

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 12, 2001, in Room 423-S of the Capitol.

All members were present.

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

Conferees appearing before the committee:

James Clover Adams, Secretary, Kansas Department of Agriculture
Woody Moses, Managing Director, Kansas Aggregate Producers' Association
Mary Feighny, Assistant Attorney General
Representative Doug Gatewood
Warren Scott, Southeast Kansas poultry producer
Donn Teske, President, Kansas Farmer's Union
Rev. Dr. Joe Hendrixson, Executive Director, Kansas Ecumenical Ministries
Leslie Kaufman, Associate Director, Public Policy Division, Kansas Farm Bureau
Michael Farmer, Executive Director, Kansas Catholic Conference (written only)
Mike Schultz, Chairman, Kansas Cattlemen's Association
Representative Bruce Larkin
Representative John Faber (written only)
Harold Walker, Kansas Chairman, National Farmers Organization (written only)
Jere White, Business Administrator, Kansas Corn Commission and Kansas Soybean Commission

Others attending: See attached list

Minutes of the February 5 meeting were distributed. Chairman Johnson asked members to notify the committee secretary of any corrections or additions prior to February 19, or they will be considered approved as presented.

The Division of Property Valuation, Kansas Department of Revenue, provided copies of the report prepared by the International Association of Assessing Officers Technical Assistance Project concerning use values in the State of Kansas. Copies can be obtained from the Kansas Department of Revenue.

Dr. Marc Johnson, Dean and Director, College of Agriculture, K-State Research and Extension, Kansas State University, submitted a listing of advisory committees and on- and off-campus boards which directly or indirectly provide input on research priorities. Copies can be obtained from the Committee Secretary or the Legislative Research Department.

Hearing on HB 2123 - Disposition of moneys to certain agricultural related fee funds.

Chairman Johnson opened the hearing on **HB 2123**.

Jamie Clover Adams, Secretary, Kansas Department of Revenue, appeared in support of **HB 2123** which was requested by the Department to establish a permanent equipment fee fund to purchase, rebuild, and repair equipment for the Kansas Department of Agriculture laboratory. She said the Department estimates generating approximately \$69,000 per year by increasing and redistributing a portion of the fees in the following areas: feeding stuffs, dairy, livestock remedies, pesticides, and chemigation. Explaining that **HB 2123** was not written the way the Department had intended, the Secretary included an amendment with her testimony to make the necessary corrections. (Attachment 1)

As there were no other conferees, the Chairman closed the hearing on **HB 2123**.

CONTINUATION SHEET

Discussion and action on HB 2102 - Unlawful acts and annual testing requirements involving weighing and measuring devices.

The Chairman opened **HB 2102** for discussion.

Woody Moses, Managing Director, Kansas Aggregate Producers' Association, proposed an amendment to **HB 2102** that would allow for a tolerance standard of plus or minus 100 pounds on a product or commodity have a commercial value of less than \$30 per ton. (Attachment 2)

Representative Feuerborn, seconded by Representative Light moved to amend **HB 2102** as recommended by the aggregate producers. Committee discussion ensued.

Greg Foley, Assistant Secretary of Agriculture, was concerned that deviation from "the uniform laws and regulations of the national conference on weights and measures" used by all 50 states could create a potential conflict.

Representative Feuerborn, with Representative Light's consent, withdrew his amendment and suggested the appointment of a subcommittee to study this issue. The Chairman appointed Representative Dahl, chairman; Representative Feuerborn; and Representative Light to the subcommittee on **HB 2102**.

Hearings on **HB 2278 - Unfair and unlawful actions involving agricultural contracts.
HB 2280 - Agricultural production contracts, good faith.
HB 2281 - Agricultural production contracts, confidentiality provisions.**

Chairman Johnson opened the hearings on **HB 2278**, **HB 2280** and **HB 2281** for proponents only. Raney Gilliland explained that **HB 2278** establishes legal rights for agricultural producers. The bill would identify and declare a variety of acts unlawful if conducted by a contractor or processor engaged in an agricultural contract. Contractors and processors would be subject to civil penalties, guilty of a misdemeanor offense, and subject to lawsuits. He explained that **HB 2280** would impose an obligation of good faith on all parties in the performance and enforcement of an agricultural contract, and that **HB 2281** would make any confidentiality provisions included in an agricultural contract void and unenforceable.

Mary Feighny, Assistant Attorney General, provided expert testimony concerning Article 1, Section 10, of the United States Constitution (the Contract Clause) which prohibits a state from enacting legislation that impairs existing contracts. She explained the purpose of the Contract Clause and discussed tests to determine whether legislation violates the clause. (Attachment 3)

Representative Doug Gatewood appeared in support of **HB 2278**, **HB 2280** and **HB 2281** designed to protect producers from discriminatory practices. He introduced Warren Scott from his district. (Attachment 4)

Warren Scott, a Southeast Kansas poultry producer from Scammon, testified in support of **HB 2278**, **HB 2280** and **HB 2281**. He discussed his experiences as a contract poultry producer for the Butterball Turkey Company since 1994. (Attachment 5)

Donn Teske, President, Kansas Farmer's Union, appeared in support of **HB 2278**, **HB 2280** and **HB 2281**. He noted that contract production has taken over the poultry industry and is well on the way to taking over the hog industry. He believes these contracts are heavily tilted in favor of the contractor and the producer assumes all the financial risks as well as environmental responsibility. (Attachment 6)

Rev. Dr. Joe Hendrixson, Executive Director, Kansas Ecumenical Ministries, presented testimony in support of **HB 2278**, **HB 2280** and **HB 2281**. The Kansas Ecumenical Ministries believe this legislation would establish a fair playing field for all farmers who enter into production contracts; that a Producer Protection Act would give farmers some bargaining power when signing contracts and would clarify the farmer's rights when changes are made to these contracts. (Attachment 7)

CONTINUATION SHEET

Leslie Kaufman, Associate Director, Public Policy Division, Kansas Farm Bureau, shared KFB's perspective on **HB 2278**, **HB 2280** and **HB 2281**. She explained that there are certain concepts contained in these bills that are compatible with KFB policy, however, there are also provisions, definitions, and choices of wording they question, or even oppose. Suggesting a possible substitute bill, she outlined significant points Farm Bureau members advocate regarding agricultural contracting.

Ms. Kaufman emphasized that in addition to any legislative approach, educational initiatives should also prove helpful in addressing agricultural contracting concerns. A draft of KFB's *Producer's Checklist for Agricultural Contracting* is included with her testimony. She noted that Farm Bureau is working with Senator Harkin and the U.S. Senate Agriculture Committee in addressing agricultural contracting issues such as producer rights and unfair trade practices. (Attachment 8)

Michael Farmer, Executive Director, Kansas Catholic Conference, provided written testimony in support of **HB 2278**, **HB 2280**, and **HB 2281**. (Attachment 9)

Mike Schultz, Chairman, Kansas Cattlemen's Association, appeared in support of **HB 2278** and **HB 2281** to give producers another process in the legal system to prevent unfair or unlawful actions by those promoting contract production agriculture and to make any confidentiality provision included in an agricultural contract void and unenforceable. (Attachment 10)

Representative Bruce Larkin, co-sponsor of the bills, testified in support of **HB 2278**, **HB 2280** and **HB 2281** to establish a set of unfair practices for agricultural contracts and to provide for civil and criminal penalties for violations. He noted that the good faith provision in **HB 2280** is in Minnesota law and is intended to clarify that producers have the same rights as consumers when commitments are broken and that the confidentiality provision in **HB 2281** is based on an Iowa statute. With his testimony he provided a copy of a letter from Roger McEowen, Associate Professor of Agriculture Economics at Kansas State University, concerning contract production legislation. (Attachment 11)

Representative John Faber, co-sponsor of the bills, provided a copy of a press release dated September 13, 2000, from Iowa Attorney General Tom Miller concerning proposed legislation to protect producers who enter into contracts to provide grain or livestock. He also provided a copy of a statement of the State Attorneys General from Iowa, North Dakota, Colorado, Indiana, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, Oklahoma, Vermont, West Virginia, Wisconsin, and Wyoming concerning concentration in agriculture dated September 13, 2000. (Attachment 12)

Harold Walker, Kansas Chairman, National Farmers Organization, submitted written testimony in support of **HB 2278**, **HB 2280** and **HB 2281**. (Attachment 13)

Jamie Clover Adams, Secretary, Kansas Department of Agriculture, submitted written comments concerning **HB 2278**, **HB 2280** and **HB 2281**. She stated that the Uniform Commercial Code covers the use of contracts in the sales of agricultural products, including seed, growing crops, grain, livestock, and some other farm products. She recommended that the authority to promulgate rules and regulations to implement provisions of these bills be given to the Kansas Attorney General, rather than Secretary of Agriculture. She stated that KDA does not have the in-house expertise, nor the manpower, to effectively address the provisions of these bills. In addition, the bills do not give KDA any enforcement power, which makes any rules and regulations virtually ineffective. She noted that each of these bills impacts both existing and future contracts in violation of Article 1, Section 10, of the U.S. Constitution. (Attachment 14)

There being no other proponents, Chairman Johnson closed the hearing for proponents on **HB 2278**, **HB 2280** and **HB 2281** and reminded the committee that opponents would be heard on Wednesday, February 14.

Discussion and possible action on HB 2011 - Incentives for production of ethanol from agricultural products; amounts; removal of cap; expiration date.

Representative Schwartz moved to recommend HB 2011 favorable for passage. The motion was seconded by Representative Compton. Committee discussion ensued.

CONTINUATION SHEET

Jere White, Business Administrator, Kansas Corn Commission and Kansas Soybean Commission, provided a summary of options or alternatives to the incentives provided by **HB 2011**. (Attachment 15) Representative Schwartz offered a substitute motion to amend **HB 2011** as outlined in Option B and the balloon attachment provided by Mr. White. Seconded by Representative Hutchins, the amendment passed.

Representative Hutchins moved to pass **HB 2011** as amended. Seconded by Representative Compton, the motion carried.

The meeting adjourned at 5:55 p.m. The next meeting is scheduled for February 14, 2001, in Room 519-S.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: FEBRUARY 12, 2001

NAME	REPRESENTING
Jamie Clover Adams	KS Department of Agriculture
MARY FEIGHNY	Att. General
Leslie Kaufman	Ks Farm Bureau
Bill Fuller	Kansas Farm Bureau
Warren Scott	SEK Poultry Producers
Tim Stroda	KS Pork Association
Fred Detribe	Kansas Farmers Union
Dono Teske	Kansas Farmers Union
Orin Eckhardt	S.E.K. Turkey Growers
GAIL ABRAM	SEK POULTRY PRODUCER
Constantine Cotsovadis	KS Dept. of Agriculture
Harold Walker	Kansas N.F.O.
Mary Fund	Ks. Rural Center
Mary Jane Stattelman	KGFA - KFCA
Todd Johnson	KLA
Cleta Remyer	
Tom Brown	FARM Credit Council
GREG A. FOLEY	KDA
DAN RILEY	KDA

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: FEBRUARY 12, 2001

NAME	REPRESENTING
Roger Aleason	Kansas Cattlemens Association
Marvin Zielstock	Hamm Companies
Grey Stephens	
Don Waggle	Wt Scale Co
Sushin Holstii	KS Coop Council
Joe Lieber	KS Coop Council
Jim Allen	Seaboard
Bro David Andrews	Catholic Conference
Doug Johnson	House
Sarah Kessinger	HNS
Chia Swine	Ks Livestock Association
Kerri Ebert	KS Dairy Association
Jeff Hubbell	IBP
David Miller	DOB
MARCE SMITH	Self
Mike Beam	KS LUSTK ASSN.
Doug Wavelan	KGFA / KPCA

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
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(785) 296-3556
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KANSAS DEPARTMENT OF AGRICULTURE
House Agriculture Committee

February 12, 2001

Testimony Regarding House Bill 2123

Jamie Clover Adams, Secretary of Agriculture

Good afternoon Chairman Johnson and members of the House Agriculture Committee. I am Jamie Clover Adams, Kansas Secretary of Agriculture. I appear today to support House Bill 2123, which establishes a permanent equipment fee fund to purchase, rebuild and repair equipment for the Kansas Department of Agriculture (KDA) laboratory. You will recall the department requested introduction of this bill.

Rationale

The laboratory supports KDA's regulatory programs. These regulatory programs (ACAP, Dairy, Meat and Poultry, and Pesticide and Fertilizer) are responsible for protecting the environment and food consumed by Kansas citizens. Every day, dairy and meat products are tested for harmful pathogens that could lead to food-borne illnesses or death. Animal feed samples are monitored for adulterants that could result in unsafe food products. Pesticide samples are analyzed to detect minute quantities of pesticides that may cause illnesses or inadvertently destroy crops. These activities are essential to the health and wellbeing of Kansas citizens. However, none of these programs can function effectively if the laboratory does not have the proper equipment to analyze samples.

Except for the period between FY 1995 and FY 1999, there have not been funds dedicated to purchasing, rebuilding and repairing equipment needed in the KDA laboratory. The Kansas Performance Review Board (KPRB) reviewed KDA's laboratory and reported that eliminating the original Laboratory Equipment Fee Fund "will likely have an adverse effect on the replacement of old and obsolete instruments." They went on to report that "...the laboratories will not be able to take full advantage of the introduction of new technologies without the infusion of additional state general funds." This is especially important since KPRB reported that "in Kansas there are no private laboratories that test agricultural products."

Establishing a stable funding source to purchase and repair laboratory equipment is essential to the effective and efficient operation of KDA's regulatory programs and ultimately to the protection of Kansas' citizens and the environment.

Equipment Needs

As mentioned above, a temporary equipment fee fund existed between FY 1995 and FY 1999. During that time, KDA spent \$ 240,000 on needed laboratory equipment. Equipment purchased during

House Agriculture Committee
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Attachment 1

that time included: antibiotic residue analyzer; somatic cell analyzer; autoclave/sterilizer; atomic absorption spectro; flow analyzer; high pressure liquid chromatograph; grinder; computerized microscope; and various fume hoods, safety cabinets, balances, and incubators.

Today, various needs exist in each subsection of the KDA laboratory. In the pesticide laboratory, a LC/MS/MS device is needed to analyze newer classes of pesticides that are applied at rates of about 1/4 ounce active ingredient per acre. It costs approximately \$400,000. Generally, off-target samples are analyzed as opposed to direct application samples. Current investigation/analytical methods cannot always provide conclusive evidence that the crop damage was caused by the pesticide in question. The LC/MS/MS would provide conclusive evidence.

In the feed and fertilizer laboratory, KDA needs a combustion analyzer to analyze nitrogen fertilizer. Current methods using current equipment do not provide results of the total nitrogen in the fertilizer. The equipment would permit full analysis of fertilizer samples using approved methods. Also needed is a spectrophotometer replacement to analyze feed samples for drugs. These two pieces of equipment cost approximately \$35,000 and \$2,000, respectively.

The United States Department of Agriculture is contemplating requiring analysis of meat products for additional pathogens including campylobacter. While federal money might be available to help with this purchase, it would not be 100 percent funding. The dairy laboratory needs replacement incubators, microscopes, refrigerators and freezers.

KDA has been able to update some of the older equipment using the temporary fund and KDA year-end savings. However, the laboratory still has several major pieces of equipment purchased in the 1950s, 1960s and 1970s, that will need to be replaced at some point.

Financial Impact

KDA estimates the proposed fees will generate approximately \$69,000 per year. Our intent is to accomplish this by increasing and redistributing fees slightly in the following areas: feeding stuffs; grade "A" milk \$0.001 per 100 pounds; manufacturing milk \$0.001 per 100 pounds; livestock remedies \$2 per year; pesticide business licenses \$12 per year; and, chemigation \$5 per year.

Inadvertently, HB 2123 was not written the way KDA intended. As currently written, it will shift current fees in four areas to the equipment fee fund. This was not our intent. Attached is an amendment to address this issue.

Conclusion

KDA currently does not have the ability to methodically replace equipment needed in the laboratory to support regulatory programs. To date, equipment needs have been funded through the temporary equipment fee fund or through program savings or agency year-end savings. Under current and foreseeable future budget scenarios, it is unreasonable and irresponsible to continue to rely on savings to fund equipment repair and replacement.

KDA asks for your favorable consideration of HB 2123. I will answer questions at the appropriate time.

HOUSE BILL No. 2123

By Committee on Agriculture

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AN ACT concerning agriculture; relating to disposition of moneys; fee funds; amending K.S.A. 47-504 and K.S.A. 2000 Supp. 2-1012, 2-2464a, 2-3315, 65-708a and 74-554 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. ~~↓~~ K.S.A. 2000 Supp. 2-1012 is hereby amended to read as follows: 2-1012. The secretary shall remit all moneys received by or for the secretary under article 10 of chapter 2 of Kansas Statutes Annotated and amendments thereto to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and *an amount equal to \$.005 per ton of 2,000 pounds or fraction thereto for each commercial feeding stuffs sold, offered or exposed for sale or distribution in this state shall be credited to the laboratory equipment fund created by K.S.A. 2000 Supp. 74-554, and amendments thereto, and the same remainder shall be credited* to the feeding stuffs fee fund. On and after July 1, 2000, through June 30, 2002, an amount not to exceed \$35,000 per year may be used to fund plant pest activities. All expenditures from the feeding stuffs fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of agriculture or by a person or persons designated by the secretary.

Sec. 2. ~~↓~~ K.S.A. 2000 Supp. 2-2464a is hereby amended to read as follows: 2-2464a. The secretary shall remit all moneys received by or for the secretary under this act and amendments thereto, to the state treasurer at least monthly. ~~On and after the effective date of this act through June 30, 1999;~~ Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and amount equal to \$12 per category of pesticide business license shall be credited to the laboratory equipment fund created by K.S.A. 2000 Supp. 74-554, and amendments thereto, and the remainder shall be credited to the pesticide use fee fund. ~~On and after July 1, 1999, upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the pesticide use fee fund.~~ All expenditures from the pesticide use fee fund shall be

2-1004. Sale of commercial feeding stuffs; inspection fee; annual fee; permit; tonnage report; delinquency fee. (a) ~~(1) On and after the effective date of this act through June 30, 1999, each~~ Each manufacturer, importer, jobber, firm, association, corporation or person, manufacturing or selling any commercial feeding stuffs, shall pay to the secretary of the state board of agriculture an inspection fee of ~~\$.105~~ \$.10 per ton of 2,000 pounds, or fraction thereof, for each commercial feeding stuffs sold, offered or exposed for sale or distributed in this state.

~~(2) On and after July 1, 1999, each manufacturer, importer, jobber, firm, association, corporation or person, manufacturing or selling any commercial feeding stuffs, shall pay to the secretary of the state board of agriculture an inspection fee of \$.10 per ton of 2,000 pounds, or fraction thereof, for each commercial feeding stuffs sold, offered or exposed for sale or distributed in this state.~~

(b) Each manufacturer, importer, jobber, firm, corporation, association of persons or person shall report to the secretary of the state board of agriculture the tonnage of commercial feeding stuffs sold and shall pay the inspection fee on the basis of such report.

(c) In the case of specialty pet foods or pet foods which are distributed in the state in packages of 10 pounds or less, an annual fee of \$25 shall be paid in lieu of the inspection fee.

(d) In the case of specialty pet foods which is distributed in the state in packages of one pound or less, an annual fee of \$15 shall be paid in lieu of the inspection fee.

(e) The minimum inspection fee shall be \$15 and shall be paid semiannually.

(f) The applicant shall keep such records as may be necessary to indicate accurately the tonnage of commercial feeding stuffs sold, and as are satisfactory to the secretary, and granting the secretary or the secretary's duly authorized representative permission to verify the statement of tonnage. The report shall be filed in the office of the secretary of the state board of agriculture, and the report of tonnage and inspection fee shall be due semiannually on the first day of January and the first day of July, covering the tonnage of commercial feeding stuffs sold the preceding six months.

2-2440. Unlawful acts; pesticide business license, requirements and fees, exemptions; government agency registration, exemptions; license and registration renewals. (a) Subject to the provisions of subsection (d), it is unlawful for any pesticide business which has not been issued a pesticide business license to:

(1) Advertise, offer for sale, sell or perform any service for the control of a pest on the property of another or apply a pesticide to the property of another within this state; or

(2) perform any service for the control of a pest or apply any pesticide on or at the premises of another person under any commission, division of receipts or subcontracting arrangement with a licensed pesticide business.

Nothing in this subsection shall be construed to require the licensing of any person applying restricted use pesticides to the property of another as a certified private applicator or under the supervision of a certified private applicator.

(b) Application for a pesticide business license or renewal shall be made in writing to the secretary on a designated form obtained from the secretary's office and shall be accompanied by an application fee per category in which the licensee applies, and an additional fee for each uncertified individual employed by the applicant to apply pesticides. ~~On and after the effective date of this act through June 30, 1999, the~~ The application fee per category shall be \$112 per category in which the licensee applies. ~~On and after July 1, 1999, the application fee per category shall be \$100 per category in which the license applies.~~ An additional fee of \$10 shall be paid for each uncertified individual employed by the applicant to apply pesticides. The application fee per category and the additional fee for each uncertified employee in effect on the day preceding the effective date of this act shall continue in effect until the state board of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. Any uncertified individual employed for a period of more than 10 days in a 30-day period or for five consecutive days by a licensee to apply pesticides subsequent to such application shall be reported to the secretary within 30 days of such employee's hiring and the fee shall be paid at that time. Each application shall also include the following:

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nade in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the state board of agriculture or by a person or persons designated by such secretary.

Sec. 3. ~~K.S.A. 2000 Supp. 2-3315 is hereby amended to read as follows: 2-3315. The secretary shall remit all moneys received under this act to the state treasurer at least monthly. On and after the effective date of this act through June 30, 1999, Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and an amount equal to \$5 for each chemigation user's permit shall be credited to the laboratory equipment fund created by K.S.A. 2000 Supp. 74-554, and amendments thereto, and the remainder shall be credited to the chemigation fee fund. On and after July 1, 1999, upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the chemigation fee fund. All expenditures from the chemigation fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the state board of agriculture or by a person or persons designated by the secretary.~~

Sec. 4. K.S.A. 47-504 is hereby amended to read as follows: 47-504. (a) ~~On and after the effective date of this act through June 30, 1999, The registration fee shall be \$12 for each livestock remedy or brand thereof. On and after July 1, 1999, the registration fee shall be \$10 for each livestock remedy or brand thereof.~~

(b) ~~All registrations shall expire on December 31 of each year. On and after the effective date of this act through June 30, 1999 except that, the registration may be continued in force and effect upon the payment of a renewal fee of \$12 per year per brand. On and after July 1, 1999, the registration may be continued in force and effect upon the payment of a renewal fee of \$10 per year per brand. For a period of less than six months the registration fee shall be ½ the annual fee.~~

(c) When a livestock remedy has been registered and the registration fee paid by the manufacturer or distributor no other person shall be required to pay the fee. When a package of livestock remedy is or has been sold in Kansas during the period when a valid registration was in force and effect and the registration fee paid, the sale of the package shall not be subject to the payment of further registration fees.

(d) If the fees herein stated provide more revenue than necessary for the enforcement of this act, the state board secretary of agriculture is hereby authorized to adopt rules and regulations under this section to reduce the original registration or renewal fee or either of them by regulation, or to adopt rules and regulations under this section to increase

2-3304. Registration of chemigation users; permit; fee; renewal. (a) Any user of the chemigation process shall register and obtain a chemigation user's permit before using the process.

(b) Registration shall consist of making application on a form supplied by the secretary. Such application shall include, but not be limited to:

- (1) The name of the persons to whom a permit is to be issued (owner or operator of land on which chemigation is to be used);
- (2) a plan for using anti-pollution devices;
- (3) a plan for handling tail water or accumulations of water;
- (4) the number and locations (legal description) of wellheads which may be involved in the chemigation process and surface water supply withdrawal points, not to include siphon tubes; and
- (5) payment of fees.

(c) ~~On and after the effective date of this act through June 30, 1999, the~~ The application fee for a chemigation user's permit shall be \$55 plus \$10 for each additional point of diversion. ~~On and after July 1, 1999, the application fee for a chemigation user's permit shall be \$50 plus \$10 for each additional point of diversion.~~ A chemigation user's permit may be renewed each year upon making an application, payment of the application fee and completing the report form providing information used in chemigation the previous year.

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1 the registration or renewal fee if decided necessary, but not in excess of
 2 the amounts of the fees set forth in this act.

3 (e) The secretary of the state board of agriculture shall remit all mon-
 4 eys received by or for the secretary under the acts contained in article 5
 5 of chapter 47 of the Kansas Statutes Annotated and amendments thereto
 6 to the state treasurer at least monthly. ~~On and after the effective date of~~
 7 ~~this act through June 30, 1999,~~ Upon receipt of any such remittance the
 8 state treasurer shall deposit the entire amount thereof in the state treasury
 9 and an amount equal to \$2 per registration fee shall be credited to the
 10 laboratory equipment fund created by K.S.A. 2000 Supp. 74-554, and
 11 amendments thereto, and the remainder shall be credited to the livestock
 12 remedies fee fund. ~~On and after July 1, 1999, upon receipt of any such~~
 13 ~~remittance, the state treasurer shall deposit the entire amount thereof in~~
 14 ~~the state treasury and the same shall be credited to the livestock remedies~~
 15 ~~fee fund.~~ All expenditures from such fund shall be made in accordance
 16 with appropriation acts upon warrants of the director of accounts and
 17 reports issued pursuant to vouchers approved by the secretary of the state
 18 board of agriculture or by a person or persons designated by the secretary.

19 Sec. 5. ~~K.S.A. 2000 Supp. 65-708a~~ is hereby amended to read as
 20 follows: 65-708a. (a) The state dairy commissioner shall remit all moneys
 21 received by or for the commissioner under article 7 of chapter 65 of
 22 Kansas Statutes Annotated and amendments thereto (, except K.S.A. 65-
 23 737 to through 65-750, inclusive, and amendments thereto), to the state
 24 treasurer at least monthly.

25 (b) ~~On and after the effective date of this act through June 30, 1999,~~
 26 Upon receipt of any such remittance the state treasurer shall deposit the
 27 entire amount thereof in the state treasury and the same shall be credited
 28 as follows: (1) An amount equal to \$.0010 per 100 pounds of milk or
 29 cream for manufacturing purposes produced by milk producers under
 30 the Kansas manufacturing grade milk inspection fee shall be credited to
 31 the laboratory equipment fund created by K.S.A. 2000 Supp. 74-554, and
 32 amendments thereto; (2) \$.0006 per 100 pounds of Kansas produced milk
 33 or cream for manufacturing purposes or other Kansas produced milk
 34 delivered to a dairy manufacturing plant and used in the manufacturing
 35 of dairy products shall be credited to the laboratory equipment fund cre-
 36 ated by K.S.A. 2000 Supp. 74-554, and amendments thereto; (3) an
 37 amount equal to \$.10 per thousand gallons of frozen dairy dessert or
 38 frozen dairy dessert mix manufactured in this state or imported for retail
 39 sale in Kansas shall be credited to the laboratory equipment fund created
 40 by K.S.A. 2000 Supp. 74-554, and amendments thereto; and (4) the re-
 41 mainder shall be credited to the dairy division fee fund. ~~On and after July~~
 42 ~~1, 1999, upon receipt of any such remittance, the state treasurer shall~~
 43 ~~deposit the entire amount thereof in the state treasury and the same shall~~

65-708. Fees for statewide system of milk inspection; fees; penalties. The following fees for a statewide system of milk inspection and regulatory services pertaining to milk for manufacturing grade purposes are hereby established:

(a) ~~On and after the effective date of this act through June 30, 1999,~~ a milk fee of \$.011 per 100 pounds of milk or cream for manufacturing purposes produced by milk producers under Kansas manufacturing grade milk inspection shall be paid. ~~On and after July 1, 1999, a milk fee of \$.01 per 100 pounds of milk or cream for manufacturing purposes produced by milk producers under Kansas manufacturing grade milk inspection shall be paid.~~ Each such producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, dairy manufacturing plant or any other person to whom the milk or cream for manufacturing purposes is sold or delivered. Each such cooperative, dairy manufacturing plant or other person is hereby charged with the duty of collecting such fees which shall be remitted to the state dairy commissioner.

(b) ~~On and after the effective date of this act through June 30, 1999,~~ a fee of \$.0081 per 100 pounds of Kansas produced milk or cream for manufacturing purposes or other Kansas produced milk delivered to a dairy manufacturing plant shall be paid on all Kansas milk used in the manufacturing of dairy products. ~~On and after July 1, 1999, a fee of \$.075 per 100 pounds of Kansas produced milk or cream for manufacturing purposes or other Kansas produced milk delivered to a dairy manufacturing plant shall be paid on all Kansas milk used in the manufacturing of dairy products.~~ As used in this subsection, the term dairy products shall not include any frozen dairy dessert or frozen dairy dessert mix. Each dairy manufacturing plant shall pay the fee provided for in this subsection and remit the fee to the dairy commissioner. If the fee computed pursuant to this section is less than \$2.50, a minimum fee of \$2.50 shall be paid.

(c) ~~On and after the effective date of this act through June 30, 1999,~~ in lieu of the fee prescribed in paragraph (2), a fee of \$1.10 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix shall be paid by the manufacturer thereof. ~~On and after July 1, 1999, in lieu of the fee prescribed in paragraph (2) a fee of \$1 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix shall be paid by the manufacturer thereof.~~ Each such manufacturer of frozen dairy dessert or frozen dairy dessert mix is hereby charged with the fee provided for in this subsection which shall be remitted to the state dairy commissioner. Frozen dairy dessert mix which is further processed into the corresponding frozen dairy dessert by the manufacturer of the frozen dairy dessert mix shall not be subject to the fee required by this subsection. If the fee computed pursuant to this subsection is less than \$7.50, a minimum quarterly remittance of \$7.50 shall be paid.

(d) ~~On and after the effective date of this act through June 30, 1999,~~ a fee of \$1.10 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix imported for retail sale in Kansas shall be paid by the milk distributor who imports these products. ~~On and after July 1, 1999, a fee of \$1 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix imported for retail sale in Kansas shall be paid by the milk distributor who imports these products.~~ The distributor shall pay and remit the fee to the dairy commissioner quarterly. If the fee computed pursuant to this subsection is less than \$7.50, a minimum fee of \$7.50 shall be remitted by each distributor.

(e) All monthly fees established in paragraphs (1) and (2) shall be remitted on or before the 30th day of each month for the calendar month immediately preceding. All quarterly fees established in paragraphs (3) and (4) shall be remitted on April 30, July 31, October 31 and January 31 for the three calendar months immediately preceding. Any fees established by this section which are not received by the dairy commissioner shall be subject to a penalty of 1% of the amount due per day or \$5 whichever amount is larger.

1 be credited to the dairy division fee fund.

2 (c) All expenditures from the dairy division fee fund shall be made
3 in accordance with appropriation acts upon warrants of the director of
4 accounts and reports issued pursuant to vouchers approved by the com-
5 missioner or by a person or persons designated by the commissioner.

6 Sec. 6. K.S.A. 2000 Supp. 74-554 is hereby amended to read as fol-
7 lows: 74-554. There is hereby created a laboratory equipment fund in the
8 state treasury. All moneys credited to the laboratory equipment fund shall
9 be expended for the acquisition and replacement of equipment used by
10 the ~~state board~~ Kansas department of agriculture laboratory. All expend-
11 itures from the laboratory equipment fund shall be made in accordance
12 with appropriation acts upon warrants of the director of accounts and
13 reports issued pursuant to vouchers approved by the secretary of the ~~state~~
14 ~~board~~ of agriculture or by a person or persons designated by the secretary.

15 Sec. 7. K.S.A. 47-504 and K.S.A. 2000 Supp. 2-1012, 2-2464a, 2-
16 3315, 65-708a and 74-554 are hereby repealed.

17 Sec. 8. This act shall take effect and be in force from and after its
18 publication in the statute book.

65-745. Establishment of fees for statewide system of milk inspection and regulatory services.
The following fees for the statewide system of milk inspection and regulatory services, established
pursuant to K.S.A. 65-737a, and amendments thereto, are hereby established:

(a) ~~On and after the effective date of this act through June 30, 1999, a fee of \$.011 for each such 100~~
~~pounds of milk produced by milk producers under Kansas grade A inspection. On and after July 1,~~
~~1999, a fee of \$.01 for each such 100 pounds of milk produced by milk producers under Kansas grade~~
~~A inspection. Each such producer is hereby charged with such fee, which shall be paid to the milk~~
~~producers' cooperative, milk processor or milk distributor to whom the milk is sold or delivered. Each~~
~~such cooperative, processor or distributor is hereby charged with the duty of collecting such fees, which~~
~~shall be remitted to the state dairy commissioner in accordance with the provisions of K.S.A. 65-746,~~
~~and amendments thereto.~~

(b) ~~On and after the effective date of this act through June 30, 1999, a fee of \$.011 for each such 100~~
~~pounds of packaged grade A pasteurized milk or milk products sold in Kansas at retail to the final~~
~~consumer. On and after July 1, 1999, a fee of \$.01 for each such 100 pounds of packaged grade A~~
~~pasteurized milk or milk products sold in Kansas at retail to the final consumer. Each such distributor is~~
~~hereby charged with the fee provided for in this subsection, which shall be remitted to the state dairy~~
~~commissioner in accordance with the provisions of K.S.A. 65-746, and amendments thereto. If any fee~~
~~computed pursuant to this subsection is less than \$2.50, then the sum of \$2.50 shall be paid in lieu of~~
~~such computed fee.~~

(c) ~~On and after the effective date of this act through June 30, 1999, a fee of \$.011 per 100 pounds or~~
~~fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of~~
~~Kansas which is processed into grade A milk or grade A milk products shall be paid. On and after July~~
~~1, 1999, a fee of \$.01 per 100 pounds or fraction thereof of grade A raw milk for pasteurization~~
~~delivered to a milk processor within the state of Kansas which is processed into grade A milk or grade A~~
~~milk products shall be paid. Each such milk processor is hereby charged with such fee which shall be~~
~~remitted to the state dairy commissioner in accordance with the provisions of K.S.A. 65-746, and~~
~~amendments thereto. If any fee computed pursuant to this subsection is less than \$2.50, then the sum of~~
~~\$2.50 shall be paid in lieu of such computed fee.~~

65-750. Milk and milk products; inspection and regulation; disposition of moneys received; grade A milk fee fund; laboratory equipment fund. (a) The commissioner shall remit all moneys received by or for him under K.S.A. 65-737 to 65-750, inclusive, and amendments thereto, to the treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited as follows: (1) An amount equal to \$.001 per 100 pounds of milk produced by milk producers under Kansas grade A inspection shall be credited to the laboratory equipment fund created by K.S.A. 2000 Supp. 74-554, and amendments thereto; (2) An amount equal to \$.001 for each 100 pounds of packaged grade A pasteurized milk or milk products sold in Kansas at retail to the final consumer, or sold to any person for resale in Kansas at retail to the final consumer, by a milk distributor shall be credited to the laboratory equipment fund created by K.S.A. 2000 Supp. 74-554, and amendments thereto; (3) An amount equal to \$.001 per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of Kansas which is processed into grade A milk or grade A milk products shall be credited to the laboratory equipment fund created by K.S.A. 2000 Supp. 74-554, and amendments thereto; and (4) ~~the remainder shall be credited to the grade A milk fee fund. On and after July 1, 1999, upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the grade A milk fee fund.~~

(b) All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or by a person or persons designated by the commissioner.

1-8

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

MEMO

To: Members of the House Committee on Agriculture

From: Woody Moses, Managing Director
Kansas Aggregate Producers' Association

Date: February 12, 2001

Subject: Proposed Amendment to HB 2102

In early Fall of 2000, the Kansas Division of Weights and Measures began a systematic program of inspecting and tagging every scale in this state used to weigh and sell aggregates. This was unusual, as prior to that time our scales had been tested on a random basis. In conjunction with that, the division has been applying, in our opinion, an unreasonable tolerance standard of ± 20 lbs for a product, which is generally sold in 30,000 lbs lots or higher (50,000 for Semi-Truck-Trailers). In economic terms, this equates to a tolerance of $\pm .003$ mils per pound. A pound of deli meat on a grocery store scale, for example, is only required to be accurate to \pm \$.01- \$.02 per pound. If a consumer was to buy 30,000 pounds of meat, the potential overcharge might be \$600.00. Yet the potential overcharge on 30,000 of rock is \$4.00.

Representatives of our industry met with the Division of Weights and Measures on November 27, 2000 in an attempt to resolve these issues. Unfortunately, we were unable to reach resolution as the Division was unwilling to bend from standards set forth by the National Conference on Weights and Measures, despite language which appears to allow such deviation¹. The use of this standard is mandated by K.S.A. 83-202(a)(2)(8).

In order to resolve this issue, the Kansas Aggregate Producers Association asks the committee to consider the attached balloon. This amendment would allow the Division of Weights and Measures more flexibility in the development and enforcement of a system for products having a low unit value.

¹ Pg. A-2, Par 2.2. Specifications, Tolerances, and Other Technical Writing Requirements for Weighing and Measuring Devices; National Institute of Standards and Technology Handbook 44, 2000 Edition.

If adopted, this amendment would provide the following advantages:

- Free up additional manpower and resources within the Division of Weights and Measures for the enforcement of more critical programs.
- Relieve our customers; primarily cities, townships, and counties from the upgrade costs which would inevitably be passed on to them in the form of higher prices. For example, if a producer was forced to spend \$40,000 in order to bring an old scale up to modern standards; the price of rock would raise by \$2.00 per ton in order to recover the cost in two years.
- In those cases where products of a low unit value are involved, provide the State of Kansas additional flexibility in the administration of weights and measures by exempting us from an arbitrary national standard.
- Afford all Kansas consumers a higher level of protection at the gas pump and food store.

In closing, we would simply urge the adoption of this amendment. As it is obviously unnecessary to inspect every scale on a county-by-county basis, the policy implemented by this amendment will provide a win-win solution for all Kansans.

HOUSE BILL No. 2102

By Committee on Agriculture

1-22

9 AN ACT concerning weights and measures; relating to unlawful acts;
10 annual testing requirements; amending K.S.A. 83-145, 83-219 and 83-
11 404 and K.S.A. 2000 Supp. 83-304 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 83-145 is hereby amended to read as follows: 83-
15 145. (a) The secretary of agriculture, or the secretary's authorized rep-
16 resentative, is authorized to test all weighing and measuring devices used
17 in the retail sale of liquefied petroleum gas, and shall reject all such de-
18 vices which are found (a) to be inaccurate and (b) to not clearly indicate
19 the quantity of liquefied petroleum gas in kilograms or pounds, liters or
20 gallons, cubic feet or cubic meters or other unit approved by the secretary
21 of agriculture, or the secretary's authorized representative. ~~It shall be~~
22 ~~unlawful to use a weighing or measuring device for determining quantities~~
23 ~~of liquefied petroleum gas which has been rejected by the secretary of~~
24 ~~agriculture, or the secretary's authorized representative.~~ The secretary of
25 agriculture, or the secretary's authorized representative, shall conspicu-
26 ously mark all rejected devices, ~~which~~. Such mark shall not be removed
27 or defaced except upon authorization of the secretary of agriculture or
28 the secretary's authorized representatives. It shall be unlawful to use a
29 vapor meter dial which is not equipped with a cubic foot indicator for
30 testing the accuracy of the meter.

31 (b) It shall be unlawful to use a liquid meter for measuring the vol-
32 ume, in gallons, of liquefied petroleum gas for retail sale from delivery
33 vehicles unless such meter is equipped with a ticket printer for use in
34 issuance of printed tickets showing the volume, in gallons, of the liquefied
35 petroleum gas delivered.

36 ~~Sec. 2.~~ K.S.A. 83-219 is hereby amended to read as follows: 83-219.

37 (a) It shall be unlawful for any owner of a commercial weighing or meas-
38 uring device person:

39 (1) To offer or expose for sale, or to sell or otherwise dispose of any
40 weight, measure or weighing or measuring device that does not meet the
41 tolerances and specifications required by chapter 83 of the Kansas Stat-
42 utes Annotated, and amendments thereto, or which has been rejected
43 without first obtaining the written authorization of the secretary;

83-202,

Section 2. K. S. A. 83-202 is hereby amended to read as follows: 83-202. (a) Except as provided further:

(1) The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state.

(2) The following standards and requirements shall apply to commercial weighing and measuring devices:

(A) "The standards of the national conference on weights and measures" published in the national institute of standards and technology handbook 44 entitled specifications, tolerances, and other technical requirements for weighing and measuring devices as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary;

(B) "the uniform laws and regulations of the national conference on weights and measures" published in the national institute of standards and technology handbook 130 regarding packaging and labeling, the method of sale of commodities, national type evaluation regulation, motor fuel inspection and motor fuel regulation, as published on December, 1994 or later versions as established in rules and regulations adopted by the secretary;

(C) "checking the net contents of packaged goods" published in the national institute of standards and technology handbook 133, third edition, as published on September, 1988 or later versions as established in rules and regulations adopted by the secretary;

(D) "checking the net contents of packaged goods" published in the national institute of standards and technology handbook 133, third edition, supplement 4, as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary; and

(E) any other handbooks or sections thereof as adopted by the secretary by rules and regulations.

(b) Any system used to measure or weigh a product or commodity having a commercial value of less than \$25 per ton of the product or commodity sold or delivered shall be exempt from the provisions of this section; provided, such system shall otherwise be tested and certified in the manner in which it is used and shall achieve a tolerance standard of plus or minus 100 pounds.

(bc) Whenever there exists an inconsistency between the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and any of the handbooks adopted by reference, the requirements of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, shall control.

3

2-3

puting the price of any individual item which is sold or offered for sale at retail. A point-of-sale system may also include or be attached or connected to a weighing or measuring device.

(m) "Scanner" means any electronic system that employs a laser-bar code reader to retrieve product identity, price or other information stored in a computer memory.

(n) "Service company" means a company which is in the business of examining, calibrating, testing, repairing and adjusting weighing and measuring devices but such term does not include a technical representative unless the technical representative is the owner of such service company.

(o) "Technical representative" means an individual who installs, repairs, adjusts or calibrates the weighing and measuring devices and certifies the accuracy of the weighing and measuring devices.

History: L. 1985, ch. 345, § 1; L. 1994, ch. 83, § 1; L. 1996, ch. 146, § 11; Apr. 18.

Research and Practice Aids:

Weights and Measures = 1 et seq.

C.J.S. Weights and Measures § 2 et seq.

83-202. Recognized system of weights and measures. (a) Except as provided further:

(1) The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state.

(2) The following standards and requirements shall apply to commercial weighing and measuring devices:

(A) "The standards of the national conference on weights and measures" published in the national institute of standards and technology handbook 44 entitled specifications, tolerances, and other technical requirements for weighing and measuring devices as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary;

(B) "the uniform laws and regulations of the national conference on weights and measures" published in the national institute of standards and technology handbook 130 regarding packaging and labeling, the method of sale of commodities, national type evaluation regulation, motor fuel inspection and motor fuel regulation, as published on December, 1994 or later versions as es-

tablished in rules and regulations adopted by the secretary;

(C) "checking the net contents of packaged goods" published in the national institute of standards and technology handbook 133, third edition, as published on September, 1988 or later versions as established in rules and regulations adopted by the secretary;

(D) "checking the net contents of packaged goods" published in the national institute of standards and technology handbook 133, third edition, supplement 4, as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary; and

(E) any other handbooks or sections thereof as adopted by the secretary by rules and regulations.

(b) Whenever there exists an inconsistency between the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and any of the handbooks adopted by reference, the requirements of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, shall control.

History: L. 1985, ch. 345, § 2; L. 1992, ch. 164, § 1; L. 1996, ch. 146, § 12; Apr. 18.

Revisor's Note:

Section was also amended by L. 1992, ch. 175, § 1, but such amendment was repealed by L. 1992, ch. 164, § 3.

Research and Practice Aids:

Weights and Measures = 3.

C.J.S. Weights and Measures § 3.

83-203. State primary standards of weights and measures; secondary standards. Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state primary standards of weights and measures and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the secretary and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the secretary.

History: L. 1985, ch. 345, § 3; L. 1992, ch. 175, § 2; July 1.

83-204. Contracts, sales or purchases construed in terms of standards of weights and measures adopted under act. All contracts, sales or purchases made for work to be

2. Tolerances for Commercial Equipment

2.1. Acceptance and Maintenance Tolerances. - The official tolerances prescribed by a weights and measures jurisdiction for commercial equipment are the limits of inaccuracy officially permissible within that jurisdiction. It is recognized that errorless value or performance of mechanical equipment is unattainable. Tolerances are established, therefore, to fix the range of inaccuracy within which equipment will be officially approved for commercial use. In the case of classes of equipment on which the magnitude of the errors of value or performance may be expected to change as a result of use, two sets of tolerances are established: acceptance tolerances and maintenance tolerances.

Acceptance tolerances are applied to new or newly reconditioned or adjusted equipment, and are smaller than (usually one-half of) the maintenance tolerances. Maintenance tolerances thus provide an additional range of inaccuracy within which equipment will be approved on subsequent tests, permitting a limited amount of deterioration before the equipment will be officially rejected for inaccuracy and before reconditioning or adjustment will be required. In effect, there is assured a reasonable period of use for equipment after it is placed in service before reconditioning will be officially required. The foregoing comments do not apply, of course, when only a single set of tolerance values is established, as is the case with equipment such as glass milk bottles and graduates, which maintain their original accuracy regardless of use, and measure-containers, which are used only once.

2.2. Theory of Tolerances. - Tolerance values are so fixed that the permissible errors are sufficiently small that there is no serious injury to either the buyer or the seller of commodities, yet not so small as to make manufacturing or maintenance costs of equipment disproportionately high. Obviously, the manufacturer must know what tolerances his equipment is required to meet, so that he can manufacture economically. His equipment must be good enough to satisfy commercial needs, but should not be subject to such stringent tolerance values as to make it unreasonably costly, complicated, or delicate.

2.3. Tolerances and Adjustments. - Tolerances are primarily accuracy criteria for use by the regulatory official. However, when equipment is being adjusted for accuracy, either initially or following repair or official rejection, the objective should be to adjust as closely as practicable to zero error. Equipment owners should not take advantage of tolerances by deliberately adjusting their equipment to have

a value, or to give performance, at or close to the tolerance limit. Nor should the repair or service personnel bring equipment merely within tolerance range when it is possible to adjust closer to zero error.¹

3. Testing Apparatus

3.1. Adequacy. - Tests can be made properly only if, among other things, adequate testing apparatus is available. Testing apparatus may be considered adequate only when it is properly designed for its intended use, when it is so constructed that it will retain its characteristics for a reasonable period under conditions of normal use, when it is available in denominations appropriate for a proper determination of the value or performance of the commercial equipment under test, and when it is accurately calibrated.

3.2. Tolerances for Standards.² - The error in a standard used by a weights and measures official should be known and corrected for when the standard is used; or if the standard is to be used without correction, its error should be not greater than one-third of the smallest tolerance to be applied when the standard is used. The reason for this is to keep at a minimum the proportion of the tolerance on the item tested that will be used up by the error of the standard. Expressed differently, the reason is to give the item being tested as nearly as practicable the full benefit of its own tolerance.

Field testing operations are complicated to some degree when corrections to standards are applied. Except for work of relatively high precision, it is recommended that the accuracy of standards used in testing commercial weighing and measuring equipment be so established and maintained that the use of corrections is not necessary. Also, whenever it can readily be done, it will be desirable to reduce the error on a standard below the one-third point previously mentioned.

3.3. Accuracy of Standards. - Prior to the official use of testing apparatus, its accuracy should invariably be verified.

¹ See General Code, Section 1.10.; User Requirement G-UR.4.3.

² The numerical values of the tolerances recommended by the National Institute of Standards and Technology, for the standards of length, mass, and capacity used by weights and measures officials, may be obtained upon request from the Office of Weights and Measures of the National Institute of Standards and Technology.



State of Kansas

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HOUSE COMMITTEE ON AGRICULTURE ASSISTANT ATTORNEY GENERAL MARY FEIGHNY'S TESTIMONY IN RELATION TO THE CONTRACT CLAUSE OF THE U.S. CONSTITUTION February 12, 2001

Thank you Mr. Chairman, members of the committee. My name is Mary Feighny and I am an Assistant Attorney General. I have been asked to advise you concerning Article 1, § 10 of the United States Constitution [the Contract Clause] which prohibits a state from enacting legislation that impairs existing contracts.

I. Purpose of the Contract Clause. The purpose of the Contract Clause is to protect the expectations of contracting parties from the dangers of subsequent legislation. The Clause was made part of the U.S. Constitution to prohibit state legislatures from enacting laws to relieve individuals of their obligations under certain contracts. However, the Contract Clause does not prevent a state from exercising its police power to protect the general welfare of the people. The problem is trying to balance the State's right to exercise its police power with the rights of parties under existing contracts.

II. Test to Determine Whether Legislation Violates the Contract Clause. Whether legislation violates the Contract Clause will depend upon the following factors:

1. The threshold issue is whether the state law operates as a substantial impairment of an existing contractual relationship. There is no Contract Clause problem if the legislation operates prospectively only [*i.e.* the legislation affects future contracts.]

House Agriculture Committee
February 12, 2001
Attachment 3

2. The impairment of an existing contract must be substantial. The severity of the impairment will increase the level of scrutiny by a court. Whether an impairment is substantial will depend upon the facts. If a contracting party is in an industry that is not regulated by the state, the impairment may be more substantial than it would be for a party who operates in an industry that is regulated by the state.

3. If there is a substantial impairment of an existing contract, the state must justify that it has a “significant and legitimate public purpose behind the regulation.” In short, the legislation must seek to remedy a “broad and general social or economic problem” rather than providing a benefit to a special interest group. For example, in *Energy Reserves Group v. Kansas Power and Light*, the Kansas Supreme Court upheld a statute that imposed price controls on existing natural gas contracts in order to protect consumers from the escalation of gas prices caused by deregulation. In *Federal Land Bank of Wichita v. Bott*, the Court found a significant and legitimate public purpose in “stabilizing agricultural conditions” as a result of high interest rates, inflation, overproduction, and low commodity prices that threatened the stability of Kansas agriculture.

4. If the state establishes a significant and legitimate public purpose, the legislation must ensure that the adjustment of the contracting parties’ rights and obligations are based upon “reasonable conditions” and are of a character “appropriate to the public purpose justifying the legislation’s adoption.” In short, the means chosen by the state to achieve its purpose must be narrowly tailored to accomplish the state’s objective.

In the *Bott* case, the Kansas Supreme Court concluded that while the State had a significant and legitimate interest in stabilizing the depressed agricultural industry, the legislation violated the Contract Clause because the means chosen to accomplish that goal were unreasonable.

It is difficult to predict whether a Court will uphold a statute in the face of a Contract Clause challenge. However, in the *Bott* case, the Court intimated that legislation will not survive Contract Clause scrutiny if the law: (1) does not address a broad, generalized economic or social problem; (2) does not operate in an area already subject to state regulation; (3) severely, permanently, and immediately alters existing contractual relationships; and (4) protects a narrow class of individuals rather than a broad societal interest.

I hope this information is helpful.

DOUG GATEWOOD
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AGRICULTURAL COMMITTEE TESTIMONY

Thank you Mr. Chairman and committee members for hearing HB 2278 , HB 2280 and HB 2281. Too often it seems the producers are forced by large corporations to assume most of the risk involved in the production process. To be sure, it must be a shared risk and the current lack of guidelines on poultry contracting allows abuse and coercion on behalf of the contractor and/ or processor.

These bills are designed to protect our producers from discriminatory practices and to encourage a climate conducive to recruiting and, something we have been neglectful of in the past, retaining opportunities for Kansas farmers.

At this time I would like to introduce to the committee a member of the Southeast Kansas Turkey Growers Association, Mr. Warren Scott.

TESTIMONY IN FAVOR OF

HB2278
HB2280
HB2281

FEBRUARY 12, 2001

WARREN SCOTT
6294 NE COALFIELD RD
SCAMMON, KS 66773

(620) - 396 - 8567

House Agriculture Committee
February 12, 2001
Attachment 5

My name is Warren Scott and I am a poultry producer from Southeast Kansas. I raise approximately 70,000 turkeys a year for Butterball Turkey Company. I entered into a contractual agreement with Butterball Turkey Company in February of 1994. There are twenty-five turkey producers in Cherokee and Crawford counties of Southeast Kansas. I am here today to speak in favor of HB2278, HB2280, and HB2281. Hopefully by relating some of my experiences, you will be convinced to support these bills.

In 1996, the company decided that all of the producers would be forced to put a new type of watering system in their brood houses, and their nipple line waterers had to be removed. Our system consisted solely of this closed line nipple drinker which they wanted removed. We felt like the new system they wanted to have installed was actually a step backwards, as it was something the industry had done away with thirty years ago. In a phone conversation with the director of live operations for the company, a very lengthy discussion was held about the merits of this system. I expressed a desire to stay with the system I presently had because it had proven itself to work for me. He told me that was not an option and that everyone had to change. He further stated that if I was unwilling to change, they might be forced to withhold poult placement from my farm. One month later this same individual handed me a plaque at a grower appreciation dinner naming my wife and myself as the #1 Growers of the Year for 1996.

Through the years that I have grown turkeys for Butterball Turkey Company, I have had many oral promises broken that were made by the management of that company. One of those promises broken is in the form of services which the company provides by spreading shavings in my turkey houses for no charge. I was told that this was a part of my compensation package, but it was later taken away by a "new manager".

During contract talks in 1997, we were told that Butterball Turkey Company would provide all of the shavings at no charge to the grower. Now we are told that if we want to top dress our range houses they will split the cost with us, but they won't pay for all them.

In January of 1999, a grower raised an issue with the company about the way the live haul trucks were being weighed. After the turkeys are taken from our farms, they are weighed immediately upon arrival at the plant. They are then placed in cooling sheds until they are processed. Before they are processed, they are weighed again to determine the amount of shrink. In the previously mentioned incident, the turkeys actually gained weight while sitting on the trucks which resulted in what the company referred to as "positive shrink". However, the grower was paid for the lighter weight minus what the company considered to be the average shrink for the week. This grower contacted GIPSA and an investigation was started by that agency. In the investigation, Butterball Turkey

Company acknowledged that they weighed the trucks wrong, and checks were sent to this grower, as well as other growers who were likewise affected, to compensate them for the under payment.

In 1997 there was a group of growers involved in contract negotiations with Butterball Turkey Company. The old contract had become unworkable for us, and most growers were facing some financial difficulties. After a very trying time, they finally agreed to sit down with us to try to reach some kind of agreement. We did come up with a new contract that 100% of the growers signed. Along with this the company made a one time payment to the growers for past inequities suffered. As part of that agreement, it was decided by both parties involved to annually meet for the purpose of evaluating and discussing changes to the contract. When the group reconvened at the end of the first year, the growers raised a concern about the fact that poult placements were being held out to a longer time frame. We are supposed to receive poults every eight weeks. During this time poults were being placed every nine to ten weeks, which adversely affected our cash flows. There were ten growers elected by the grower body present at this meeting. Myself and a grower from Missouri were the spokespersons for this group. We were told by the complex manager and the vice-president of Butterball Turkey Company that we were not going to get anything and if we didn't like that we could leave and they wouldn't hold us to our contracts. They said this with full knowledge that we had no place else to go. Some of the growers attempted to find

another integrator, only to be told that they wouldn't take any Butterball Turkey Company growers.

This past year Butterball Turkey Company didn't meet with the growers at all, and the meeting doesn't appear as though it will materialize this year either.

As part of our contract we receive a bonus based upon the livability of our turkeys. About two years ago we started coming up short on our load out counts. Sometimes it was up to three hundred turkeys less than what our records showed we should have. Up until that time our average load out discrepancy was thirty turkeys. We questioned this because we thought perhaps the birds had never been delivered to our farm to begin with. They agreed to make an adjustment to our numbers so that we could receive our livability bonus, but they told me I couldn't tell anybody about it. When I was asked by other growers about the incident, I truthfully told them that we did indeed receive our bonus. The issue came up again on our next flock sold, and I was told they wouldn't adjust them because I had told someone about the settlement on the previous flock. We then requested that the company count each poult placed on our farm at the farm location on the day of placement. The company did this on three consecutive placements, and our load out discrepancies were back in the normal range.

I have asked myself the question - "Why do they put confidentiality clauses in contracts when all the people that sign one receive the same contract?" The answer to that

question is the old theory "Divide and Conquer". They don't want us to have the ability to unite, or to form bargaining associations. They don't even want us talking together for fear that we might find out the things that we have been told aren't really true.

I had a grower from Granby, Missouri call me one day very upset about what her fieldman had told her. He said they were the only ones having problems financially and it was because of their lack of proper management abilities. He also told them that Warren Scott wasn't having any problems. This is one of the ways that they limit their liabilities - by trying to blame the growers for some of the company problems. This has a tendency to demoralize growers and to pit one grower against another. If we have the ability to organize, it limits their ability to influence each grower individually in a negative way.

In closing, I would like to thank you for this opportunity to speak in favor of these bills. I would like to ask you, as a committee, to support this legislation not only in this committee, but also upon the house floor. Thank You!

Kansas Farmer's Union
Testimony for HB's 2278, 2280, & 2281
2-12-2001
Donn Teske
President

Hello, my name is Donn Teske and I am president of the Kansas Farmers Union. I am testifying today in support of HB's 2278, 2280, & 2281. Farmers Union has repeatedly spoken out in opposition to the corporate structure in agriculture, however as the practice of corporate ag and contract production becomes more embraced by the agricultural system the farmer producers here in Kansas are becoming more at risk to dominating contracts and innuendo's if they are going to participate. This is not a new concept, we do not have to learn through bad experiences here in Kansas. As other states have embraced the corporate contract production system, flaws in the producer's rights in the poultry and hog industries have become evident and we can deal with them here in Kansas before more producers in our state become locked into unfair contracts.

Contract production has completely taken over the poultry industry and is well on the way to taking over the hog industry. Kansas Ag statistics show that from 1992 until 1997 Kansas lost 50% of the hog farms in the state. Through much of this time I have had the opportunity to work as a farm analyst with farmers across Kansas. Several times I have had the opportunity to evaluate potential hog contracts that my clients were considering. Every contract was heavily tilted in the favor of the contractor and the producer had all of the financial risks as well as environmental responsibility. I also had the opportunity to work with one client who had gotten on the wrong side of the contractor and was having his contract terminated. The producer still had a very large debt on his facilities, and as you well know it is very difficult to make payments on facilities when there aren't hogs coming into them.

What the Kansas legislature can do is enact the proposed bills. It gives the producer rights that shouldn't prohibit contracts being signed yet would give him legal rights if situations go awry with the contractor.

Kansas Farmers Union policy states "We fully support the Kansas Legislature establishing a 'Producer Protection Act'", and I am very honored to relay that to you here today. We feel that you as legislators serve the farmers in your districts as part of the voting public, and it is within your power to give your producers rights while they deal with the giants that are dominating the ag industry.

Testimony on the Producer Protection Act

(HB 2278, HB 2280, HB 2281)

Before the House Agriculture Committee, Kansas Legislature

Date: February 12, 2001

Mr. Chairman, thank you for the opportunity to speak to the Committee today. I am Rev. Dr. Joe Hendrixson, Executive Director of Kansas Ecumenical Ministries. Known informally as the state council of churches, Kansas Ecumenical Ministries' membership includes nine church bodies with 1,700 congregations in our state. I appreciate the opportunity to share with you and the members of the Committee the perspective of the churches on this important issue.

Throughout 1999, the member church communions of Kansas Ecumenical Ministries worked together to study the current situation in Kansas agriculture and the vitality of our rural communities. Together, we envisioned an abundant life that can be viable into the distant future for those who work the land and for the communities in which they live. The churches of Kansas have a long history of helping farmers in this state, most notably during the great farm crisis of the 1980s. As in so many other areas of the church's work, our role in agriculture has not been so much to specify farm policy. Instead, our role is to assist those whose voices have been weakened by circumstances beyond their control to be heard.

The farmers and ranchers who have large enough operations to be able to contract profitably with companies to market their efforts are not our concern today. They have avenues through which they can make their voices heard, such as commodity and livestock associations, agribusiness conglomerates, and the state itself.

However, farmers and ranchers who by choice or by circumstance are small producers and/or believe in an independent system of agriculture have few such opportunities to be heard. That is the first reason the churches are here today.

Furthermore, the church believes that farming occupies a unique place in the variety of human labor. It is more closely tied than any other economic activity to the very processes of life itself. Food, its production and its distribution, goes to the very heart of who we are as fragile human beings. Food is the first of the basic necessities of life, and those who produce food are more closely tied to what is sacred than any other occupation.

Therefore, we believe that all those who choose to farm and ranch in this great land deserve a reasonable opportunity to succeed in their labors, to make a reasonable living from it, and to have a secure and hopeful life in it. The three bills that are before you today take a step in making such security possible for many small and independent food producers.

We believe that this legislation would establish a fair playing field for all farmers who enter production contracts. A Producer Protection Act would give farmers some bargaining power when signing contracts and would clarify the farmer's rights when changes are made to these contracts.

Policy Implications

We encourage the establishment of certain basic protections for farmers and ranchers who contract their production with large processors. Producer rights should include the ability to join or belong to an association of producers, the right of the producer to refuse to accept delivery of unhealthy or defective livestock or inputs, the right of the producer to require use of state inspected scales for determining payment, and the right to fair, open, and competitive contracts.

- **Make unlawful any contractor or processor action which is deceptive, coercive, retaliatory, or discriminatory.**

We support passage of HB 2278.

- **Make producer rights inviolable.**

We support passage of HB 2280.

- **Make agricultural contracts open.**

We support passage of HB 2281.

Conclusion

The churches of Kansas continue in our belief that the best future for Kansas agriculture is characterized by diversity. We look forward to a future with diversity of produce and livestock, as well as diversity in the size and types of farm operations. Such diversity supports fundamental values of democracy, decentralization, diversity in land ownership, and opportunities for participation in the sacred vocation of food production. Passage of the Producer Protection Act enhances the future of Kansas agriculture.

Thank you. I am available to answer questions.

Dr. Joe M. Hendrixson, Executive Director
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About Kansas Ecumenical Ministries

Kansas Ecumenical Ministries is commonly known as the state council of churches. It traces its roots through several Kansas ecumenical organizations dating back to 1865. It includes the Kansas congregations of the American Baptist Churches, the Christian Church (Disciples of Christ), the Church of the Brethren, the Episcopal Church, the Evangelical Lutheran Church in America, the General Conference Mennonite Church, the Presbyterian Church U.S.A., the United Church of Christ, and the United Methodist Church.

Representatives of these communions, including the Executive Minister or Bishop, serve on the Governing Board of Kansas Ecumenical Ministries and guide its work. The church communions covenant to work together on Christian unity and spirituality, justice, and advocacy.

Kansas Interfaith Impact is the advocacy organization of Kansas Ecumenical Ministries and its member Church communions. Public policy positions taken by Kansas Ecumenical Ministries/Kansas Interfaith Impact are approved by the Governing Board and grounded in study of the Scriptures, theology, and the historic writings of the Church. It bases its involvement in specific issues on social statements of the member communions and the mutual concern of Kansas church leaders.

The Rural Concerns Committee of Kansas Ecumenical Ministries leads the member communions in study of rural and agricultural issues, assists with celebrations of rural life, and provides direct assistance to farmers experiencing financial stress.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE

**RE: HB 2278, HB 2280 and HB 2281 regarding
agricultural contracts.**

**February 12, 2001
Topeka, Kansas**

**Presented by:
Leslie J. Kaufman, Associate Director
Public Policy Division
Kansas Farm Bureau**

Chairman Johnson and members of the House Agriculture Committee, thank you for the opportunity to appear today and share Farm Bureau's perspective on HB 2278, HB 2280 and HB 2281 regarding agricultural contracts. As you know, generally conferees sign-up to testify as a proponent or opponent of a bill. At times, that places us in a difficult situation when we have to categorize ourselves as "for" or "against" an entire bill, when a proposal is neither totally compatible nor totally incompatible with our policy positions. Although we are appearing during the proponents hearing, today is certainly one of those days we wish there was a "partial supporter" category.

There are certain concepts contained in these bills that are compatible with KFB policy, and which we can lend support to. However, there are also provisions, definitions, and choices of wording that we question, or even oppose. As such, we cannot wholeheartedly endorse or support the bills in their current form.

Farm Bureau members are keenly aware of the impacts contract production has had, and is expected to have, on the agriculture industry. Contracting can be a valuable risk management tool, producers can receive premiums for improving performance or quality and operations can be expanded without the producer bearing the full cost of growth. On the other hand, farmers and ranchers, who traditionally have been characterized as very independent, must be willing to relinquish control over production

House Agriculture Committee
February 12, 2001
Attachment 8

decisions to another entity. There may also be times when the negotiating power over an agreement rests more with the contractor than the producer. As such, individual farmers and ranchers must evaluate their personal goals, the contract being offered and the financial and legal impacts of the contract terms carefully to ensure that contract production is a positive component of their agricultural operation.

Farmers and ranchers from all 105 Kansas counties gathered in Wichita this past November to discuss issues important to agriculture and rural communities and enact policy to guide Kansas Farm Bureau during year 2001. Agriculture contracting issues were among the topics discussed. Our members adopted new language and reaffirmed existing positions that demonstrate our desire to foster open markets, while at the same time, protecting private interest and assuring producers have a myriad of production opportunities available to them.

Kansas Farm Bureau strongly supports the ability of producers, both individually and collectively, to enter into production and/or marketing enterprises, including contractual and cooperative enterprises. Thus, we would conclude the provisions of HB 2278 which identify the right of producers to join associations or enter into membership agreements with other producers is compatible with our policy.

In analyzing HB 2278, in total, we do have concerns. In general, we would characterize the wording of the bill as cumbersome, at best. We believe Sec. 2 (pg. 3) of the bill is confusing and unclear. **We firmly believe production contracts must be negotiated and entered into an environment free from unfair trade practices.** That may be the intent of the bill's language prohibiting actions to "coerce, intimidate, disadvantage, retaliate against or discriminate against any producer..." That section, under (a)(2) and (3) would prohibit "preferential terms" in agricultural contracts or "granting" rewards. When section 2 is read in total, we are concerned that under the proposed language, producers would be prohibited from receiving incentives for increasing quality or performance, as it may be considered a "preferential term", "reward" or "discrimination" against a producer with a lesser quality product.

The ability for producers to produce for the market must be protected. Farmers and ranchers that raise specialty agriculture products should not be prohibited from securing a premium for increased performance and quality.

HB 2280 imposes an obligation of good faith in all agricultural contracts. The bill borrows the UCC definition of "good faith" which is defined as "honesty in fact in the conduct or transaction concerned." (K.S.A. 84-1-201). I think we can all agree that we want every person or entity entering into a business transaction to do so honestly and fairly. This is an admirable goal. But, we do not see how the bill, as currently worded, will actually further this goal.

The bill borrows heavily from the definition section in HB 2278. Thus, many of the concerns about the clarity, confusion and poor wording noted in our discussion above carries over into HB 2280. Unlike, HB 2278, HB 2280 contains no definition of "passive contractor" although it defines "contractor" as a "person who is an active contractor or a passive contractor." (Section 1, pg. 1). As in HB 2278, it is difficult, if not impossible, to identify to whom the bill will apply, how it will be applied and what its impact will be.

Additionally, we question if this bill is necessary. The UCC already imposes a duty of "good faith" in transactions falling under it. HB 2280 provides no mechanism to compel fairness and honesty. Again, we strongly encourage honesty and fairness in all business dealings, not just agricultural contracting. We just do not see how HB 2280 does anything to actually or practically advance this goal.

HB 2281, if enacted, would void all confidentiality clauses in existing and future agriculture contracts. Farm Bureau members enacted new policy language specific to the issue of confidentiality. **Producers must have the ability to seek professional legal, financial and agricultural production advice on contract terms, obligations and responsibilities. Producers should be allowed to discuss and compare contracts with other producers.** This type of information seeking and sharing might be advanced by the ban on confidentiality clauses contained in HB 2281, but the bill goes too far. It eliminates protection of information that should be allowed protection. Our members were very clear in their desire to protect certain personal and proprietary information when they adopted the following policy language:

Disclosure of contract terms must not require revelation of trade secrets or require a producer to divulge personal financial information or production practices. Any legislation designed to increase information flow relative to agriculture contracting must allow producers to keep certain financial information private and protect trade

secrets, other intellectual property rights and production practices. As such, we cannot support an all-out ban on all confidentially clauses.

Clearly, Farm Bureau policy has commonality between certain concepts contained in these three bills. And, just as clear are our points of deviation. The farmer and rancher members of Farm Bureau have adopted specific statements relative to what should be contained in any legislation addressing agricultural contracting. We stand ready to work with this committee and other interested parties should you, Mr. Chairman, and your committee desire to refine legislation, perhaps in the form of a substitute bill, to address agricultural contracting issues in Kansas. The following are significant points Farm Bureau members advocate regarding agricultural contracting:

- ✓ **Producers must be allowed to enter into production and/or marketing enterprises, individually or collectively, including contractual and cooperative enterprises;**
- ✓ **Producers must be able to seek professional legal, financial and agricultural production advice on actual contract terms, obligations and responsibilities;**
- ✓ **Producers should be able to discuss and compare contracts with other producers;**
- ✓ **Disclosure of contract terms must not require revelation of trade secrets or require producers to divulge personal financial information or production practice;**
- ✓ **Contracts should be written in plain language and should include a readable, understandable summary of material risk;**
- ✓ **Production contracts must be negotiated and entered into in an environment free from unfair trade practices;**
- ✓ **Producers should be provided a first priority lien for amounts due under a production or marketing contract; and**
- ✓ **Contractors should be prohibited for being able to terminate a contract with a producer who has complied with the provisions of the contract.**

If this committee so desires, the above points could be included in reasonable, common sense substitute bill to address many important agricultural contracting concerns.

We would also remind the committee that Sen. Harkin, addressing agricultural contracting issues such as producer rights and unfair trade practices, introduced legislation

in the 106th Congress, S-3243. It is our understanding the bill will be reintroduced during the 107th Congress. Kansas Farm Bureau and the American Farm Bureau Federation are working closely with Sen. Harkin and the Senate Agriculture Committee on many important contracting issues.

In addition to any legislative approach that may be appropriate, informational initiatives should also prove helpful in addressing agricultural contracting concerns. **Farm Bureau strongly encourages private organizations, governmental agencies and educational institutions to develop and promote educational programs and materials that provide technical and practical information about contract production, marketing and cooperative businesses.** We have initiated programs to do just that.

Before you is the nearly final draft of a publication we will be distributing to all our county Farm Bureaus. Additionally, we will be conducting an information session, based on this and other material, at our Commodity Conference in Hays on March 21st. Other agriculture contracting seminars are planned. We will also be using our KFB web page to provide contracting information, including a link to USDA's contract production guide.

The guide book, informational meetings, web page information and legislative work are examples of the many programs and projects Farm Bureau, on both the state and national level, intends to assist farmers and ranchers in evaluating contract production as an option for their operation. Our goals for these initiatives are simple:

- *Producers should have tools and resources available to help evaluate contract production and specific contracts;*
- *Producers should enter into contracts only when they fully understand the terms and obligations of the agreement;*
- *Contract production should provide a positive and profitable impact on a producers agricultural operation.*

We appreciate the opportunity to appear today and share our positions on these important issues. We stand ready to answer questions or assist the committee in any way requested. Thank you.

A PRODUCER'S CHECKLIST
for
AGRICULTURAL CONTRACTING



KANSAS FARM BUREAU

FEBRUARY 2001

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INTRODUCTION

The agriculture industry is experiencing change in many sectors. Producers are growing for domestic and global markets. Consumers desire specialty products and farmers and ranchers are meeting these demands. With these changes come new ways in which commodities and livestock are produced and marketed. An ever-increasing share of agriculture products are now being grown and marketed under contract.

Contract production and marketing has many advantages. Producers are able to obtain consistent cash flow, secure premiums for superior products and efficiencies, take advantage of financing opportunities and use the contract as a risk-management tool. Contracting can also bring a loss of control over a growing operation and dictate producer actions.

Contracting has advantages and disadvantages. The information contained in this guide is not intended to argue for or against contracting. Rather, it is designed to assist the producer in evaluating a contract in order for the producer to determine if the agreement meets his or her needs as a farmer or rancher.

At the time we are compiling this list, legislation is pending before Congress and the Kansas Legislature that would dictate specific items in agricultural contracts. Legislation or regulatory changes, on the state or national level, could render some information contained in this manual out of date.

The checklist is an information tool only. It contains some of the items a producer might want to consider when contemplating an agriculture contract. **It is not legal or financial advice.**

We strongly encourage every producer to seek professional legal and financial consultation before entering into an agricultural production or marketing contract. These contracts are often prepared by the contractor's attorneys and seek to protect the contractor's interests. Thus, it is important for a producer to obtain independent advice from his or her own attorney and financial professionals.

The checklist is essentially a list of questions to contemplate regarding contract agriculture in general and the specific contract you are examining. These questions, along with the advice of your professional legal, financial and technical advisors, can help you more fully evaluate the terms, responsibilities, obligations and impacts of an agricultural contract.

PRODUCER'S CHECKLIST

Is Contract Production Right for Me?

PERSONAL NEEDS AND GOALS

_____ What are your current operational needs and goals?

_____ What are your short and long-term operational needs and goals?

_____ Are you comfortable turning control of operating decisions, in whole or in part, over to another?

_____ Are you willing to provide private financial histories to support your ability to comply with a contract?

EXPERT CONSULTATION

_____ Have you sought appropriate background information?

- Legal considerations
 - Attorney

Financial/tax implications

- Banker
- Other lender
- CPA
- Financial planner
- Insurance agents
 - General provider
 - Crop insurance provider
- Technical experts
 - Extension specialist
 - Agricultural consultant
 - Environmental technician
 - Veterinarian
 - Farm Service Agency (farm program consequences)
- Other producers

Know the Contractor

- _____ How long has the contractor been in business?
- _____ How is the contractor's business organized/structured?
Is the contractor a subsidiary of another entity?
- _____ Is the parent company obligated under the contract to fulfill the responsibilities of the contractor, should the contractor fail to do so?
Under what circumstances?
- _____ Is the contractor (and/or the parent company) financially stable and do they have sufficient resources/cash flow to comply with the contract terms?
- Financial statements
 - Cash flow statements
 - Annual Reports
- _____ What are the contractor's short and long-term business goals and objectives?
- _____ Has the contractor entered into other contractual relationships or capital investments in the same geographic area?
- _____ Is the contractor committed to continuing to operate in the area for a specific length of time?
- _____ Are you comfortable with the contractor's business philosophy?
- _____ Are you comfortable entering into a working relationship with this entity?
- _____ Does the contractor have appropriate credentials (if applicable)?
- Bonded
 - Licensed
 - Registered
 - Other

Equipment and Facilities

- _____ Will you be required to invest in new, or upgrade existing facilities?
Do you have the ground space for such an expansion?
Do you have ground space available for future expansion?
Will you be in compliance with any applicable setback requirements?
- _____ If crop production, will you need special storage or handling facilities?
Preserve identity?
Separate GMO grains?
Segregate varieties?
- _____ Does the infrastructure exist to support the operation or future expansion?
- Water
 - Sewer or waste disposal
 - Energy source - electricity, propane, natural gas, etc.
 - Roads and driveways
 - Irrigation system
 - Other
- _____ Will the equipment, facilities, procedures or product require special care, management, fuel or utilities?
Who is responsible for the cost of these special considerations?
- _____ Who is responsible for securing any needed permits, zoning approval or inspections?
Who pays any fees?
What happens in the event approval is not granted?
- _____ Will the contract period extend long enough for you to recover your investment in equipment, facilities and infrastructure upgrades?
- _____ Can the contract be terminated prior to recovering your capital investment?
If yes, is there a provision to compensate you for your investment?
Will you be able to recover costs of future upgrades?
- _____ Who is responsible for construction related costs?
- Permits
 - Surveys
 - Engineering
 - Excavating
 - Updating abstracts
 - Materials
 - Specialized equipment
 - Labor

- _____ What are the time parameters for completing construction or upgrades?
- _____ What happens if there are delays? Are there penalties? Does it depend on the reason for delay?
- Act of God
 - Strike
 - Illness
 - Delivery of supplies delayed
- _____ Does the equipment, facilities or infrastructure need to meet certain specifications?
- Approval
 - Certification
 - Calibration
 - Industry standards
- _____ Who provides the specifications?
- _____ Who determines if these specifications have been met and what methodologies do they use?
- _____ Who is responsible for failure to meet specifications? Does it depend on the reason for non-compliance?
- Poor workmanship
 - Sub-standard materials
 - Failure to comply with regulations
 - Other
- _____ Can the equipment, facilities or infrastructure be put to other uses?
- During the contract period?
- Following the contract period?
- Can you house livestock or handle grain other than the contractor's in the facility?
- At the same time, you are housing contractor's livestock/grain?
- _____ Who has access to the equipment, facilities and fields? Under what conditions?
- Is advance notice required to enter?
- Are special procedures needed to enter?
- Prevent contamination
 - Prevent spread of disease
- _____ What are the procedures in the event of contamination or disease?
- _____ How is liability assigned for damages from contamination or disease?
- _____ What is the method for recovering damages for contamination or disease?

_____ Are you restricted on the type of crops, livestock or wild animals that may be near the facility?

_____ Who is responsible for damage to equipment, facilities, fields or infrastructure?

_____ Who is responsible for maintaining insurance on equipment, facilities, premises, crops or livestock?

What level of coverage is required?

_____ Who is responsible for injury incurred at the site?

Who maintains liability insurance?

What level of coverage is required?

Operation and Production Considerations

_____ Are you able to comply with contract provisions detailing production requirements?

_____ Are you willing to give up control or decision-making power to enter into a contract enterprise?

LIVESTOCK

LIVESTOCK DELIVERY

_____ Who pays the cost of delivering livestock in and out of your facility?

_____ Are deliveries to be made on a set schedule? Who determines when they will be made?

_____ What happens if you receive deliveries late?

_____ Are there consequences if you fail to deliver livestock in time?

_____ Who bears the risk of loss during delivery in and out of your facility?

_____ Are the conditions of livestock delivered in and out clearly defined?

- Arrive in good health
- Specific number, weight and quality delivered to you
- Certain specifications met on animals you send out
- Other

_____ What are the consequences if deliveries to you are not up to specification?

Can you reject animals?

Is compensation due you?

_____ What are the consequences if animals you send out of your facilities do not meet specifications?

Loss of premium?

_____ When, where and under whose supervision are the animals weighed?

ANIMAL HEALTH

_____ Who evaluates livestock health when animals arrive at your facility?

_____ What recourse is available to you if you believe the livestock is unhealthy?

Request a veterinarian to certify animal health?

Who bears the cost for this exam?

Reject the animal?

_____ Who bears the risk of loss if unhealthy or poor quality animals fail to meet performance standards or quality specifications?

_____ Are you able to recover income lost through poor performance of sick or poor quality animals that were delivered to you?

_____ Who bears the risk of loss while animals are at your facility?

Are there presumptions regarding loss soon after the arrival at your facility?

What if injury/death occur as a result of equipment failure?

What if injury/death occurs as a result of weather?

- Extreme temperature
- Extended periods of rain/flood or drought
- Lightning or wind
- Other

_____ Are there consequences if unhealthy livestock is brought into your facility that infects other animals?

Infects contracted livestock?

Infects your own livestock?

_____ Who pays for scheduled and impromptu health care for livestock?

_____ Who selects the veterinarian?

What if that specific veterinarian is unavailable?

_____ Who is responsible for veterinary bills?

_____ What if the facility is quarantined as a result of a disease outbreak?

Are you protected from income losses?

Does it matter who orders the quarantine (contractor, vet, regulator)?

_____ Who is responsible for complying with animal health regulations?

CROPS

GRAIN CONDITION AND QUALITY

_____ Does the contract require the grain to meet certain standards?

- Moisture
- Foreign matter
- Test weight
- Protein content
- Oil content
- Toxin limits
- Other

_____ What quality standards are applicable?

- GIPSA
- Other

_____ Who is responsible for quality testing?

_____ What if you dispute the test results?

Can you have another independent test run?

_____ How are conflicting test results addressed under the contract?

_____ Who is responsible for the costs associated with improving quality, such as grain drying?

_____ What are the consequences under the contract if quality standards are not met?

_____ If only a portion of the crop fails to meet quality specifications, is the entire crop penalized?

_____ What happens to crops that are rejected for failure to meet specifications?

Can you sell the crop?

Can you use the crop as feed?

Other

GROWING OPERATION REQUIREMENTS

_____ Is a specific plan for planting, managing or harvesting the crop required?

_____ Is a specific pest management plan mandated?

_____ Are specific pest management tools prohibited?

_____ Is a certain fertility program mandated?

_____ Does the contract specify what type of tillage must be utilized?

How does that impact your conservation plan?

- _____ Does the crop involved have special resistance or susceptibility traits to insects, disease or agri-chemicals?
- _____ Must the crop be segregated or protected from other crops or types of plants?
If so, what distance must be maintained?
Will this require additional costs or investments?
- _____ Once the crop is harvested, what type of residue is left?
How does that impact your conservation plan?
- _____ How does the contractor enforce growing requirements?
- _____ Who bears the risk of loss while the crop is in the field?

AMOUNT OF PRODUCTION

- _____ What production decisions are you responsible for?
- _____ Is the product to be delivered under the contract a specific number of bushels or the output of a particular tract of land?
- _____ What is the expected yield from the crop to be planted?
- _____ If planting a specialty crop that typically yields less than a general crop, will the price/premium for the specialty crop make up for diminished yield?
- _____ Does the contract specify certain time frames for planting, fertilizing, applying chemical or harvesting?
- _____ Does the contract allow adjustment to time frames, number of acres planted or harvested or location of planting due to weather?
- _____ If the contract requires you to deliver a certain amount of grain, are their penalties for failing to deliver the set amount?
- _____ Does it matter what caused the shortfall in production?
- Act of God
 - Weather
 - Plant pest or disease
- _____ Are you allowed to deliver substitute supplies in order to meet the quantity obligations imposed under the contract?

GENETICALLY MODIFIED ORGANISMS (GMO'S)

_____ Are you contracting to plant GMO seed?

_____ What uses has the grain been approved for?

- Human consumption
- Animal consumption
- Non-food uses

_____ Do other countries place use restrictions on the crop? (i.e. European Union)

_____ Are restrictions likely in the future?

_____ Does the contract require you to plant a non-approved GMO product?

_____ What recourse is available to you if you suffer economic losses from growing a non-approved crop.

_____ Is there, or do you expect, opposition to the crop from consumer or environmental groups?

_____ What is the market for the crop being planted?

_____ Where will the crop be delivered?

_____ Has the entity designated to receive delivery guaranteed in writing that the GMO crop will be accepted?

Does the delivery point place conditions on a GMO crop before accepting?

_____ Must the crop be certified as a GMO or non-GMO product?

_____ What is the process for certification?

_____ Will testing be required?

Who performs the tests?

Who pays for the tests?

_____ What happens if you dispute the test results?

Can the crop be tested by a neutral third party?

If so, who bears the cost of this testing?

_____ Does the certification require you, the farmer, to be responsible for product purity after it leaves your facility?

_____ Is there a possibility for developing a multi-tiered market or price structure?

GRAIN DELIVERY

_____ Where is grain to be delivered?

_____ What will it cost to deliver to that location?
Who bears the cost of delivery?

_____ What if the location needs to be changed?
Who bears additional cost associated with the change?

_____ Will there be special handling procedures?

_____ Does the contract specify a specific date for delivery?

_____ If not, who sets the delivery date?

_____ Is the contract a "buyer's call"?

_____ If so, how much notice is the contractor required to give?

_____ Are there penalties for early or late delivery?

_____ What if the circumstances beyond your control necessitate early or late delivery?

_____ Who bears the risk of loss while the crop is in storage or in delivery?

FARM PROGRAM IMPLICATIONS

_____ Will entering into the contract impact your eligibility for farm program participation or payments?

- Commodity loans
- Market loss payments
- Loss deficiency payments (LDP's)
- Other

_____ Is the crop a farm program crop?
For payment purposes?
For base retention purposes?

_____ Is it classified as a fruit or vegetable by the Farm Service Agency (FSA)?

_____ Will growing the contract crop impact your established farm program yield?

PAYMENT

_____ How is the price established for the crop?

_____ Is payment for the sale of grain or for providing the service of growing the crop?

_____ When is payment due?

- Upon delivery
- Certain number of days following delivery
- Specific date

_____ What guarantee of payment do you have if payment is not received upon delivery?

_____ Does the contract specify it is a credit sale if payment is made after delivery?

Environmental Issues

_____ Are you knowledgeable about the environmental regulations that apply to the operation?

_____ Does your location meet any applicable setback requirements?

_____ Who is responsible for meeting environmental requirements?

- Meeting current requirements
- Meeting future requirements
- Maintaining records
- Preparing and filing reports
- Keeping permits current

_____ Who is responsible for a violation of applicable environmental standards?

_____ Are special environmental plans required for the facility?

- Nutrient management plans
- Waste management plans
- Disaster contingency plans
- Disposal of chemicals and containers
- Other

_____ Who is responsible for the plans?

- Development
- Implementation
- Updating
- Filing with appropriate authorities

WASTE MANAGEMENT

_____ Who is responsible for disposing and treating wastes?

- Manure
- Wastewater
- Dead animals
- Spoiled grain
- Other

_____ Are the proper agreements in place for waste disposal, such as manure/waste water agreement for spreading on another's land?

_____ Who owns the waste?

Can you sell it?

Who gets the money?

COMMUNITY CONSIDERATIONS

_____ Will the type of production meet with opposition from neighbors or the environmental community?

Are you prepared to deal with that pressure, even on a continual basis?

Are there cost-effective actions you can take to mitigate the complaints?

- Dust/odor controls
- Water quality protection activities
- Noise abatement

Financial Implications

INITIAL CONSIDERATIONS

_____ Does the contract require an initial investment from you (start-up money, facilities upgrade, new equipment or construction, etc.)?

_____ Do you have the money, or can you obtain financing, to cover these costs?

Are the financing costs/interest rates acceptable?

_____ If obtaining financing, how does the additional debt influence your debt to equity ratio?

_____ Who pays for contractor mandated upgrades during the life of the contract?

_____ How is depreciation of assets addressed and how does the depreciation period relate to the length of the contact?

LENDER APPROVAL

_____ Will the lender want to approve the contract before providing the loan?

_____ Will the lender require assurances that the contractor meets his or her obligations under the contract?

Is the contractor willing to provide that information?

OPERATIONAL COSTS

_____ Who pays the cost of repairs on the facility and equipment?

_____ Who maintains insurance, what types are maintained and at what level of protection?

- Liability
- Income protection
- Crop
- Multi-peril
- Hail
- Other

_____ Who is responsible for utility costs?

_____ Who is responsible for security expenses?

_____ Who is responsible for veterinary expenses?

_____ Do you know, or can you reasonably estimate, production costs to evaluate the profitability of the contract?

- Your own production records
- Another producer's productions costs
- Production cost estimates from the Extension Service

_____ Do the contract requirements increase the production costs above what is normally estimated?

If so, will you still be able to generate sufficient income and cash flow?

_____ Who is responsible for the cost of inputs?

_____ Does the contract require inputs be purchased from a specific source?

What if that source is unable to provide the input when it is needed?

PAYMENTS/INVESTMENT RECOVERY

_____ Will the contract provide sufficient cash flow to meet debt obligations and family living expenses?

_____ Is the basis for your payment clearly delineated (how are you being paid)?

_____ How is the price of your livestock or commodity being established?

- Grid
- Chicago Board of Trade
- Local/area price
- Other

_____ When does the pricing occur? Can it be forward priced?

_____ Are there payment factors that are out of your control?

_____ Are payments firmly scheduled?

Does the schedule meet your cash flow needs?

Are there penalties for late payments?

_____ Can payments be assigned?

_____ Does the contract provide any guarantee as to minimum payment or minimum occupancy?

Is it based on facility holding capacity?

_____ What happens if the contractor files bankruptcy?

_____ Can the contract be terminated early? How does that impact your recovery of capital investments?

_____ Will payments include your lender's name on the check?

_____ When will the last payment be made? Before livestock/commodity leaves your facility?

_____ Are check-off funds collected? When?

_____ Who is responsible for actually marketing the product?

INCENTIVES/BONUSES

_____ Are incentive/bonus terms clearly defined?

_____ How are incentive/bonus payments calculated?

Is the methodology understandable?

Are you able to evaluate the calculations?

AGRICULTURE LIENS

- _____ Are any of the statutory agricultural liens available to you for the type of operation contemplated?
- _____ Are any of the liens available to the contractor?
- _____ What priority is given to that ag lien?
- _____ What are the legal requirements for perfecting or preserving a lien?
- _____ Are you prohibited from granting a security interest in the agricultural product to a third party, such as a lender, input supplier or landlord?

Labor and Management Issues

LABOR

- _____ Who determines the husbandry practices employed in the operation?
- _____ How are these practices evaluated and who performs the evaluation?
- _____ Does the contract allow labor or management to be subcontracted or delegated?
- _____ How would delegation impact your cash flow and profitability under the contract?
- _____ Who provides for workers compensation, health and disability insurance for yourself and employees?

TRAINING

- _____ Are you or your employees required to have special training?
- _____ Who pays for the cost of the training?
- _____ Where will the training take place?
- _____ Will training need to be updated?

OPERATION RECORDS

- _____ What documentation will be involved in the operation?
- _____ What portion of your time commitment to the operation will be needed to meet record-keeping obligations?

_____ What are the consequences of poor or incomplete record keeping?

Legal Considerations

RIGHTS AND OBLIGATIONS

_____ Are all of the agreement parts included in the written terms of the contract?

_____ What are your legal rights and obligations under the contract?

_____ What are the contractor's legal rights and obligations under the contract?

_____ Do other entities have obligations under the contract or need to approve the contract?

- Parent company
- Lender
- Landlord
- Spouse

PARTY STATUS

_____ What kind of relationship between you and the contractor is created under the contract/law?

- Employee/employer
- Tenant/landlord
- Joint venture
- Partnership
- Agency
- Independent contractor
- Other

***Note: the type of relationship can have important legal and financial implications.**

_____ Who owns the livestock or crop and how/when is title transferred?

***Note: ownership can have important legal and financial implications, particularly when determining who bears the risk of loss.**

_____ Is a "bailment" relationship created under the contract/law?

ASSIGNMENT

_____ Can the contract be assigned?

By you?

By the contractor?

_____ Will assignment by either party result in tax consequences to you?

TERMINATION

_____ Under what conditions can the contract be terminated?

Conditions for contractor to terminate?

Conditions for you to terminate?

Can termination occur for minor breeches?

What if the producer becomes sick, disabled, dies or files bankruptcy?

What if the contractor fails to deliver livestock, feed, seed, inputs or timely payments?

What if the contractor files bankruptcy?

_____ Does the contract contain an "Act of God" excuse for non-performance?

_____ Who determines if those conditions for termination have been met?

Judgment of one party?

Objective standards?

Quality testing?

_____ Are there notice requirements before termination?

_____ Following notice, is there reasonable time for the offending party to remedy the alleged breach?

_____ What are your rights following termination?

Recovery of payments due?

Recovery of capital investments?

Option to purchase crop or livestock?

Right to sell or use crop or livestock?

_____ Will property need to be transferred or sold once the contract is terminated?

RESPONDING TO LEGAL COMPLAINTS

_____ Who is responsible for responding to complaints, lawsuits or alleged violations of the law?

_____ Who is ultimately responsible for damages, penalties and legal expenses related to complaints, lawsuits or alleged violations of the law?

CONFIDENTIALITY, INTELLECTUAL PROPERTY AND WAIVER OF RIGHTS

- _____ Are you prohibited, under the contract, from discussing the terms of the contract?
Is so, does that include discussions with your attorney, financial advisor or technical advisor?
- _____ Does the contract require you to reveal any trade secret or personal financial information?
If so, who shall receive the information?
Will they hold the information in confidence?
- _____ Are you required by the contract to protect a contractor's intellectual property, trade secret or process? Are you responsible for preventing unauthorized use?
Genetic information?
Genetic material (germ plasm, sperm, growth enhancers)?
Feed/ration formulation?
- _____ Are you able to save back seed to plant on your farm in the future?
- _____ What happens to seed that is rejected by the contractor?
Can you use it as seed in the future?
Can you use it for feed?
- _____ Does the contract require you to waive any rights you would otherwise have under the law?

DISPUTE RESOLUTION

- _____ Does the contract require disputes to be settled in a particular manner?
 - Arbitration
 - Mediation
- _____ Are you prohibited from seeking court action?
- _____ How will the arbitrator or mediator be chosen?
- _____ Will there be one arbitrator or mediator or a panel of decision makers?
- _____ Does the contract specify special rules for the dispute resolution process?
- _____ Is the decision binding?
- _____ Is there a process for appeal?
- _____ Who pays the costs of dispute resolution?

VENUE/CHOICE OF LAW/CHANGE OF LAW

- _____ Whose law governs the interpretation of the contract?
 - The state where producer lives?
 - The state where contractor legally resides?

- _____ Does the contract dictate where any lawsuit might be filed?
 - Is that location fair?
 - Can you reasonably access that location?

- _____ If the laws governing contracts change, does that nullify the contract?

PROTECTING ASSETS

- _____ Who is responsible for various types of insurance?

- _____ Are the amounts of insurance sufficient to protect you from loss?

- _____ Are you able to acquire crop insurance on the product involved?
 - Will it be based on your actual crop history or other yield information?

- _____ Are you able to acquire income replacement insurance at a reasonable cost?

- _____ Are any agriculture liens available to you? What are the requirements for perfecting and preserving a lien?
 - Is identification of commodity, livestock or facility necessary?
 - Is a specific form required?
 - Does the lien need to be filed with a specific authority?
 - Other?

Community Consideration

- _____ Will the type of production influence your relationship with neighbors and community members?

- _____ Are your neighbors aware of your interest in entering into an agricultural contracting enterprise?

Concluding Analysis

- _____ Are you being rushed by the contractor to make a decision? Will the offer expire at a specific time?
- _____ Are all agreements reduced to writing in the terms of the contract?
- _____ Do you understand all the terms, rights, responsibilities and obligations imposed by the contract?
- _____ Have you have consulted with appropriate experts?
- Attorney
 - Banker
 - Other lender
 - CPA
 - Financial planner
 - Insurance agents
 - Extension specialist
 - Agricultural consultant
 - Environmental technician
 - Veterinarian
 - Farm Service Agency
 - Other producers
- _____ Viewed in the most negative light, will I be able to fulfill the obligations?
- _____ Viewed in the most negative light, will I be able to make a profit?
- _____ Have you evaluated the contract and its impacts, both positive and negative, on your farming and ranching operation?
- _____ Do you need to negotiate further?
- _____ Are you ready to enter into the agreement?

ADDITIONAL RESOURCE LISTINGS

The following provides a list of additional contacts that may be able to provide additional information on agricultural production, marketing and contracting. The list is strictly informational. Inclusion on the list is not an indication that Kansas Farm Bureau has reviewed information available from these sources, nor should it be seen as an endorsement by KFB.

KSU Research and Extension 785/532-6147	http://www.oznet.ksu.edu
MWPS MidWest Plan Service 800/562-3618	http://mwpsdq.org
National Ag Risk Education Library 612/625-1964 or 800/234-1111	http://www.agrisk.umn.edu
Minnesota Department of Agriculture (651) 297-2200	webinfo@mda.state.mn.us
Iowa Attorney General's Office 515/281-5164	http://www.state.ia.us/government/ag
American Farm Bureau Federation 847/685-8600	http://www.fb.org
National Pork Producers Council 515/233-2600	http://www.nppc.org
National Cattleman's Beef Association 303/694-0305	http://www.beef.org



6301 ANTIOCH • MERRIAM, KANSAS 66202 • 913-722-6633

**Testimony to the House Agriculture Committee
in support of HB 2278, HB 2280 & HB 2281
Monday, February 12, 2001**

Chairman Johnson and members of the committee, the Kansas Catholic Conference appreciates this opportunity to provide testimony to the House Agriculture Committee in support of House Bills 2278, 2280 and 2281, which comprise what has been referred to as the Producer Protection Act. The Kansas Catholic Conference believes in a fair, open and competitive marketplace. These bills would help spell out the rights and responsibilities of both the farmer and the contractor. Contract farming has taken over certain sectors of agriculture such as poultry and the future in agriculture seems to be heading for even more contractual arrangements. Being aware of the concerns raised by contract poultry growers, we believe that Kansas law should better reflect a balance of the rights of all parties. Iowa and Minnesota have passed such laws and several other states are considering these same issues.

We believe that it is in everyone's best interest to spell out the obligations implied in these producer contracts. These three bills would better balance the economic power held between the farmer and the processor or contractor. The Kansas Catholic Conference supports a structure of agriculture built on a decentralized, owner/operated family farm system. It is our understanding that these three bills would go a long way to improve agricultural contracts. HB 2278 would make it unlawful for any contractor to take any action to coerce, intimidate, retaliate or discriminate against any producer who exercises or attempts to exercise any producer right as defined in the bill. HB 2280 would make any contract that includes a provision to waive a producer right or an obligation of the contractor void and unenforceable. HB 2281 establishes that a contractor or processor cannot enforce a provision in an agricultural contract that states information in that contract is confidential.

MOST REVEREND GEORGE K. FITZSIMONS, D.D.
DIOCESE OF SALINA

MOST REVEREND RONALD M. GILMORE, D.D.
DIOCESE OF DODGE CITY

MOST REVEREND MARION F. FORST, D.D.
RETIRED

MOST REVEREND JAMES P. KELEHER, S.T.D.
Chairman of Board
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MICHAEL P. FARMER
Executive Director

MOST REVEREND EUGENE J. GERBER, D.D.
DIOCESE OF WICHITA

House Agriculture Committee
February 12, 2001
Attachment 9

It seems that in a balanced and competitive marketplace, fair rules of commerce are understood by all parties and that the government should only become involved if there are violations. These three bills seem to simply clarify the fair rules of commerce.

In their *Agriculture White Paper*, which will be released by the Kansas Catholic Bishops here in the Statehouse tomorrow afternoon, they state:

“...there are ethical implications to every human choice. Every decision will take us closer to our final end, or further from it: will be ethical or unethical, will be good or bad, will lead to virtue or to vice. Our educational choices, our business choices, our personal choices, our recreational choices, our agricultural choices...all are fraught with implications that go far beyond this world. There can be no divorce between economics and ethics. Those who try to answer the question without the security of clear moral standards wander aimlessly in a fog, and they produce no policy that is effective in safeguarding the concerns of nature and those of society.”

We believe that these bills will in fact help in safeguarding the concerns we all have regarding the agricultural choices we make each day by implementing good public policy. Thank you for this opportunity to provide the Kansas Catholic Conference's support for House Bills 2278, 2280 and 2281.

Mike Farmer, Executive Director
Kansas Catholic Conference

House Agriculture Committee
HB 2278
Testimony from the
Kansas Cattlemen's Association
By Chairman Mike Schultz

Mr. Chairman and members of the committee,

The membership of the Kansas Cattlemen's Association are supportive of House of Representatives Bill #2278 a bill that will give producers another process in which we will have a legal system to prevent any unfair or unlawful actions by those promoting contract production agriculture.

History has been made with case and points documented that the problems with contract production have and do exist today as in the past. Poultry and pork provide a valuable lesson, their once competitive and free lifestyle is now that of a wage slave to corporations in contract production of ag products. Look at the number of independent producer operations that are now empty and deserted. The system now is one of highly concentrated environmentally hazardous mega operations. Not to mention the ill effects on the communities.

We ask for your support on this HB 2278.

Thank you for your time and consideration,

Mike Schultz / Chairman
Kansas Cattlemen's Association

House Agriculture Committee
HB 2281
Testimony from the
Kansas Cattlemen's Association
By Chairman Mike Schultz

Mr. Chairman and members of the committee,

The membership of the Kansas Cattlemen's Association are supportive of House of Representatives Bill #2281 a bill that will allow producers the opportunity to get outside advise from legal counsel, bank representatives and other professional advise when necessary. The past experience is that the contractor may keep producers from sharing contractual arrangements with other producers there by isolating those producers from each other. When anyone enters into a agreement and the other party provides the contract it must show up as a red flag. This bill will help give producers that tool to develop a true competitive market arrangement as a producer with investments into facilities for production.

We ask for your support on this HB 2281

Thank you for your time and consideration,

Mike Schultz / Chairman
Kansas Cattlemen's Association

BRUCE F. LARKIN
 REPRESENTATIVE, DISTRICT SIXTY-THREE
 R.R. 1
 BAILEYVILLE, KANSAS 66404



TOPEKA

HOUSE OF
 REPRESENTATIVES

Testimony before the
 House Agriculture Committee
 Regarding
 House Bill 2278
 on
 February 19, 2001

COMMITTEE ASSIGNMENTS
 RANKING MINORITY MEMBER: TAXATION
 MEMBER: AGRICULTURE
 ENVIRONMENT
 AGRICULTURE & NATURAL
 RESOURCES BUDGET
 COMMITTEE
 INTERSTATE COOPERATION

Chairman Johnson and Members of the Committee. Thank you for allowing me to testify on House Bill 2278.

The combination of rapid consolidation in agriculture and the rise of widespread contracting in agriculture gives rise to concerns of unequal information, unequal bargaining power, and the potential for anti-competitive practices. The experience in the highly concentrated poultry industry demonstrates that abusive practices can be imposed on producers in connection with contracts. Retaliation, coercion, and discrimination against poultry producers is all too common.

This establishes a set of unfair practices for agricultural contracts:

First, it makes it an unfair practice for a contractor or processor to take action to coerce, retaliate, or discriminate against a producer for the exercise of a "producer right." Producer rights include (1) the right to join a producer association, (2) the right to contract with a producer association, (3) the right to be a whistle blower. Types of coercive or retaliatory actions are outlined, including alteration of termination terms, payment terms, or contract inputs.

Second, it makes it an unfair practice for a contractor or processor to provide a producer false information about producer rights or about producer associations.

Third, it makes it an unfair practice for a contractor to refuse to provide a contract producer information used to determine compensation and to allow a contract producer to observe weighing used to determine compensation.

Fourth, it makes it an unfair practice for a contractor to use so-called "tournament" compensation programs. Tournament compensation programs base compensation on one contract producer on the performance of other producers. The programs are widely used in the poultry industry and there have been many allegations that the programs allow contractors to unfairly discriminate against producers. The concern is that contractors who control the quality


House Agriculture Committee
 February 12, 2001
 Attachment 11

of contract inputs can control, and perhaps unfairly manipulate, a producer's performance under a contract.

This bill also prohibits waivers of these provisions and that laws of other states are unenforceable.

The bill calls for civil and criminal penalties for violations. Criminal penalty is a misdemeanor and civil penalty is an amount equal to the actual damages incurred by a producer.

Also, a producer can pursue a private cause of action.


Representative Bruce Larkin

BRUCE F. LARKIN
REPRESENTATIVE, DISTRICT SIXTY-THREE
R.R. 1
BAILEYVILLE, KANSAS 66404



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: TAXATION
MEMBER: AGRICULTURE
ENVIRONMENT
AGRICULTURE & NATURAL
RESOURCES BUDGET
COMMITTEE
INTERSTATE COOPERATION

Testimony before the
House Agriculture Committee
Regarding
House Bill 2280
on
February 19, 2001

Chairman Johnson and members of the Agriculture Committee. Thank you for allowing my testimony on HB 2280.

This bill applies only to production contracts and imposes an obligation of good faith on all parties in an agricultural production contract. The Uniform Commercial Code defines good faith as "honesty in fact in the conduct or transaction concerned." This could be an effective tool for producers. For example, if a contractor or processor made an oral promise and then reneged on the promise, the producer could better recover under this provision.

This provision is in Minnesota law and is intended to clarify that producers have the same rights as consumers when commitments are broken.

Representative Bruce Larkin

A handwritten signature in cursive script that reads "Bruce Larkin".

BRUCE F. LARKIN
REPRESENTATIVE, DISTRICT SIXTY-THREE
R.R. 1
BAILEYVILLE, KANSAS 66404



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: TAXATION
MEMBER: AGRICULTURE
ENVIRONMENT
AGRICULTURE & NATURAL
RESOURCES BUDGET
COMMITTEE
INTERSTATE COOPERATION

Testimony before the
House Agriculture Committee
Regarding
House Bill 2281
on
February 19, 2001

Chairman Johnson and members of the Agriculture Committee. Thank you for allowing my testimony on HB 2281.

Many agricultural contracts contain strict confidentiality provisions. Some of these provisions could be interpreted to prevent producers from discussing contracts with their attorneys, financial advisors, and other producers (not to mention governmental authorities). This not only inhibits the individual producer from getting professional evaluation of a contract, it also puts a cloak of secrecy on agricultural transactions. The traditional transparency in agriculture achieved through auctions, terminal markets, and futures trading is very much at risk in the era of production contracts and marketing arrangements which feature confidentiality.

This prohibits the inclusion of confidentiality provisions in agricultural contracts. This is based on an Iowa statute passed in 1999.

Bruce Larkin
Representative Bruce Larkin

February 12, 2001

Rep. Bruce Larkin
Kansas House of Representatives
Kansas Legislature
300 SW 10th Ave.
Topeka, Kansas 66612

RE: Contract production legislation

Dear Bruce:

While I have not had enough time over the weekend to give a full and thorough review of the bills that have been proposed on the contract production issue, let me share a few general thoughts concerning the importance of such legislation.

It is true that production contracts can provide opportunities to increase farm markets and profits. However, they can also greatly change the way farm decisions are made and can present significant new legal and financial risks many agricultural producers have not experienced before. Experience has shown that many contracts are offered to farmers without the opportunity for negotiation or a full disclosure and/or explanation of the contract terms. Likewise, the contracts are typically developed in situations where there is great disparity in bargaining power and information between the parties. In that type of a situation, the opportunity is very real for companies to take unfair advantage of farmers with one-sided, poorly-written, or oppressive contracts.

A related issue involves market structure. Agricultural producers are experiencing increasing levels of concentration among potential buyers of their products that they may be asked to contract with. The combination of concentration and vertical integration from the top down not only diminishes competition, it eliminates meaningful competitive options for producers. With regional dominance by the integrator, the result is demolition of open, competitive and transparent markets with those markets replaced by negotiated pricing. Where there is great disparity of bargaining power (a monopolist or near monopolist on one hand and someone in perfect competition on the other), it is fairly clear what the outcome will be. A primary question is whether a court would void any resulting contract as unconscionable. One way to try short-circuit that process is to provide statutory protections to producers that sign production contracts.

These are some of the reasons that an increasing number of states have enacted legislation in recent years regulating agricultural production contracts. As you are aware, Minnesota, Wisconsin and Iowa are among the lead states that have passed legislation designed to protect producers. Indeed, production contracts in Iowa are posted on the Attorney General's website for public inspection.

The Kansas legislature has recognized the need to enact some type of producer

protections. In 1994, Kansas became the second state to enact some of the Minnesota provisions, but only as applied to swine production contracts. The legislation was passed as part of a larger bill amending the corporate farming restrictions to allow corporate involvement in swine production and includes a number of provision designed to regulate the manner in which swine production contracts are used. It is widely recognized now that the potential problems that can occur with contract production in Kansas are not strictly confined to the swine industry.

Ultimately, the question as to whether the use of production contracts should be more closely regulated can only be answered based on the perspective and experience of the person being asked. The goals of fairness, equity, full disclosure, and reasonable allocation of the risks and benefits of agriculture are the key underlying issues. Contracts can be written which are balanced and equitable and which attract good growers. The key question is whether such contracts will result in the absence of legislative protections for producers. Given the current market structure in which buyers of agricultural products operate in, a growing number of policy-makers are deeming additional protections necessary.

Sincerely,

Roger A. McEowen, Esq.
Assoc. Prof. Ag Econ
Ext. Spec. Ag Law and Policy
Kansas State University
Manhattan, Kansas. Member
of KS and NE Bars.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES



TOPEKA

JOHN FABER

REPRESENTATIVE, 120 DISTRICT

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MEMBER AGRICULTURE
EDUCATION
FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ON INFORMATION
TECHNOLOGY

For immediate release - Wednesday, September 13, 2000.

Iowa Leads States Pushing "Producer Protection Act"

Attorney General Tom Miller leads sixteen farm and ranch states in proposing new laws to protect producers who enter contracts to provide grain or livestock.

DES MOINES.

Iowa Attorney General Tom Miller announced today that sixteen State Attorneys General have drafted new laws to protect contract growers and producers - the growing number of farmers and ranchers who produce livestock or grain on contract with large contractor companies.

"Contracting poses serious risks for producers and ultimately for consumers," Miller said. "Contracting has its place and its benefits, and it certainly is growing quickly, but we want to be sure farmers get a fair shake in a time when there is a strong trend toward consolidation and concentration in agriculture. There can be a huge disparity in bargaining power between farmers and contractor companies. We're working to be sure the scales aren't tipped against ordinary producers."

Miller and the Farm Division of his office led the multi-state project of drafting the model legislation, which is designed to be introduced in state legislatures. Several of the measures are based on laws that recently were adopted in Iowa -- banning confidentiality clauses in contracts, for example, and giving farmers a first-priority lien for payments in case a contractor company goes out of business. Miller said his office would ask the Iowa Legislature to approve other elements contained in the model act.

"We are proposing moderate measures that will protect farmers but will not be overly burdensome for processors," Miller said.

In a joint statement <<http://www.state.ia.us/government/ag/agcontractingstatement.htm>> accompanying the model "Producer Protection Act," Miller and the sixteen State Attorneys General said the legislation would "help preserve competition in agriculture for the benefit of farmers and consumers."

The Attorneys General cited their concern about "the rapid trend toward consolidation in agriculture" and that fewer and fewer firms control the production, processing, preparation and retailing of agricultural commodities and food. The rapid rise of production contracts and marketing contracts has dramatically increased vertical integration in U.S. agriculture.

"We worry that this conglomeration of economic power may lead to anti-competitive practices and adversely affect the prices paid to farmers for commodities and the prices paid by consumers for food," said the Attorneys General, who serve in many important farm and ranch states.

Attorney General Miller said: "In production contracting, we worry about the great disparity in bargaining power and marketing information between the contractor companies and individual producers. Large companies often offer contracts to producers on a take-it-or-leave-it basis. Risks to producers are buried in pages of legalese, and producers easily can be stuck with unfair contract terms. On top of that,

House Agriculture Committee
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Attachment 12

they may be barred from disclosing any of the terms to others," he said.

"We've already addressed several of those issues in Iowa," he said. "We want to do more in Iowa, and we want other states to join the effort to protect their farmers and ranchers as well."

The Attorneys General said contracting often results in unfair shifting of economic risk to farmers and ranchers, especially those who are required to make large capital investments in buildings and equipment. And they said the fact that most agricultural contracting is done in secrecy "severely limits the ability of farmers to compare contracts and negotiate the best or even a fair deal."

The model state legislation Producer Protection Act"

<http://www.state.ia.us/government/ag/agcontractingexplanation.htm> would:

Require contracts to be in plain language and contain disclosure of material risks.

Provide contract producers with a three-day right to review production contracts.

Prohibit confidentiality clauses in contracts. This provision -- which is modeled after a law enacted last year in Iowa -- would help maintain the "market transparency" that historically has been available to farmers and ranchers through auctions and terminal and futures markets. "Farmers and ranchers should have the freedom to discuss their contracts with other farmers at the coffee shop, not to mention with their own lawyers and bankers," Miller said.

Provide producers with a first-priority lien for payments due under a contract - in case the contractor company should go out of business. Iowa approved such a measure in 1999.

Protect producers from having contracts terminated capriciously or as a form of retribution if farmers already have made a sizeable capital investment required by the contracts.

Make it an unfair practice for processors to retaliate or discriminate against producers who exercise rights including the right to join producer organizations.

The model legislation was endorsed by the Attorneys Generals of Colorado, Indiana, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Vermont, West Virginia, Wisconsin, and Wyoming.

The joint statement of the Attorneys General said they did not necessarily agree on every single provision of the model "Producer Protection Act," and that the legislation would need some customization for each state. "Nevertheless, we see a real benefit for states to enact similar laws and we see this model statute as an important starting point," they said.

<http://www.web-span.com/pga/news/newsindex.html> <http://www.web-span.com/pga/news/newsindex.html> <http://www.web-span.com/pga/index.html> <http://www.web-span.com/pga/index.html>

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**Statement of State Attorneys General on "Producer Protection Act"
September 13, 2000**

We, the Attorneys General of the States of Iowa, North Dakota, Colorado, Indiana, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, Oklahoma, Vermont, West Virginia, Wisconsin and Wyoming join together to address a serious issue facing our states and the nation - concentration in agriculture.

In recent years, we have become particularly concerned about the rapid trend towards consolidation in agriculture at both horizontal and vertical levels. Through mergers, acquisitions, alliances, and other arrangements, fewer and fewer firms control the production, processing, preparation, and retailing of agricultural commodities and food. We worry that this conglomeration of economic power may lead to anticompetitive practices and adversely affect the prices paid to farmers for commodities and the prices paid by consumers for food.

State Attorneys General play a significant role in fostering full and free competition in the United States economy through the enforcement of federal and state antitrust laws. We pledge to continue our past practice of working together and with the United States Department of Justice and the Federal Trade Commission to vigorously enforce these laws as they apply to agriculture.

However, it is clear that enforcement of antitrust laws, as interpreted by the courts, may not be enough to promote effective competition in agriculture. The antitrust laws do not provide us with the tools to deal with an important cause of concentration in agriculture - contracting. The use of production contracts and marketing contracts by firms with ever growing market shares has dramatically increased vertical integration in American agriculture. Dr. Neil Harl of Iowa State University has called this the "rising tide in contract agriculture."

We acknowledge that there are important reasons why contractors (most often processors) and farmers utilize, and can benefit from, contracts. Indeed, some argue that contracting may greatly increase economic efficiency in agriculture. However, we also believe that contracting poses serious risks for producers and, ultimately, for consumers. This is particularly true in some agricultural sectors where producers are, as Dr. Harl puts it, "contracting with near monopolists." Our offices have received numerous complaints and allegations of abuse in agricultural contracting. We have also reviewed the history of contracting, especially in the poultry industry. In general, we see several risks arising from contracting, including the following:

First, there is greater and greater disparity between processors and farmers with respect to market information and bargaining power. Large companies often offer contracts to producers on a "take it or leave it" basis. The contractual risks to producers are buried in pages of legalese and producers are stuck with unfair contract terms. The poultry industry, which has been vertically integrated for decades through the extensive use of contracts, is replete with allegations of unfair treatment of producers.

Second, contracting can result in the unfair shifting of economic risks to farmers. This is common in production contracts that require producers to make substantial capital investments. For example, in the poultry industry, some producers are contractually required to make long term capital investments in buildings and equipment, but are only offered a contract that covers one flock of birds.

Finally, a serious consequence of the widespread use of contracts, which often contain strict confidentiality provisions, may be the demise of market transparency traditionally achieved in agriculture through auctions, terminals, and futures trading. Most agricultural contracting is conducted in virtual secrecy and this severely limits the ability of farmers to compare contracts and negotiate the best, or even a fair, deal.

We believe that states have an opportunity and, indeed, a responsibility to consider reasonable oversight of agricultural contracting that will lessen these risks and promote meaningful competition in agriculture. Several states have such oversight in place and several others have considered similar legislation. We have studied the problem and analyzed various legal and public policy solutions. We have concluded that an effective approach at this time would be the development of model state legislation which provides needed protections for farmers, but is not overly burdensome for processors. The product is model state legislation entitled the "Producer Protection Act." agcontractingexplanation.htm

The attached section-by-section explanation describes the legislation in detail. In brief, the Act has several noteworthy provisions: It requires contracts to be written in plain language and contain disclosures of material risks. It provides contract producers with a three-day right to review production contracts. It prohibits the inclusion of confidentiality provisions in contracts. It provides producers with a first priority lien for payments due under a production contract. It makes it harder for processors to terminate production contracts capriciously or as a form of retribution if farmers have already made sizable capital investments pursuant to requirements in the contracts. It makes it an unfair practice for processors to retaliate or discriminate against producers who exercise certain rights (such as the right of producers to join producer organizations).

A couple of caveats: First, although we as a group endorse the purpose and general components of the legislation, we may not agree on all of the specific provisions of the Act. Second, we do not presume that state legislatures will enact the Act as written - each state will obviously need to make independent legislative decisions. Nevertheless, we see a real benefit for states to enact similar laws and we see this model statute as an important starting point.

In conclusion, we urge state legislators and others to seriously consider this Act. We believe that enactment of this sort of legislation will help preserve competition in agriculture for the benefit of farmers and consumers.

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Testimony for House Bills 2278, 2280, 2281
Kansas House Committee of Agriculture
Honorable Dan Johnson, Chairperson

Submitted by Harold Walker, Chairperson, Kansas NFO (National Farmers Organization)
February 12, 2001

I am Harold Walker, chairperson of Kansas NFO. I own a diversified farm operation in Jackson County. NFO is a marketing and bargaining farm organization representing farmers across all of Kansas. We operate like a co-operative, with clusters of farmers forming marketing groups in several regions of the state, and then these groups link and sell together in the marketplace, using contracts, for market leverage.

First of all, I want to thank you for having these hearings. As I read through these bills, I think to myself that what's included in them is just basic fairness. Producers don't have these rights under production contracts; they need them. Who can disagree with having rights such as being able to join an association, or refuse deliver of unhealthy animals, or to use state inspected scales, or to be coerced into changing the terms of a contract, or discriminatory treatment under contract, and the list goes on and on. The bottom line is that the issue of producer protection is being addressed through these bills in both a pro-active manner and a re-active manner. We feel positive about House Bill 2278, 2280, 2281. We also know from discussions with our members who are in areas where production contracts are used, that these bills are needed in Kansas today, and will be needed as grain and livestock production contracts are used.

One important distinction we want to emphasize is that these bills apply to production contracts, and not marketing contracts.

Marketing contracts can be a positive force for independent producers because farmers can lock in long term prices that can be more favorable than bearing the risk of markets alone. Other groups also use marketing contracts like we do. **House bills 2278, 2280, 2281 do not hinder a farmer's ability to participate in programs using marketing contracts, and in fact, may support that participation.**

As an agent representing farmers, we understand the pressure buyers or contractors can exert, especially when only a few buyers exist. **NFO has had buyers that will not do business with us.** Consequently, we know it is **much more difficult for individual farmers to counter this, and other types of market and contract pressure....** Production contracts leave the individual at risk and alone in the market. These bills will provide a remedy and that's one reason why you should pass these bills out of committee.

In closing, **one suggestion or addition** we have to these bills is that **we would like to see a dispute or conflict settled through a mediation process.** However violations of law could be settled through court, but not through arbitration. **Would suggest that arbitration not be allowed to settle disputes.**

Thank You.

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
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KANSAS DEPARTMENT OF AGRICULTURE

House Agriculture Committee

February 12, 2001

Written Statement Regarding House Bills 2278, 2280 and 2281

Kansas Department of Agriculture

The Kansas Department of Agriculture (KDA) is neutral with regard to House Bills 2278, 2280 and 2281. However, because KDA is given permissive authority in each bill to promulgate rules and regulations, we offer the following observations.

Article 2 of the Uniform Commercial Code (UCC) covers the use of contracts in the sales of agricultural products, including seed, growing crops, grain, livestock, and some other farm products. It appears these bills are intended to provide regulation beyond that included in the UCC. Each bill gives the Secretary of Agriculture the permissive authority to promulgate rules and regulations to implement provisions of the bill. KDA recommends that this authority be given to the Kansas Attorney General. KDA does not have the in-house expertise, nor the manpower, to effectively address the provisions of these bills. Further, the bills do not give KDA any enforcement power, which makes any rules and regulations virtually ineffective.

Each bill impacts both existing and future contracts. Article I, Section 10 of the United States Constitution provides that "no State shall ... pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts..." The United States Supreme Court held in *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 6 L. Ed. 606 (1827), that a debtor relief law which had prospective application was constitutional. In so holding, the majority reasoned that state laws in existence at the time a debt or other contractual obligation was incurred became part of the contract and subsequent enforcement of such laws could not impair contractual obligations. The Kansas Supreme Court stated in *Federal Land Bank of Wichita v. Bott* that the motive for adoption of the contract clause was to prohibit states from retroactively interfering with contracts between private parties. In *Federal Land Bank of Wichita v. Bott*, the Kansas Supreme Court held the Family Farm Rehabilitation Act unconstitutional because it impaired the contract between the mortgagor and mortgagee in violation of the contract clause of the United States Constitution.

Thank you for the opportunity to provide input on House Bills 2278, 2280 and 2281.

House Agriculture Committee
February 12, 2001
Attachment 14

HB 2011 Scenarios for Consideration

After hearing the testimony of Secretary Carlson and subsequent discussion from a number of legislators, it is our opinion that options or alternatives to the incentives provided by HB 2011 should be considered. There was a clear message of need for a cap or limit in order to allow a reasonable budgeting process.

We have reviewed data supplied by the Department of Revenue to the Special Committee on Utilities and make the following observations based on data thru the first quarter of the current fiscal year:

The current incentive program has provided \$32,409,233 to the four current ethanol producers since the beginning of FY-88. This was paid on total production of 329,192,115 gallons or at an average rate over the 13 year period of \$0.1016 per gallon.

Current production is in the area of 36,000,000 gallons per year. In other words, the state has provided \$0.90 in total incentive per gallon of current output. This is an average and certainly the actual numbers vary from plant to plant.

HB 2011 proposed continuing an incentive on the existing production of \$0.05 per gallon and adding an additional \$0.025 incentive for new production, without a cap.

We propose the following alternatives, which are based on a total of 120,000,000 new gallons of ethanol produced in Kansas by FY-04:

Option A: Discontinue current incentive. Apply new production incentive at \$0.10 on first 15,000,000 gallons per year for a period of 7 years. After seven years, incentive is \$0.05 until 2011 on first 15,000,000 gallons per year. Incentive average is \$0.0893 per total new gallon produced or \$0.7854 per gallon of new output.

Option B: Same as above except there is no incentive after the first seven years of production. Incentive average is \$0.0526 per total new gallon produced or \$0.4625 per total new gallon output.

HB 2011 Alternatives

Year	New Plants Total	New Production Total	HB 2011 New Production	HB 2011 Base	HB 2011 Total	Option A	Option B
FY-02	1	\$ 25,000,000	\$ 1,875,000	\$ 2,000,000	\$ 3,875,000	\$ 1,500,000	\$ 1,500,000
FY-03	3	\$ 70,000,000	\$ 5,250,000	\$ 2,000,000	\$ 7,250,000	\$ 4,500,000	\$ 4,500,000
FY-04	5	\$ 120,000,000	\$ 9,000,000	\$ 2,000,000	\$ 11,000,000	\$ 12,000,000	\$ 7,500,000
FY-05	5	\$ 120,000,000	\$ 9,000,000	\$ 2,000,000	\$ 11,000,000	\$ 12,000,000	\$ 7,500,000
FY-06	5	\$ 120,000,000	\$ 9,000,000	\$ 2,000,000	\$ 11,000,000	\$ 12,000,000	\$ 7,500,000
FY-07	5	\$ 120,000,000	\$ 8,375,000	\$ 2,000,000	\$ 10,375,000	\$ 12,000,000	\$ 7,500,000
FY-08	5	\$ 120,000,000	\$ 7,250,000	\$ 2,000,000	\$ 9,250,000	\$ 12,000,000	\$ 7,500,000
FY-09	5	\$ 120,000,000	\$ 7,125,000	\$ 2,000,000	\$ 9,125,000	\$ 11,250,000	\$ 6,000,000
FY-10	5	\$ 120,000,000	\$ 6,000,000	\$ 2,000,000	\$ 8,000,000	\$ 8,500,000	\$ 3,000,000
FY-11	5	\$ 120,000,000	\$ 6,000,000	\$ 2,000,000	\$ 8,000,000	\$ 8,500,000	\$ 3,000,000
		\$ 1,055,000,000	\$ 68,875,000	\$ 20,000,000	\$ 88,875,000	\$ 94,250,000	\$ 55,500,000

251

HOUSE BILL No. 2011

By Special Committee on Utilities

1-5

9 AN ACT concerning certain ethyl alcohol production; relating to incen-
10 tives therefor; amending K.S.A. 79-34,163 and 79-34,164 and K.S.A.
11 2000 Supp. 79-34,161 and repealing the existing sections.

12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2000 Supp. 79-34,161 is hereby amended to read
15 as follows: 79-34,161. On ~~October 1, 1987~~ July 1, 2001, and quarterly
16 thereafter, the ~~state treasurer shall credit \$625,000~~ secretary of revenue
17 shall certify to the director of accounts and reports the amount necessary
18 to pay producer incentives for the production of agricultural ethyl alcohol
19 under the provisions of this act. Upon receipt of each certification, the
20 director of accounts and reports shall transfer to the Kansas qualified
21 agricultural ethyl alcohol producer incentive fund an amount equal to the
22 amount so certified from the amounts remaining after the state treasurer
23 credits an amount to the motor vehicle fuel tax refund fund as provided
24 in K.S.A. 79-3425, and amendments thereto, in the Kansas qualified ag-
25 ricultural ethyl alcohol producer incentive fund.

26 Sec. 2. K.S.A. 79-34,163 is hereby amended to read as follows: 79-
27 34,163. (a) A Kansas qualified agricultural ethyl alcohol producer shall be
28 paid a production incentive for distilling agricultural ethyl alcohol. The
29 incentive shall be payable to the Kansas qualified agricultural ethyl alcohol
30 producer from the Kansas qualified agricultural ethyl alcohol producer
31 incentive fund. The amount of the production incentive shall not exceed
32 ~~\$.20 per gallon of agricultural ethyl alcohol sold to an alcohol blender.~~ be
33 as follows:

~~34 (1) Except as provided by subsection (a)(2), the amount shall be \$.05~~
~~35 for each gallon of agricultural ethyl alcohol sold by the producer to an~~
~~36 alcohol blender.~~

37 (1) (2) If the producer increases the producer's agricultural ethyl alcohol ^{per}
38 production capacity on or after January 1, 2001, for the five calendar
39 years immediately following the year in which such increase in capacity
40 is completed the producer shall receive an additional amount equal to
41 ~~\$.025~~ for each gallon of agricultural ethyl alcohol sold by the producer to
42 an alcohol blender that is in excess of the producer's base sales.

\$.10

43 (b) For the purposes of subsection (a)(2), a producer's base sales shall

(i)

up to but not exceeding
an increase of 15,000,000
gallons per producer.

HB 2011

2

fiscal year 2001

1 ~~be the number of gallons of agricultural ethyl alcohol sold by the producer~~
 2 ~~to an alcohol blender in calendar year 2000 unless the producer has in-~~
 3 ~~creased the producer's agricultural ethyl alcohol production capacity on~~
 4 ~~or after January 1, 2001, and five or more calendar years have passed~~
 5 ~~since the year in which such increase in capacity was completed, in which~~
 6 ~~case the producer's base sales shall be the largest number of gallons of~~
 7 ~~agricultural ethyl alcohol sold by the producer to an alcohol blender in~~
 8 ~~any one calendar year commencing on or after January 1, 2001.~~

July

9 ~~(b)~~ (c) The Kansas qualified agricultural ethyl alcohol producer shall
 10 file for the production incentive beginning ~~October 1, 1987~~ *July 1, 2001*,
 11 and quarterly thereafter, on a form furnished by the department of rev-
 12 enue. The form shall require the producer to file such information as the
 13 secretary of revenue may require by rules and regulations, but shall in-
 14 clude information relating to the original production records and invoices
 15 issued to the alcohol blender at the time of delivery, showing the total
 16 number of gallons of agricultural ethyl alcohol sold to the alcohol blender
 17 for the previous three months.

October 1

18 ~~(e)~~ (d) The secretary of revenue may adopt such rules and regulations
 19 necessary to administer the provisions of this act, including the devel-
 20 opment of a procedure for the payment of the production incentive.

21 Sec. 3. K.S.A. 79-34,164 is hereby amended to read as follows: 79-
 22 34,164. The provisions of K.S.A. 79-34,160 through 79-34,163, and
 23 amendments thereto, shall expire on July 1, ~~2001~~ *2011*.

24 Sec. 4. K.S.A. 79-34,163 and 79-34,164 and K.S.A. 2000 Supp. 79-
 25 34,161 are hereby repealed.

26 Sec. 5. This act shall take effect and be in force from and after its
 27 publication in the statute book.