person, and the court before whom~~
39 ~~such conviction is had shall, in addition to the imposition of the fine~~
40 ~~aforsaid, order and adjudge the forfeiture of his or her said office. The~~
41 ~~attorney general shall:~~

42 (a) Enforce this act throughout the state;

3 (b) cooperate with state and local officials, officials of other states and

1 officials of the federal government in the administration of comparabl
2 statutes;

3 (c) maintain a public file of final judgments rendered under this ac
4 that have been either reported officially or made available for public dis-
5 semination under subsection (a)(3) of K.S.A. 50-630, and amendments
6 thereto, and of consent judgments; and

7 (d) include in the report required by subsection (a)(6) of K.S.A. 50-
8 628, and amendments thereto, a statement of the investigatory and en-
9 forcement procedures and policies of the attorney general's office, of the
10 number of investigations and enforcement proceedings instituted and of
11 their disposition, and of the other activities of the office and of other
12 persons to carry out the purposes of this act.

13 Sec. 6. K.S.A. 50-110 is hereby amended to read as follows: 50-110.
14 The several district courts of this state and the judges thereof shall have
15 jurisdiction, and it shall be their duty, upon good cause shown and upon
16 written application of the county attorney or the attorney general, to cause
17 to be issued by the clerk of said court subpoenas for such witnesses as
18 may be named in the application of a county attorney or the attorney
19 general, and to cause the same to be served by the sheriff of the county
20 where such subpoena is issued, and such witnesses shall be compelled to
21 appear before such court or judge at the time and place set forth in the
22 subpoena, and shall be compelled to testify as to any knowledge they may
23 have of the violations of any of the provisions of this act, and any witness
24 who fails or refuses to attend and testify shall be punished as for con-
25 tempt, as provided by law.

26 —Any person subpoenaed and examined shall not be liable to criminal
27 prosecution for any violation of this act about which such person may
28 testify. Neither shall the evidence of any such witness be used against
29 him or her in any criminal proceeding. The evidence of all witnesses so
30 subpoenaed shall be taken down by the reporter of said court, and shall
31 be transcribed and placed in the hands of the county attorney or the
32 attorney general, and he or she shall, in the proper courts, at once pros-
33 ecute such violator or violators of this act as the testimony so taken shall
34 disclose. Witnesses subpoenaed as provided for in this section shall be
35 compelled to attend from any county in the state. (a) Jurisdiction. For
36 the purpose of enforcing this act, the courts of this state shall have power
37 to exercise jurisdiction over persons, corporations and other entities to
38 the maximum extent permitted by the constitution of the United States.

39 (b) Venue. Every action pursuant to this act shall be brought in the
40 district court of any county in which there occurred an act or practice
41 declared to be a violation of this act or in the district court of Shawnee
42 county.

43 Sec. 7. K.S.A. 50-131 is hereby amended to read as follows: 50-131.

1 ~~If any~~ No person, company or corporation doing business in Kansas shall
2 make any agreement, expressed or implied, or by any understanding or
3 combination with any person, company or corporation within or without
4 the state, by which any shipper of seeds, grains, hay or livestock is de-
5 frauded out of any portion of the net weight of any consignment of grain,
6 seeds, hay, or livestock; All such agreements or combinations are hereby
7 declared to be in restraint of trade, ~~and any such person, company or~~
8 ~~corporation shall be deemed guilty of a misdemeanor, and upon convic-~~
9 ~~tion shall be fined in the sum of not less than one hundred dollars and~~
10 ~~not exceeding one thousand dollars for each offense.~~

11 Sec. 8. K.S.A. 50-132 is hereby amended to read as follows: 50-132.
12 ~~Every~~ No person, servant, agent or employee of any firm or corporation
13 doing business within the state of Kansas ~~that~~ shall conspire or combine
14 with any other persons, firm or corporation within or without the state
15 for the purpose of monopolizing any line of business, or shall conspire or
16 combine for the purpose of preventing the producer of grain, seeds or
17 livestock or hay, or the local buyer thereof, from shipping or marketing
18 the same without the agency of any third person, firm or corporation;
19 ~~shall be deemed guilty of a misdemeanor, and on conviction shall be fined~~
20 ~~in a sum not less than one thousand dollars and not to exceed five thou-~~
21 ~~sand dollars for each offense.~~

22 Sec. 9. K.S.A. 50-133 is hereby amended to read as follows: 50-133.
23 ~~Any~~ No person ~~who shall~~, as agent or employee of any person, firm or
24 corporation, *shall* enter into an agreement, expressed or implied, by
25 which it is stipulated that grain, seeds or hay shall not be shipped by the
26 producer or local buyer unless accompanied with warehouse receipts or
27 that the same shall in any manner be under the control of any warehouse-
28 man or agent as a condition precedent to the marketing of ~~said such~~ grain;
29 All such agreements shall be deemed and are hereby declared unlawful
30 and in restraint of trade, ~~and the person entering into such agreement or~~
31 ~~combination shall be deemed guilty of a misdemeanor, and upon convic-~~
32 ~~tion shall be fined in a sum not less than one thousand dollars and not~~
33 ~~more than five thousand dollars, or by imprisonment in the county jail~~
34 ~~not less than ninety days and not to exceed one year, or by both such fine~~
35 ~~and imprisonment, at the discretion of the court.~~

36 Sec. 10. K.S.A. 50-137 is hereby amended to read as follows: 50-137.
37 In case any grain dealer or dealers, partnership, company, corporation or
38 association of grain dealers, or any person or persons, partnership, com-
39 pany, corporation or association subject to the provisions of this act, shall
40 do or cause to be done or permit to be done any act, matter or thing in
41 this act prohibited or declared to be unlawful, or shall omit to do any act,
42 matter or thing in this act required to be done, such grain dealer or grain
43 dealers, partnership, company, corporation or association of grain dealers,

1 or any other person or persons, partnership, company, corporation or
2 association, shall be liable to the person or persons injured thereby to the
3 full amount of damages sustained in consequence of any such violation
4 of the provisions of this act, together with a reasonable ~~counsel or attor-~~
5 ~~ney's fee attorney fees~~, to be fixed by the court in every case of recovery,
6 which ~~attorney's fee attorney fees~~ shall be taxed and collected as a part
7 of the costs in the case, and in any such action brought for the recovery
8 of damages the court before whom the same shall be pending may compel
9 any grain dealer or grain dealers, partnership, company, corporation or
10 association of grain dealers, or any person or persons, partnership, com-
11 pany, corporation or association subject to the provisions of this act, or
12 any director, officer, receiver, trustee, agent, employee, or clerk of them
13 or either of them, defendant in such suit, to attend, appear and testify in
14 such case, and may compel the production of the books and papers of
15 such grain dealer or grain dealers, partnership, company, corporation or
16 association of grain dealers, or any other person or persons, partnership,
17 company, corporation or association party to such suit. The claim that any
18 such testimony or evidence may tend to criminate the person giving such
19 evidence shall not excuse such witness from testifying, but such evidence
20 or testimony shall not be used against such person in the trial of any
21 criminal proceeding.

22 Sec. 11. K.S.A. 50-139 is hereby amended to read as follows: 50-139.
23 In all civil actions brought in the supreme court or in the district courts
24 of this state for the purpose of enforcing the provisions of Laws 1887,
25 chapter 175, Laws 1889, chapter 257, Laws 1897, chapter 265, Laws 1899,
26 chapter 293, Laws 1899, chapter 77, as amended by Laws 1900, chapter
27 121, whether such suits are for the purpose of ousting corporations, firms
28 or associations from transacting business in the state through or in pur-
29 suance of unlawful agreements and combinations in restraint of trade or
30 to enjoin such unlawful combinations and agreements, the said court may
31 on motion of either party require the opposing litigant to produce books
32 or writings in his or her possession or under his or her power which may
33 contain evidence pertinent to the issue, and may require the party to
34 answer interrogatories filed in court with said motion for the discovery of
35 facts material to the support or defense of the action, and if either of said
36 parties fail to comply with such order of the court or judge, the court
37 may, on motion, give judgment by default. *All civil actions brought to*
38 *enforce this act shall be brought pursuant to chapter 60 of the Kansas*
39 *Statutes Annotated, and amendments thereto.*

40 Sec. 12. K.S.A. 50-153 is hereby amended to read as follows: 50-153.
41 ~~Whenever the attorney general or assistant attorney general shall have~~
42 ~~knowledge of any violation of any of the provisions of any of the laws of~~
43 ~~the state of Kansas relating to trusts, monopolies, combinations in re-~~

2

1 ~~straint of trade, unlawful discrimination, unfair trade or the unlawful buy-~~
2 ~~ing, selling and dealing in commodities without the intention of delivering~~
3 ~~the same, the attorney general may for the purpose of investigating and~~
4 ~~inquiring into such violations issue subpoenas for such persons as he or~~
5 ~~she shall believe to have any information or knowledge of any such vio-~~
6 ~~lation to appear before him or her at any time and place within the state~~
7 ~~of Kansas to be designated in the subpoena, then and there to testify~~
8 ~~concerning any violation of any of the provisions of said laws; or said~~
9 ~~attorney general or assistant attorney general may file with the judge of~~
10 ~~a court of competent jurisdiction a written statement, signed by said at-~~
11 ~~torney general or assistant attorney general, alleging any violations of any~~
12 ~~of said laws, and such judge shall then, at the request of the said attorney~~
13 ~~general or assistant attorney general, issue subpoenas for witnesses, com-~~
14 ~~manding such witnesses to be and appear before such judge at the time~~
15 ~~designated in such subpoena to testify concerning any violation of the~~
16 ~~provisions of said laws:~~

17 ~~—Such subpoenas may direct witnesses to bring with them any papers,~~
18 ~~documents and books that may be considered material, and may be served~~
19 ~~by any person and shall be served and returned to said attorney general,~~
20 ~~assistant attorney general or judge, as the case may be, in the same man-~~
21 ~~ner that subpoenas are served and returned under the code of civil pro-~~
22 ~~cedure; but said subpoenas may be returned by mail to the attorney gen-~~
23 ~~eral or assistant attorney general when served in a county other than that~~
24 ~~in which the same is returnable. Each witness shall be sworn to make~~
25 ~~true answers to all questions put to him or her touching the matter under~~
26 ~~investigation and the testimony of each witness may be reduced to writing~~
27 ~~and when reduced to writing shall be signed by the witness. The attorney~~
28 ~~general or assistant attorney general or judge shall be empowered to ad-~~
29 ~~minister oaths and affirmations to such witnesses:~~

30 ~~—Any disobedience to the subpoena of the attorney general or assistant~~
31 ~~attorney general or any refusal to be sworn as a witness or to sign the~~
32 ~~testimony given or to answer any proper question propounded by the~~
33 ~~attorney general or assistant attorney general, in any such inquiry before~~
34 ~~said attorney general or assistant attorney general, shall be a misdemeanor~~
35 ~~and shall be punished by a fine of not more than three hundred dollars~~
36 ~~(\$300) or by imprisonment in the county jail for not more than ninety~~
37 ~~(90) days or by both such fine and imprisonment.~~

38 ~~—Adjournments of any such inquiries may be made from time to time~~
39 ~~and such judges may punish any witness for contempt for or on account~~
40 ~~of any refusal to be sworn or to answer questions as a witness or to sign~~
41 ~~his or her testimony, and the attendance of witnesses may be compelled~~
42 ~~by attachment by such judge: (a) Whenever the attorney general has rea-~~
43 ~~son to believe that any provision of this act has been violated, the attorney~~

_____ , is, or is about to be

1 general, or any deputy attorney general or assistant attorney general,
2 may:

3 (1) Administer oaths and affirmations;

4 (2) subpoena witnesses or matter; _____, propound written questions to be answered under oath;

5 (3) take testimony under oath;

6 (4) examine or cause to be examined any documentary material of
7 whatever nature relevant to such alleged violations; and

8 (5) collect evidence.

9 (b) If matter that the attorney general subpoenas is located outside
10 this state, the person subpoenaed may either make it available to the
11 attorney general at a convenient location within the state or pay the rea-
12 sonable and necessary expenses for the attorney general or the attorney
13 general's representative to examine the matter at the place where it is
14 located. The attorney general may designate representatives, including
15 officials of the state in which the matter is located, to inspect the matter
16 on the attorney general's behalf, and the attorney general may respond
17 to similar requests from officials of other states.

18 (c) Service by the attorney general of any subpoena shall be made by:

19 (1) The mailing thereof by certified mail to the last known place of
20 business, residence or abode within or without this state; or

21 (2) in the manner provided in the code of civil procedure as if a pe-
22 tition has been filed.

23 (d) The attorney general may request that an individual who refuses
24 to comply with a subpoena, on the ground that testimony or matter may
25 incriminate the individual, be ordered by the court to provide the testi-
26 mony or matter. Except in a prosecution for perjury, an individual who
27 complies with a court order to provide testimony or matter after asserting
28 a privilege against self-incrimination to which the individual is entitled
29 by law, may not be subjected to a criminal proceeding or to a civil penalty
30 to the transaction concerning which the individual is required to testify
31 or produce relevant matter.

32 (e) If any person willfully fails or refuses to obey any subpoena issued
33 by the attorney general pursuant to this act, the attorney general, after
34 notice, may apply to the district court, and, after a hearing thereon, the
35 district court may issue an order:

36 (1) Granting injunctive relief restraining the sale or advertisement of
37 any merchandise or services by such persons;

38 (2) vacating, annulling or suspending the corporate charter of a cor-
39 poration created by or under the laws of this state or revoking or sus-
40 pending the certificate of authority to do business in this state of a foreign
41 corporation or revoking or suspending any other licenses, permits or cer-
42 tificates issued pursuant to law to the person which are used to further
43 the allegedly unlawful practice; or.

1 (3) *granting such other relief as may be required, until the person*
2 *obeys the subpoena.*

3 ~~Sec. 13.~~ K.S.A. 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-
4 110, 50-114, 50-118, 50-119, 50-121, 50-122, 50-123, 50-124, 50-125, 50-
126, 50-127, 50-128, 50-129, 50-130, 50-131, 50-132, 50-133, 50-134, 50-
137, 50-138, 50-139, 50-140, 50-141, 50-142, 50-143, 50-144, 50-145,
50-146, 50-150, 50-151, 50-152, 50-153, 50-154, 50-155 and 50-156 are
8 hereby repealed.

9 ~~Sec. 14.~~ This act shall take effect and be in force from and after its
10 publication in the statute book.

New Section 13. *K.S.A. 75-716 is hereby amended to read as follows: 75*
716. (a) Except as otherwise provided by law, any moneys in the attorney general's
antitrust special revenue fund shall be disbursed by the director of accounts and
reports in the manner provided by law, upon order of the attorney general, for the
payment of any expense incurred by the attorney general in the prosecution of antitrust
actions. Such expenses shall include, but not be limited to, professional and witness
fees, deposition costs, investigation, travel and subsistence, or any other expenses
reasonably related to enforcement of such laws, whether incurred pursuant to the
recovery of money or enforcement through other civil or criminal remedies.

~~(b) On each June 30, the attorney general shall determine the amount of~~
~~moneys credited to the attorney general's antitrust special revenue fund which is in~~
~~excess of the amount authorized by the legislature to be expended from such fund for~~
~~the ensuing fiscal year and shall certify such amount to the director of accounts and~~
~~reports. Upon receipt of such certification, the director of accounts and reports shall~~
~~transfer the amount certified from the attorney general's antitrust special revenue fund~~
~~to the state general fund.~~

~~13. 14.~~

~~14. 15.~~



Since 1894

Testimony of the Kansas Livestock Association

House Judiciary Committee

HB 2855

February 17, 2000

Allie Devine
Kansas Livestock Association

Good afternoon. The Kansas Livestock Association supports the reforms offered in HB 2855. It is our understanding that the bill simply modernizes many of the terms and procedures for enforcement of the Kansas antitrust laws. It is also our understanding that the thresholds for making and enforcing a claim do not change under this bill and that existing case law would still be applicable.

Thank you for your time and consideration.

House Judiciary
2-17-2000



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON THE JUDICIARY

**RE: HB 2855 – Strengthening the Kansas Restraint
of Trade Act.**

**February 17, 2000
Topeka, Kansas**

**Prepared by:
Leslie Kaufman, Assistant Director
Public Policy Division
Kansas Farm Bureau**

Chairman O'Neal and members of the House Judiciary Committee, thank you for the opportunity to appear today and share Farm Bureau's support for the concepts behind HB 2855. I am Leslie Kaufman, the Assistant Director of Public Policy for Kansas Farm Bureau.

Monopoly power, whether it arises in industry, labor, finance, agriculture or government is a threat to our competitive enterprise system and the individual freedom of every American. We applaud the efforts of the Governor and his administration to take seriously the need to examine the structure of Kansas' anti-trust laws. Many of the concepts contained in HB 2855 further our policy that government should assist in property rights protection by preventing mergers that result in a monopoly, or would violate antitrust laws that threaten competitive enterprise system.

At the same time, governments should not abuse this role and attempt to halt development or limit the size of a business, no matter if it is agricultural, manufacturing,

processing or retailing. We believe several of the provisions contained in HB 2588 will allow the state to have additional, appropriate oversight through our antitrust laws while still maintaining a productive, open business market in Kansas. These include:

- Modernizing the Attorney General's power to conduct investigations, including administrative subpoena power;
- Providing multiple remedy options for addressing violations;
- Allowing the Attorney General to recover investigation cost if litigation is successful;
- Enabling the courts to extend jurisdiction over non-residents violating our state statutes; and
- Including antitrust activities as a segment of the Attorney General's annual consumer protection report.

The changes in HB 2588, in our opinion, appear to be reasonable, appropriate means to strengthen the state's antitrust initiatives without the need to establish additional layers of bureaucracy or duplicate upon existing state or federal programs.

Recently, Farm Bureau testified before the Senate Agriculture Committee on SB 494. This bill, if passed in its original form, would enact the Competitive Livestock Markets Act and place selected portions of the federal Packers and Stockyards Act in Kansas law. We were unable to lend support to this proposal aimed at addressing anticompetitive practices in the livestock sector for three main reasons:

1. The bill appears to duplicate an already existing federal program;
2. Approval of a duplicitous program could draw limited state resources away from measures which are desperately needed by farmers and ranchers; and
3. The true impact of and potential outcome of the program was not fully discernable.

We do not believe the changes proposed in HB 2855 will result in this type of duplication or need for additional administrative procedures. Again, we feel this is a balanced approach to meeting state anti-trust enforcement needs without unneeded duplication. We encourage the committee to advance this bill. Thank you.