

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 14, 2001, in Room 519-S of the Capitol.

All members were present.

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

Conferees appearing before the committee:

Jamie Clover Adams, Secretary, Kansas Department of Agriculture
Todd Domer, Director of Communications, Kansas Livestock Association
Harold Walker, President, Kansas National Farmers Organization (written only)
Jan Lyons,, Manhattan
Roger Black, Arkansas City
Allie Devine, Director of Legal Research, Kansas Livestock Association
Doug Wareham, Kansas Grain and Feed Assn. and Kansas Fertilizer and Chemical Assn.
Gary Beachner, General Manager, Beachner Grain, Inc., St. Paul
Max Sudbeck, Agronomist, Taylor Seed Farms, White Cloud
Mike Jensen, President, Kansas Pork Association

Others attending: See attached list

Jamie Clover Adams, Secretary, Kansas Department of Agriculture, provided background information and discussed the stepped-up surveillance and preventive measures the Kansas Department of Agriculture is taking in light of emerging issues in Europe regarding bovine spongiform encephalopathy (BSE). She included a copy of a memorandum she sent to all rendering plants, feed mills, and other interested parties on January 31, 2001, informing them of the Kansas Department of Agriculture's zero-tolerance enforcement policy with regard to Good Manufacturing Practices inspections. (Attachment 1)

Todd Domer, Director of Communications, Kansas Livestock Association, emphasized that BSE does not exist in Kansas or the United States. He discussed the aggressive action plan centered around broad distribution of factual information the Kansas Livestock Association and others put in place at the onset of heavy BSE coverage in the U.S. media. He said that the publicity surrounding BSE has created a situation in which public fear exceeds actual risk. (Attachment 2)

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

Representative Hayzlett moved to reconsider committee action taken on February 12 on HB 2011. Seconded by Representative Feuerborn, the motion carried.

Discussion and action on HB 2103 - Increasing total aggregate loans under agricultural production loan deposit program.

Harold Walker, President, Kansas National Farmers Organization, submitted written comments in support of **HB 2103**. (Attachment 3)

Representative Hutchins moved to recommend HB 2103 favorable for passage. The motion was seconded by Representative Hayzlett.

Representative Schwartz offered a substitute motion to amend HB 2103 to provide for the recalculation of interest rates on these loans on the first business day of January and July of each year using the market rate then in effect. (Attachment 4) Seconded by Representative Dahl, the amendment passed.

CONTINUATION SHEET

Representative Hutchins moved to pass **HB 2103** as amended. Seconded by Representative Hayzlett, the motion carried.

Continuation of 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 opponents only.

Jan Lyons, Manhattan, representing the Kansas Livestock Association, appeared in opposition to **HB 2278**, **HB 2280** and **HB 2281** and gave her perspective of how these bills would impact the livestock industry and her family's operations in particular. She chaired a special KLA subcommittee to review the contract producer protection act and make recommendations to the KLA Executive Committee and Board. She reported that after reviewing these bills, the Kansas Livestock Association believes many provisions are contrary to their statement of principles, included with her testimony, and therefore cannot support these bills. (Attachment 5)

Roger Black, Arkansas City, representing the Kansas Livestock Association, testified in opposition to **HB 2278**, **HB 2280** and **HB 2281**. He also served on the KLA subcommittee to review these bills. He discussed his concerns in regard to the definition sections of these bills. He believes these bills only complicate and discourage innovation and freedom in the marketplace; that these issues should be addressed by education, not by legislation. (Attachment 6)

Allie Devine, Director of Legal Research, Kansas Livestock Association, outlined a number of legal concerns KLA has with **HB 2278**, **HB 2280** and **HB 2281** involving contracts. She stated that contracts are so fundamental to our economy, that Article 1, Section 10, of the United States Constitution prohibits a state from enacting legislation that impairs existing contracts. She discussed a number of issues arising under the various aspects of each of these bills. She emphasized that KLA supports producers' rights to contract freely and therefore opposes legislation that interferes with these fundamental rights. (Attachment 7)

Doug Wareham, Kansas Grain and Feed Association and Kansas Fertilizer and Chemical Association, expressed concerns regarding **HB 2278**, **HB 2280** and **HB 2281**. He discussed their associations' Free Enterprise Policy in regard to agriculture contracting and highlighted specific requirements in these bills their associations cannot support. (Attachment 8)

Gary Beachner, General Manager, Beachner Grain, Inc., St. Paul, and Legislative Committee Chairman for the Kansas Grain and Feed Association and member of KGFA's Board of Directors, appeared in opposition to **HB 2278**, **HB 2280** and **HB 2281**. He agreed that while some provisions in these bills appear reasonable, the language is vague and extremely one-sided. (Attachment 9)

Max Sudbeck, Agronomist, Taylor Seed Farms, White Cloud, and Legislative Committee Chairman for the Kansas Fertilizer and Chemical Association and director on KFCA's Board, testified in opposition to **HB 2278**, **HB 2280** and **HB 2281** and shared his concerns in regard to these bills. (Attachment 10)

Mike Jensen, President, Kansas Pork Association, testified in opposition to **HB 2278**, **HB 2280** and **HB 2281** stating that KPA membership wants less government, not more. He stated that contracting is a form of financial risk management and that KPA members feel that current law already exists to adequately protect their rights. He noted that KPA has long been active in producing educational materials as well as serving as a clearinghouse for information on contracting. He reported that KPA membership feels strongly that this "voluntary" approach is much more palatable than additional government oversight. (Attachment 11)

Representative Larkin distributed copies of a ConAgra settlement agreement to a lawsuit filed by Georgia contract poultry growers. (Attachment 12) He also provided information regarding an USDA investigation into the business practices of Perdue, a poultry company based in Maryland. (Attachment 13)

Chairman Johnson closed the hearings on **HB 2278**, **HB 2280** and **HB 2281**.

CONTINUATION SHEET

Discussion and action on HB 2123 - Disposition of moneys to certain agricultural related fee funds.

Raney Gilliland reminded the committee that the Kansas Department of Agriculture had reported drafting problems with this bill. Secretary Jamie Clover Adams explained her proposed amendment to **HB 2123**. (February 12, Attachment 1) Representative Faber moved to amend **HB 2123** as requested by the Secretary. Seconded by Representative Ostmeyer, the motion passed.

Gordon Self, Revisor of Statutes Office, explained a technical correction on Page 1, Line 36, of the bill. The word "and" should be "an." Representative Faber moved to make this correction. Seconded by Representative Hutchins, the motion passed.

Representative Faber moved to pass **HB 2123** as amended. The motion was seconded by Representative Light. The motion carried.

The meeting adjourned at 5:15 p.m. The next meeting is scheduled for February 19, 2001.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: FEBRUARY 14, 2001

Letecia Reed

KDA

NAME	REPRESENTING
<i>Todd Allen</i>	<i>KLA</i>
<i>Charles Munson</i>	<i>KLA</i>
<i>Ballantrae Burr</i>	<i>"</i>
<i>Ken Novak</i>	<i>KFCA</i>
<i>Max Sudbeck</i>	<i>KFCA</i>
<i>Dag Wardman</i>	<i>KGFA / KFCA</i>
<i>Mary Beachner</i>	<i>KGFA</i>
<i>Jim Allen</i>	<i>Seaboard</i>
<i>Rob Quanz</i>	<i>KLA</i>
<i>Cherryflow</i>	<i>KGFA / KFCA</i>
<i>Jack Smith</i>	<i>"</i>
<i>Stanley Lee</i>	<i>"</i>
<i>Larry Otjen</i>	<i>KLA</i>
<i>Deborah K. Lyons Bryant</i>	<i>KLA</i>
<i>Alan Hess</i>	<i>KLA</i>
<i>Henry Droyan</i>	<i>KLA</i>
<i>Tom [Signature]</i>	<i>Farm Credit Council</i>
<i>Joe Lieber</i>	<i>Ko Co-op Council</i>
<i>Mary Jane Stattelman</i>	<i>KGFA KFCA</i>

ROBERT BEVER

KFCA

Larry Blanding

KFCA

Jerry Twyman

KFCA

HOUSE AGRICULTURE COMMITTEE GUEST LIST

Greg Krissch
Chris Wilson

DATE: FEBRUARY 14, 2001

~~KFCFA~~
KS Dairy Ass'n, KS Seed Industry Ass'n

NAME	REPRESENTING
Allie Dwyer	KFA
Roger Black	KLA
Jan Lyons	KLA
Gary Doane	KLA
Kevin Brady	KFCA
Mike Jensen	Ks Pork Assoc.
Ed Mildenberger	KLA
Lyle Saddler	KLA
Wen Flagler	HLA
Shelby Katz	KLA
Ron J. Fink	KLA
Tom Kopp	KLA
Bill Pandy	KLA
Don Hineman	KLA
Mike Collins	KLA
Tom Holland	KLA
Ed Stisher	KAP
Richard Bennett	KLA
D. Scott Neal	KLA

Mike Schmidt
Brian Norton

KGFA
KFCA

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: FEBRUARY 14, 2001

Don M. Repore

KCA

NAME	REPRESENTING
<i>Dayle Donohue</i>	<i>KLA</i>
<i>Jody Donohue</i>	<i>KLA</i>
<i>Bill Sproul</i>	<i>KLA</i>
<i>Laura Pearl</i>	<i>KFCA</i>
<i>DOYLE PEARL</i>	<i>KFCA</i>
<i>Alan Stone</i>	<i>KFCA</i>
<i>John Stone</i>	<i>KGFA</i>
<i>Paul D. Dillinger</i>	<i>KGFA/KFCA</i>
<i>David Helfrich</i>	<i>KGFA</i>
<i>Tim H. H. H.</i>	<i>KGFA/KFCA</i>
<i>Frank Harper</i>	<i>KLA</i>
<i>John Johnson</i>	<i>KGFA</i>
<i>Pam Grootenman</i>	<i>KGFA</i>
<i>Jim Graubert</i>	<i>Farm Credit</i>
<i>Kevin W. Futh</i>	<i>KFCA</i>
<i>Michael L. Shirley</i>	<i>KFCA</i>
<i>David Selman</i>	<i>KFCA</i>
<i>Ronald Oldde</i>	<i>KLA</i>
<i>DAN WICK</i>	<i>WICK GRAIN & KFCA</i>

Tom Stewart

KGFA/KFCA

Zachary Barnes

KGFA

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
Topeka, Kansas 66612-1280
(785) 296-3556
FAX: (785) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE

House Agriculture Committee

February 14, 2001

Statement Regarding Feed Mill Inspections

Jamie Clover Adams, Secretary of Agriculture

Chairman Johnson and members of the committee, I am Jamie Clover Adams, Kansas Secretary of Agriculture. I am here today to discuss the stepped-up surveillance and prevention measures the Kansas Department of Agriculture is taking in light of emerging issues in Europe regarding bovine spongiform encephalopathy (BSE).

In the past two months, BSE was found for the first time in cattle in Spain and Germany. Also capturing media attention was the increased number of BSE cases in France, the processing and distribution of cattle from an infected herd to (but reportedly recalled from) French grocery stores, and a 19-year-old Frenchman dying of new variant Creutzfeldt-Jakob Disease.

BSE was first diagnosed in 1986 in the United Kingdom. Since that time, the United States has taken the following steps to prevent BSE from ever occurring here:

- The United States has not imported beef from the U.K. since before 1985.
- In 1989, the U.S. banned the import of live ruminant animals, and most ruminant products, from countries with confirmed BSE cases.
- In 1990, USDA initiated an active surveillance program to examine brains of U.S. cattle. More than 60 veterinary diagnostic laboratories throughout the U.S. participate in this surveillance. In ten years, USDA has tested more than 11,700 brain specimens from cattle displaying any neurological symptoms that might indicate BSE. No cases have been found.
- In 1997, the USDA prohibited the import of live ruminants, and most ruminant products, from all of Europe.
- Also in 1997, the Food and Drug Administration (FDA) promulgated regulations to prohibit the feeding of most mammalian proteins to ruminants. Approximately 10,000 BSE feed inspections have been conducted, 80 percent of which were done by the states.

House Agriculture Committee
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Attachment 1

- In December 2000, the USDA prohibited all imports of rendered animal protein products, regardless of species, from Europe. The restriction applies to products that either originated in, were rendered or processed in, or otherwise associated with products from, Europe.

Feed is the first line of defense against BSE, and I want KDA to do its part to protect Kansas consumers and the Kansas beef industry. KDA's efforts, through the Agricultural Commodities Assurance Program (ACAP) and the Kansas Commercial Feeding Stuffs Law, are meant to supplement the efforts of the federal government. Our enforcement plan includes the following:

- A memorandum outlining KDA's zero-tolerance policy regarding good manufacturing practices (GMP) inspections was sent to renderers, feed mills and feedlots that mix feed. A copy of that memorandum is attached.
- KDA asked to increase its spending cap on the feeding stuffs fee fund to allow the purchase of necessary laboratory equipment and to implement increased surveillance measures. This was approved by the House Appropriations Committee.
- KDA proposed temporary emergency regulations, adopting the most recent FDA regulations regarding GMPs and the ban on the use of mammal-derived protein byproducts in cattle and other ruminant feed.
- KDA is working with Senator Schmidt to introduce legislation to include civil penalties in the Kansas Commercial Feeding Stuffs Law. This is necessary to ensure KDA has the tools it needs to quickly address any problem that may arise. A draft copy is attached.
- KDA inspectors will begin inspections, and reinspections, after the new laboratory equipment is secured.

Again, KDA's efforts are intended to supplement the efforts of both the FDA and USDA. All states must do their part to ensure that BSE never threatens U.S. consumers or the U.S. beef industry.

I appreciate the opportunity to share our plan with the committee. I will stand for questions at the appropriate time.

MEMORANDUM

TO: Rendering Plants, Feed Mills and Other Interested Parties

FROM: Jamie Clover Adams, Secretary of Agriculture

SUBJECT: Good Manufacturing Practices and Prohibited Material

DATE: January 31, 2001

This memorandum is to inform all interested parties of the Kansas Department of Agriculture's (KDA) zero-tolerance enforcement policy with regard to Good Manufacturing Practices (GMP) inspections.

Background

KDA routinely conducts GMP inspections at FDA-licensed and non-licensed feed mills. These inspections include verifying that firms handle prohibited material following established procedures to prevent feed containing prohibited materials from being fed to cattle and other ruminants.

Due to recent events here and in Europe, we reexamined our GMP inspection program and decided to redirect some of our resources to place greater emphasis on the BSE portion of the GMP inspection. Also, we will better utilize some of the enforcement measures available to us to prevent from entering the food chain feed that has not been produced according to established procedures.

Policy

KDA will immediately conduct GMP inspections at rendering plants producing feed and will also reinspect feed mills with a focus on:

- 1) Ensuring that feed containing prohibited material is properly labeled with a caution statement indicating that the feed is not to be fed to cattle or other ruminants.
- 2) Guaranteeing that procedures are in place to prevent commingling prohibited materials with other feed products.
- 3) Verifying proper record keeping.

Product found to contain prohibited material and not properly labeled may be seized and destroyed. Firms without established procedures to prevent commingling of prohibited materials with other feed products will be told to correct the problem immediately. These firms will be reinspected and, if deficiencies have not been corrected, feed produced between the initial inspection and reinspection may be seized and destroyed. I realize these enforcement measures may seem severe, but I believe that the potential risk to human health and the Kansas economy are adequate justification.

My expectation is that feed product manufacturers understand the requirements for manufacturing feed containing prohibited material, the seriousness of this issue and the potential impact manufacturer's actions have on Kansas industry. Consequently, rendering plants and feed mills should already be in compliance. We appreciate that the industry has cooperated in the past, and we look forward to continued cooperation as we address this very serious issue.

We will gladly provide any information or assistance anyone needs to comply with the rules governing Good Management Practices. For more information or assistance, please call Constantine Cotsoradis, ACAP program manager, (785) 862-2415.

2-6-01
Final draft

2-1008; Samples for analysis; entry on premises, application; stop sale orders; judicial review.

(b) ~~The state board of agriculture, the secretary of the board~~ or a duly authorized representative thereof, acting as the enforcing officer, may issue and enforce a written or printed stop sale order to the owner or custodian of any quantity of commercial feeding stuffs which the secretary or ~~the~~ *that* duly authorized representative of the secretary determines to be misbranded, adulterated or *may* containing any substance injurious to *public health or* the health of livestock, poultry or pets or which are sold, offered or exposed for sale in violation of any of the statutes contained in article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto or any rules and regulations adopted thereunder. The stop sale order shall prohibit further sale and movement of such commercial feeding stuffs, except on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale order. Any stop sale order issued pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the statutes contained in article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

2-1011. Violations; penalties; seizure in place proceedings; injunction.

(1) It shall be deemed a violation of this act for any manufacturer, importer, jobber, firm, association, corporation or person to sell, offer or expose for sale, or distribute in this state any commercial feeding stuffs:

(A) Unless the manufacturer, importer, jobber, firm, association, corporation or person has been issued a license for each manufacturing or distribution facility pursuant to K.S.A. 2000 Supp. 2-1014; (B) which is not labeled as required by law; (C) which bears a false or misleading statement on the label or the advertising accompanying the commercial feeding stuffs; (D) which is adulterated or contains any substance or substances which may render the commercial feeding stuffs injurious to *public health or* the health of livestock, poultry and pets.

(2) It shall be deemed a violation of this act for any manufacturer, importer, jobber, firm, association, corporation or person to: (A) Mutilate, destroy, obliterate or remove the label or any part thereof, or do any act which may result in the misbranding or false labeling of such commercial feeding stuffs; (B) fail or neglect to file the tonnage report and pay the inspection fee due thereon as required; (C) file a false report of the tonnage of feeding stuffs sold for any period; (D) impede, obstruct, hinder or otherwise prevent or attempt to prevent said secretary or the secretary's authorized agents in the performance of any duty in connection with the enforcement of the provisions of article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

(3) *Any manufacturer, importer, jobber, firm, association, corporation or person who shall violate any of the provisions of article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto or the rules and regulations adopted, may incur a civil penalty in an amount not more than \$1000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this*

subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(3) (4) Any manufacturer, importer, jobber, firm, association, corporation or person who shall violate any of the provisions of article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto or the rules and regulations adopted, in a willful or wanton manner shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100 for the first violation and not less than \$100 nor more than \$500 for each subsequent violation.

(4) (5) Any commercial feeding stuffs misbranded or adulterated or *suspected of* containing any substance or substances injurious to *public health or* the health of livestock, poultry or pets or which is offered or exposed for sale in violation of any of the provisions of article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto shall be subject to seizure *in place until such time that the final disposition of the affected feeding stuffs has been determined by sampling and analysis. Within 30 days of seizure in place, upon verification that the suspected feeding stuffs are misbranded, adulterated or contain a substance or substances that may be injurious to public health or the health of livestock, poultry or pets, the secretary shall issue an order establishing measures to prevent further contamination or the threat to public or animal health. The opportunity for hearing pursuant to the Kansas administrative procedure act shall be provided upon issuance of the order. The secretary may order the destruction of contaminated feeding stuffs if no alternative assures that further contamination or health hazards are averted, and may be imposed in addition to any other penalty established by law.* and may be condemned, disposed of or sold as the court may direct. ~~The proceeds from any such sale, and all penalties recovered shall be deposited with the state treasurer in the commercial feeding stuffs fee fund. The court may in its discretion release the feeding stuffs so seized when the requirements of the law have been complied with, and upon payment of all costs and expenses incurred by the state in any proceedings connected with such seizure. The seizure proceedings as provided in K.S.A. 41-805 and amendments thereto, shall be followed. The district courts of the state of Kansas shall have jurisdiction to restrain violations of this act by~~ injunction.



Since 1894

February 14, 2001

TO: Members of the Kansas House Ag Committee
FROM: Todd Domer, KLA Director of Communications
RE: Actions to avert negative BSE publicity

Thank you Mr. Chairman and members of the committee for the opportunity to update you on an issue that, I want to make as a point of emphasis, does not exist in Kansas or the U.S. and there has never been a confirmed case. For starters, I refuse to use the imaginative term initially given to this serious disease by the European media. I hope you will join me in referring to it as BSE, short for Bovine Spongiform Encephalopathy, and avoid the street name.

The Kansas Livestock Association and Kansas Beef Council put in place an aggressive action plan at the onset of heavy BSE coverage in the U.S. media. Our strategy was centered around broad distribution of factual information, with the ultimate goal of putting consumers at ease by reassuring them beef sold in the U.S. continues to be a wholesome, safe food.

In taking this message to the public, we assembled an Issue Management Team to discuss media strategies and other issues associated with BSE. The team includes representatives from the Kansas Department of Agriculture, Kansas Veterinary Medical Association, USDA Animal and Plant Health Inspection Service, Kansas Animal Health Department, other Kansas ag groups, KLA and the Kansas Beef Council. Each group has a sincere stake in this issue and the cattle industry. Members of the team are serving as credible spokespersons when the media calls, delivering a loud and clear message that BSE does not exist in this country, and government and the beef industry are determined to keep it out. These facts have been repeated over and over during interviews with reporters who reach millions of consumers each day.

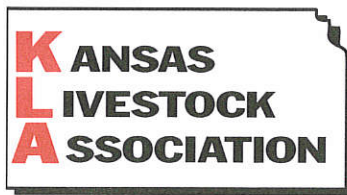
I won't take the time to go line by line through the fact sheet each of you have received, but I encourage you, as a thought leader, to read it and be conversant on the subject. The dissemination of factual information, through the media or person to person, is key to managing this issue.

Much of the prevention strategy here in the U.S. is based on mistakes made in Europe, the only place where the problem exists. Preliminary results of a USDA-funded study at Harvard University show the risk of BSE occurring in the U.S. is almost non-existent due to the effectiveness of prevention measures in place. It would be naive to believe BSE can absolutely, positively never enter the U.S., but we're about as close as a country can get without being able to make the claim. If a case were diagnosed here, firewalls are in place to prevent its spread and eradicate it quickly and effectively.

Publicity surrounding BSE has created a situation in which public fear exceeds actual risk. The National Cattlemen's Beef Association, KLA and the Kansas team are serious about rectifying the problem by providing the positive story about beef safety.

Again, thank you for this opportunity.

House Agriculture Committee
February 14, 2001
Attachment 2



Since 1894

BSE FACT SHEET

- BSE does not exist here and there has never been a confirmed case in the U.S.
- The U.S. beef industry and government are serious about keeping it out of this country. Over the past decade, the U.S. has developed one of the most stringent, comprehensive BSE prevention plans in the world.
- The U.S. has taken aggressive steps to protect consumers and prevent the disease from entering or occurring, including the following:
 - * 1985 – U.S. banned beef imports from the United Kingdom.
 - * 1989 – U.S. banned imports of ruminant animals and ruminant products from countries with confirmed BSE cases.
 - * 1991 – U.S. banned imports of ruminant meat and edible products and most by products of ruminant origin from countries with confirmed BSE cases.
 - * 1997 – U.S. banned imports of all live ruminants and most ruminant products from all European countries, regardless of BSE status. Any products excluded from the ban have been scientifically determined not to have a risk of carrying the BSE infectious agent.
 - * 1997 – U.S. banned the use of meat and bone meal in cattle feed.
 - * 2000 – U.S. banned imports of all rendered animal protein products, regardless of species, from all European countries.
- Active surveillance has been ongoing since 1990. Food Safety and Inspection Service personnel condemn and test any animal suspected of having a central nervous system disorder. As part of the diagnostic effort, veterinary practitioners have been trained to spot clinical signs of the disease. More than 10 years of extensive testing has never turned up BSE in the U.S.
- Preliminary results of a USDA-funded study at Harvard University show the risk of BSE occurring in the U.S. is almost non-existent due to the prevention steps taken. The comprehensive final report is expected during the spring of 2001.
- Officials with the Council for Agricultural Science and Technology (CAST) recently released a report indicating prevention and control measures have been effective in keeping the disease from entering the U.S. CAST is an organization dedicated to communicating science-based information to decision makers and the general public.

Kansas NFO
Harold Walker, President
16963 Q Rd
Mayetta, Kansas 66509

Honorable Dan Johnson, Chairperson
Kansas House Committee on Agriculture

Kansas NFO strongly supports HB 2103, an act concerning the Kansas Agricultural Loan Deposit Program.

Our members, from all areas of Kansas, feel this bill will be beneficial in this time of drought conditions and low commodity prices.

Again thank you for your support and consideration.

House Agriculture Committee
February 14, 2001
Attachment 3

HOUSE BILL No. 2103

By Committee on Agriculture

1-22

9 AN ACT concerning the Kansas agricultural production loan deposit pro-
10 gram; amending K.S.A. 2000 Supp. 75-4209 and 75-4271 and repealing
11 the existing sections. and 75-4272

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

13 Section 1. K.S.A. 2000 Supp. 75-4209 is hereby amended to read as
14 follows: 75-4209. (a) The director of investments may invest and reinvest
15 state moneys eligible for investment which are not invested in accordance
16 with K.S.A. 75-4237, and amendments thereto, in the following
17 investments:
18

19 (1) Direct obligations of, or obligations that are insured as to principal
20 and interest by, the United States of America or any agency thereof and
21 obligations and securities of the United States sponsored enterprises
22 which under federal law may be accepted as security for public funds, on
23 and after the effective date of this act moneys available for investment
24 under this subsection shall not be invested in mortgage-backed securities
25 of such enterprises and of the government national mortgage association,
26 except that any such mortgage-backed securities held prior to the effec-
27 tive date of this act may be held to maturity;

28 (2) repurchase agreements with a bank or a primary government se-
29 curities dealer which reports to the market reports division of the federal
30 reserve bank of New York for direct obligations of, or obligations that are
31 insured as to principal and interest by, the United States government or
32 any agency thereof and obligations and securities of United States gov-
33 ernment sponsored enterprises which under federal law may be accepted
34 as security for public funds;

35 (3) commercial paper that does not exceed 270 days to maturity and
36 which has received one of the two highest commercial paper credit ratings
37 by a nationally recognized investment rating firm.

38 (b) When moneys are available for deposit or investments, the direc-
39 tor of investments may invest in SKILL act projects and bonds pursuant
to K.S.A. 2000 Supp. 74-8920, and amendments thereto, and in state
agency bonds and bond projects.

42 (c) When moneys are available for deposits or investments, the di-
43 rector of investments may invest in preferred stock of Kansas venture

4-2

1 capital, inc., under terms and conditions prescribed by K.S.A. 74-8203,
2 and amendments thereto, but such investments shall not in the aggregate
3 exceed a total amount of \$10,000,000.

4 (d) When moneys are available for deposits or investments, the di-
5 rector of investments may invest in loans pursuant to legislative mandates,
6 except that not more than the lesser of ~~10%~~ 13% or ~~\$80,000,000~~
7 \$120,000,000 of the state moneys shall be invested.

8 (e) Interest on investment accounts in banks is to be paid at maturity,
9 but not less than annually.

10 (f) Investments made by the director of investments under the pro-
11 visions of this section shall be made with judgment and care, under cir-
12 cumstances then prevailing, which persons of prudence, discretion and
13 intelligence exercise in the management of their own affairs, not for spec-
14 ulation, but for investment, considering the probable safety of their capital
15 as well as the probable income to be derived.

16 (g) Investments under subsection (a) or (b) or under K.S.A. 75-4237,
17 and amendments thereto, shall be for a period not to exceed four years,
18 except that linked deposits authorized under the provisions of K.S.A. 2000
19 Supp. 2-3703 through 2-3707, and amendments thereto, shall not exceed
20 a period of 10 years and agricultural production loan deposits authorized
21 under the provisions of K.S.A. 2000 Supp. 75-4268 through 75-4274, and
22 amendments thereto, shall not exceed a period of eight years.

23 (h) Investments in securities under paragraph (1) of subsection (a)
24 shall be limited to securities which do not have any more interest rate
25 risk than do direct United States government obligations of similar ma-
26 turities. For purposes of this subsection, "interest rate risk" means market
27 value changes due to changes in current interest rates.

28 (i) The director of investments shall not invest state moneys eligible
29 for investment under subsection (a), in the municipal investment pool
30 fund, created under K.S.A. 2000 Supp. 12-1677a, and amendments
31 thereto.

32 (j) The director of investments shall not invest moneys in the pooled
33 money investment portfolio in derivatives. As used in this subsection,
34 "derivatives" means a financial contract whose value depends on the value
35 of an underlying asset or index of asset values.

36 (k) Moneys and investments in the pooled money investment port-
37 folio shall be invested and reinvested by the director of investments in
38 accordance with investment policies developed, approved, published and
39 updated on an annual basis by the board. Such investment policies shall
40 include at a minimum guidelines which identify credit standards, eligible
41 instruments, allowable maturity ranges, methods for valuing the portfolio,
42 calculating earnings and yields and limits on portfolio concentration for
43 each type of investment. Any changes in such investment policies shall

1 be approved by the pooled money investment board. Such investment
2 policies may specify the contents of reports, methods of crediting funds
3 and accounts and other operating procedures.

4 (l) The board shall adopt rules and regulations to establish an overall
5 percentage limitation on the investment of moneys in investments au-
6 thorized under paragraph (3) of subsection (a), and within such author-
7 ized investment, the board shall establish a percentage limitation on the
8 investment in any single business entity.

9 Sec. 2. K.S.A. 2000 Supp. 75-4271 is hereby amended to read as
10 follows: 75-4271. (a) The state treasurer is hereby authorized to dissemi-
11 nate information and to provide agricultural production loan deposit loan
12 packages to the lending institutions eligible for participation in this act.

13 (b) The agricultural production loan deposit loan package shall be
14 completed by the borrower before being forwarded to the lending insti-
15 tution for consideration.

16 (c) (1) An eligible lending institution that agrees to receive an agri-
17 cultural production loan deposit shall accept and review applications for
18 loans from eligible agricultural borrowers. The lending institution shall
19 apply all usual lending standards to determine the credit worthiness of
20 eligible agricultural borrowers. No single agricultural production loan de-
21 posit loan shall exceed \$250,000. The total aggregate amount of agricul-
22 tural production loan deposit loans under this program shall not exceed
23 ~~\$50,000,000~~ \$100,000,000 of unencumbered funds pursuant to article 42
24 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

25 (2) To be eligible to obtain an agricultural production loan, an eligible
26 agricultural borrower must have a debt-to-asset ratio of 40% or greater.

27 (3) Only one agricultural production loan deposit loan shall be made
28 and be outstanding at any one time to any agricultural borrower.

29 (4) No loan shall be amortized for a period of more than eight years.

30 (d) An eligible agricultural borrower shall certify on its loan applica-
31 tion that the reduced rate loan will be used exclusively for the operating
32 expenses involved in farming.

33 (e) The eligible lending institution may approve or reject an agricul-
34 tural production loan deposit loan package based on the lending institu-
35 tion's evaluation of the eligible agricultural borrowers included in the
36 package, the amount of the individual loan in the package and other
37 appropriate considerations.

38 (f) The eligible lending institution shall forward to the state treasurer,
39 an approved agricultural production loan deposit loan package, in the
40 form and manner prescribed and approved by the state treasurer. The
41 package shall include information regarding the amount of the loan re-
42 quested by each eligible agricultural borrower and such other information
43 regarding each eligible agricultural borrower the state treasurer requires,

4.4

See Insert #1

1 including a certification by the applicant that such applicant is an eligible
2 agricultural borrower.

3 ~~Sec. 3.~~ K.S.A. 2000 Supp. 75-4209 and ~~75-4271~~ are hereby repealed. and 75-4272.

4 ~~Sec. 4.~~ This act shall take effect and be in force from and after its

5 publication in the statute book.

Sec. 3. K.S.A. 2000 Supp. 75-4272 is hereby amended to read as follows: 75-4272. (a) The state treasurer may accept or reject an agricultural production loan deposit loan package based on the state treasurer's evaluation of whether the loan to the eligible agricultural borrower meets the purposes of this act. If sufficient funds are not available for an agricultural production loan deposit, then the applications may be considered in the order received when funds are once again available subject to a review by the lending institution.

(b) Upon acceptance, the state treasurer shall certify to the director of investments the amount required for such agricultural production loan deposit loan package and the director of investments shall place an agricultural production loan deposit in the amount certified by the state treasurer with the eligible lending institution at an interest rate, which is 2% below the market rate provided in K.S.A. 75-4237, and amendments thereto, and which shall be recalculated on the first business day of January and July of each calendar year using the market rate then in effect. When necessary, the state treasurer may request the director of investments to place such agricultural production loan deposit prior to acceptance of an agricultural production loan deposit loan package.

(c) The eligible lending institution shall enter into an agricultural production loan deposit agreement with the state treasurer, which shall include requirements necessary to implement the purposes of the Kansas agricultural production loan deposit program. Such requirements shall include an agreement by the eligible lending institution to lend an amount equal to the agricultural production loan deposit to eligible agricultural borrowers at an interest rate which is not more than 2% above the market rate as determined under K.S.A. 75-4237, and amendments thereto, and which shall be recalculated on the first business day of January and July of each calendar year using the market rate then in effect. The agreement shall include provisions for the agricultural production loan deposit to be placed for a maturity considered appropriate in coordination with the underlying agricultural production loan. The agreement shall include provisions for the reduction of the agricultural production loan deposit in an amount equal to any payment of loan principal by the eligible agricultural borrower.

Testimony

presented by

Jan Lyons

regarding

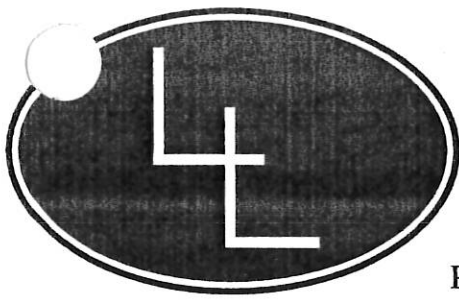
House Bills 2278, 2280, 2281

before the

House Agriculture Committee

Wednesday, February 14, 2001

House Agriculture Committee
February 14, 2001
Attachment 5



Lyons Ranch

JAN and FRANK LYONS and FAMILY

2481 McDowell Creek, Manhattan, KS 66502

Phone: (785)537-7226 • Fax: (785)776-4005 • Email: LYONSRANCH@aol.com

Good afternoon, my name is Jan Lyons. I own and operate, along with my family, a purebred Angus cow-calf operation in the Riley county area. Ours is a family business involving, myself, my husband, our two daughters, and our sons-in-law, who own and operate portions of our operation. We also are blessed with seven grandchildren who we hope will have an opportunity to participate in the ranch if they so choose.

I am here representing the Kansas Livestock Association (KLA) and to give you a perspective of how these bills, if passed, will impact the livestock industry and in particular my operation.

As you may know, the Kansas Livestock Association is a nonprofit trade association that represents all aspects of the livestock industry. KLA represents very small cow-calf producers and the very large commercial cattle feeders. KLA also represents some dairy and swine producers.

During our 2000 convention held in December, the issue of contract producer protection acts arose. We discussed various aspects of the model producer protection act developed by attorneys general. Numerous questions were posed regarding the coverage of such acts and impacts on the industry. KLA President Don Hineman created a subcommittee to review the model act and make recommendations to the KLA Executive Committee and Board. I've learned that as a past president of KLA you often get the honor of special assignments.

I had the pleasure of chairing this special committee. There were seven members of the committee with interests in a variety of agricultural pursuits including grain, hay, commercial cattle feeding, swine production, and cow-calf production. One of the members of the committee, Roger Black, is also here to testify. We conducted a line-by-line review of the model act and had hours of discussion regarding the pros and cons of such legislation.

Many of the provisions contained in the model producer protection act are similar to the provisions of HB 2278, HB 2280, and HB 2281. In short, we cannot support these bills and I would like to take this opportunity to explain why.

KLA has a long history of resisting government regulation of the livestock industry. Our members believe an open and free market offers the best opportunity for advancement and survival. Our philosophy is best stated in our "Statement of Operating Principles" attached. In short, our statement emphasizes an individual's right to innovate in the management and marketing of our products without needless government regulations.

After reviewing these bills, we believe many provisions are contrary to our statement of principles and will limit an individual's freedom to innovate in the management and marketing of livestock. The livestock industry is changing. Contracting plays an integral part in the protection of new ideas and allows producers to receive the rewards for innovation and progress. Today's consumer demands that we supply a wholesome, superior quality product. Through contracting arrangements, producers are responding to that demand.

Your Source for Superior Genetics

In our operation my family and I raise registered Angus bulls. We have entered into a contractual relationship with a large processor in California that specializes in high quality meat products. Our contract specifies that we will provide a target number of bulls each year. This assures them the genetics they need to raise premium animals that supply the meat protein to satisfy their customers. We also entered into contracts with other producers to place embryos in their cows. We supply the embryos and when those cows give birth our contracting partners tag and weigh the calves. They care for the calves until weaning at about seven months of age. At that time, we take physical possession of the calves and pay our predetermined contract price, plus a premium, to our contracting party. Let me stress, we are not unique. Many seedstock producers in our state, and outside the borders, are entering into such arrangements because of the enhanced profits and efficiencies in such a program.

Specific provisions of these bills appear to directly impact our contracts. These contracts were negotiated very carefully to develop win-win scenarios. Good faith is inherent in all of our transactions. If it is not, we lose contracts, business, and friends. The proposed bills would prohibit confidentiality clauses in our contracts. Through confidentiality we are able to protect the sanctity of our relationship with other producers.

Under these bills it appears that I am an "active contractor". As an active contractor, I am prohibited from treating producers in a discriminatory manner that may include offering preferential terms. HB 2278 section 2 (a)(2) would preclude me from offering different terms relating to price, quality, or quantity to producers with whom I have contracted. Section 2 (a)(3) would also prohibit me from granting rewards for good service. Section (a) (4) would prohibit me from altering the quality, quantity, or delivery times of contract inputs (Here defined by Section 1(H)(A) to include semen or eggs for breeding livestock). This bill would limit our freedom to give incentives or rewards for good performance or any flexibility in the time we establish for delivery and type of embryos. I cannot waive the provisions of this act nor select a law from a different jurisdiction to govern the contract. I am not certain what effect this bill would have on contracts I have with persons in other states.

After reviewing the chart, and walking through the bills, I think you can understand our concern that this is an overly burdensome process. The terms are restrictive and would likely discourage the use of contracts and lead to additional confusion in the marketplace. The bills would discourage the protection of the very innovation we need in the livestock industry to maintain our portion of the consumer dinner plate. For these reasons, KLA cannot support these bills.

Contracts are valuable tools for our operation. I have assumed the responsibility to negotiate our contracts. I believe the parties who have a vested interest in the success of the agreement are those who should negotiate the agreements. I want to assure you that we are committed to seeing that all parties understand the terms, conditions, and expectations of all agreements we sign. It has been a learning process that has rewarded us. Rather than pass cumbersome, restrictive legislation, KLA and I encourage the legislature to support educational efforts to disseminate information that helps individuals enter into win-win agreements.

KLA Statement of Operating Principles:

WHEREAS, the Kansas Livestock Association believes the livestock industry is best served by the process of free enterprise and free trade, and

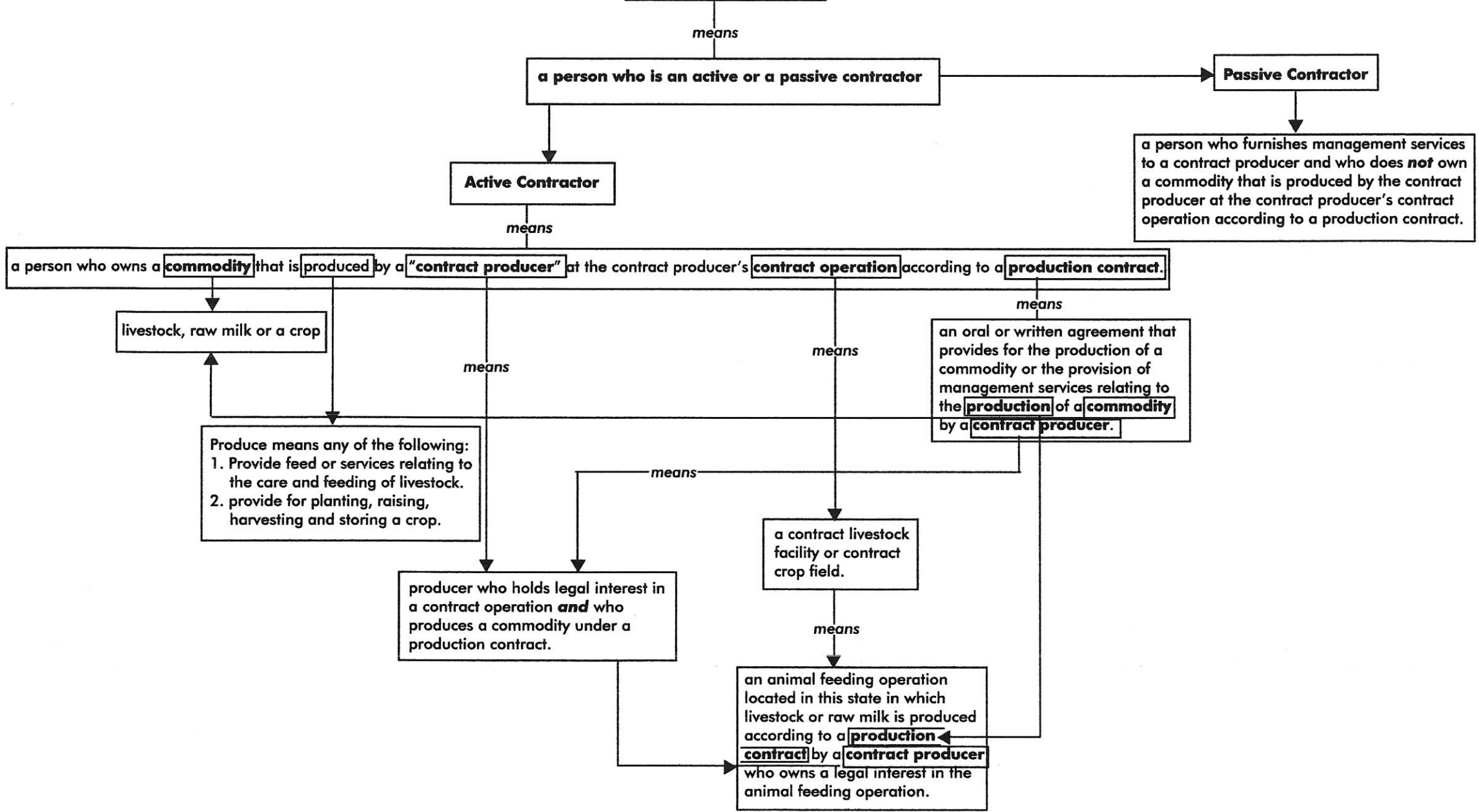
WHEREAS, even with its imperfections, free trade is relatively more equitable than regulated and subsidized markets which retard innovation and distort production and market signals, and

WHEREAS, regulated and subsidized markets disadvantage some producers in favor of others, and

WHEREAS, recent proposals of federal non-natural disaster direct government payments and federal livestock insurance are two examples of long-term negative precedents for the livestock industry.

THEREFORE, BE IT RESOLVED, the Kansas Livestock Association reaffirms its opposition to the imposition of political solutions to the livestock industry's economic problems or attempts to narrow the business options or limit the individual freedom of livestock producers to innovate in the management and marketing of their production unfettered by additional government regulations.

Am I a Contractor?



Testimony

presented by

Roger Black

regarding

House Bills 2278, 2280, 2281

before the

House Agriculture Committee

Wednesday, February 14, 2001

Good afternoon, my name is Roger Black. I own and operate a stocker growing operation near Arkansas City, Kansas. For those of you not familiar with the various types of cattle operations, I would like to describe to you mine.

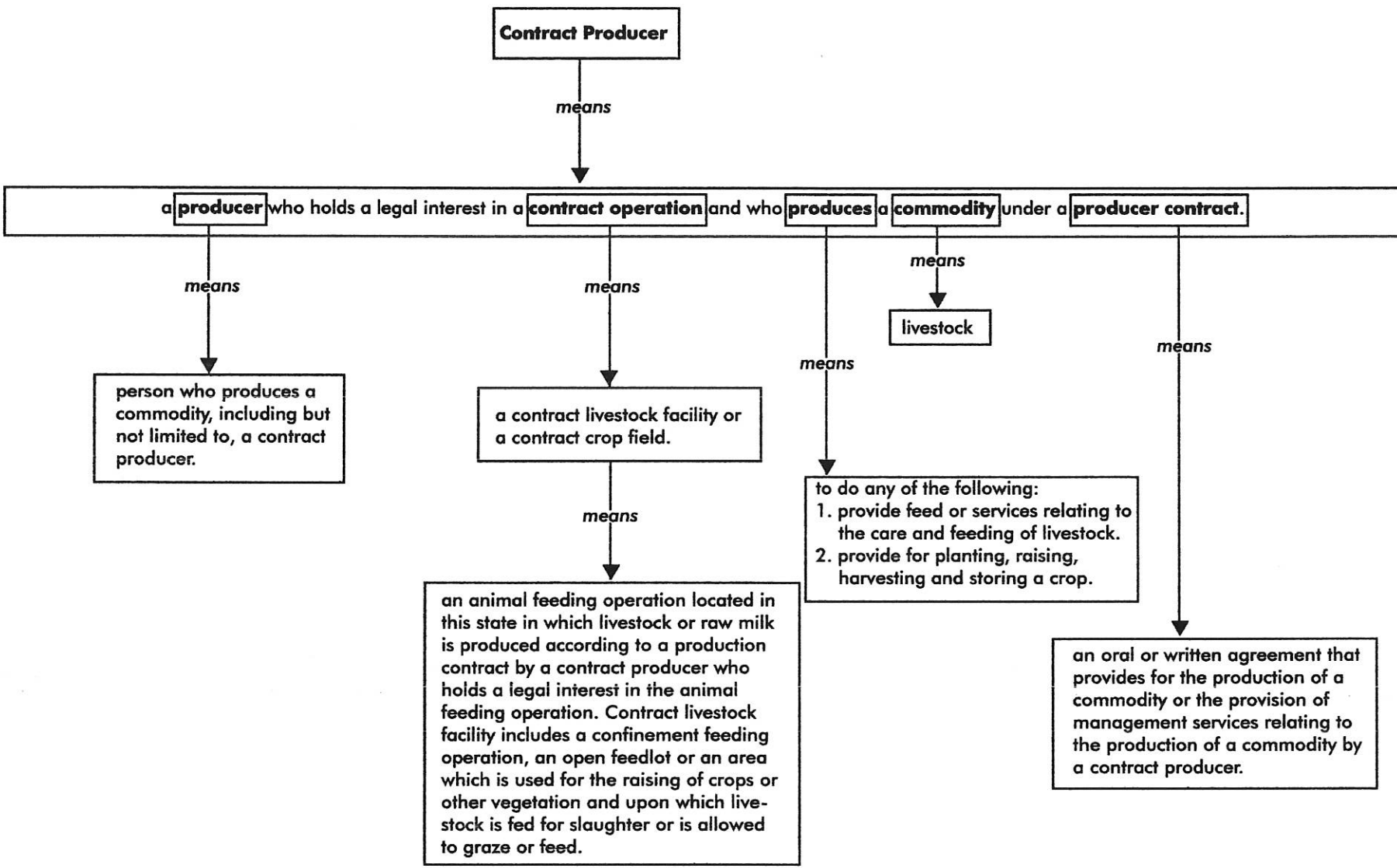
I contract with cow-calf operators throughout the region to grow baby calves. Many times cow-calf producers do not have the facilities or time to raise their calves to a point where they are most marketable at the best possible price. Baby calves, newly weaned from their mothers, sometimes need a little more time to develop and build a strong bone structure that accommodates efficient fattening that leads to a premium meat product. I have developed contractual relations with a number of producers to provide this "growth time" for their cattle. I summer graze investor owned cattle on pasture that I rent. I also straightened out mismanaged calves and produce and market hay across the country.

The first problem I have with these bills is self-identification. Under these bills I think I would be considered a "contract producer". Like Jan, I have a chart illustrating the steps to make this determination. I do not believe the parties with whom I contract know that they may be "active or passive contractors". By meeting these definitions, it appears that the bill may affect my operation.

In the interest of creating a "level playing field", I am part of a grand scheme of regulation. A level playing field is the last thing I want. A level playing field infers no inherent competitive advantage. We strive daily to tilt the playing field because if there is not something we can bring value to, we have nothing to sell. If we have nothing to market, we are out of business.

Years ago, I read John Naismith's book *Megatrends*. This book convinced me that I must reform my business to meet the coming service trends. I created my economic advantage through negotiations. I want the opportunity to receive rewards for good performance. I want to be able to negotiate the terms of my contracts. I want to protect the confidentiality of my negotiations. Once we turn our attention away from finding economic advantages and to jumping regulatory hoops, we sacrifice the efficiencies and creativeness of negotiations. Most negotiations involve identifying each parties' needs and wants, then finding ways to meet each sides needs. "Wants" frequently don't happen. If a body of law adds another dimension to the process, I believe it would inhibit progress and inject inefficiencies into the system.

I served on the KLA committee to review these bills. I entered the discussions with an open mind. I understand the concerns of proponents of these bills, but have concluded that any "fix" to this perceived problem only complicates and discourages innovation and freedom in the marketplace. These issues can and should be addressed by education, not by legislation. For these reasons, I support the positions of KLA and request that you not pass these bills.





Since 1894

Testimony

presented by

Allie Devine, Director of Legal Research
Kansas Livestock Association

regarding

House Bills 2278, 2280, 2281

before the

House Agriculture Committee

Wednesday, February 14, 2001

House Agriculture Committee
February 14, 2001
Attachment 7

Good afternoon, my name is Allie Devine. I am the Director of Research and Legal Affairs for the Kansas Livestock Association. I would like to outline a number of legal concerns KLA has with HB 2278, HB 2280, and HB 2281.

These bills involve contracts. In simplest terms a contract is defined as "an agreement between two or more persons which creates an obligation to do or not to do a particular thing." Restatement of Contracts Second, section 1 defines a contract as "a promise or a set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty." This definition was an attempt to simplify into specific rules years of common law rulings. K.S. A. 84-1-201a (11) defines a contract to mean "the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law." The concept of exchange is inherent in each definition and in a free economy. "Exchange" E. Allan Farnsworth, one of the great scholars of contract law writes, "is the mainspring of any economic system that relies as heavily on free enterprise as does ours."

Contracts are so fundamental to our economy, that Article 1, Section 10 of the United States Constitution prohibits a state from enacting legislation that impairs existing contracts. Assistant Attorney General Mary Feighny outlined the Constitutional tests in her testimony. I ask that you consider each of the tests carefully. In particular, ask what broad and general social or economic problem is this legislation seeking to address? The testimony given indicates that there is no such problem.

There are a number of issues that arise under the various aspects of each of these bills. First, as illustrated in the testimonies of Jan Lyons and Roger Black, the terminology used in these bills is cumbersome and difficult to follow. In trying to clarify aspects of contracts, the definitions contained in the bills confuse the reader. The terminology needs to be closely scrutinized to assure no conflicts with existing commercial transactions.

Proponents of the bill testified that the bill is intended to apply only to production contracts. What relationships are the bills really seeking to regulate? Given the many varieties of contracts that result in the production of a product, it is difficult to determine whether the bills are seeking to regulate sales, independent contractor relations, services, or some type of bailment arrangement. It is difficult to determine who and what transaction will be regulated and how the regulation will affect existing relationships and transactions.

KLA members have serious concerns regarding bill provisions that require the application of this act to written and oral agreements. If the intentions of the proponents were to assure that producers understand fully the terms of arrangements they are entering, wouldn't it make sense to apply these provisions to written arrangements only? If clarity and misunderstanding are problems, they will not be resolved by applying this regulation to oral agreements. The purpose of reducing agreements to writing is to assure complete understanding of the parties' intentions. Written agreements preclude the parties from changing their intentions later. The Uniform Commercial Code, K.S.A. 84-

2-201, which may apply to some of these arrangements, “provides that contracts for the sale of goods for the price of \$500.00 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.” It appears that the policy proposed in these bills is not consistent with the policy of other contractual commercial transactions. Again, this leads to confusion in the industry and ultimately in the courts.

KLA members strongly oppose provisions in these bills that prohibit parties from requiring confidentiality or voiding confidentiality provisions. In other words, KLA strongly supports the rights of parties to maintain confidentiality and privacy. KLA supports the rights of parties to discuss contracts with professionals, like attorneys and financial analysts. The attorney/client privilege and the duties of fiduciaries protect these communications from becoming public. KLA members discussed these issues at length and concluded that the public good achieved through protection of ideas and innovation outweighs the need for total disclosure of transactions by contracting parties.

KLA also opposes provisions in the bills that prohibit the parties from waiving the provisions of the act. Again, KLA members want the freedom to write their own contracts terms.

We also have concern with provisions of the bills that require the application of Kansas’s law to all contracts. Contracting parties typically select the state of registration of their business as the forum for resolving conflicts. KLA supports the rights of contracting parties to negotiate this term. We are also uncertain what impact such a provision would have on interstate transactions. Which state law controls if another state in which one of the contracting parties resides has a similar requirement?

We propose that the provisions of these bills that seek to require “good faith” in all production contracts is unnecessary. We support and expect all parties to contracts to act in “good faith”. It is our opinion that current statutory or case law would require or imply “good faith” in contractual dealings. We believe legislation is not necessary.

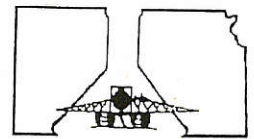
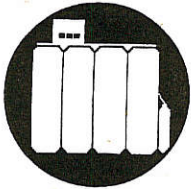
KLA members have concerns regarding the meaning of some of the provisions containing producer rights in HB 2278 p. 3. Many of the “producer rights,” such as the right to associate, are protected by the U.S. and state constitutions. Are these provisions establishing a new level of protection? HB 2278 also implies that contractors seek to impose provisions prohibiting reporting of illegal actions. These actions by contractors would likely be declared unconscionable, unenforceable, and may be unlawful under existing laws. KLA suggests that some of these provisions, like those in lines 17-20, p. 3 of HB 2278 would be more appropriate in the actual contract of the parties and not in statute. Provisions regarding weighing of livestock are included in the Packers and Stockyard’s Act.

Section 2 of HB 2278 outlines a number of prohibitions on contractors. Subsection (a) outlines unfair trade practices. Again, some of these practices are contained in the

Packers and Stockyards Act, unfair trade practice and antitrust laws. KLA would oppose section 2(a)(2), (3) because KLA supports the rights of contracting parties to be preferential and reward good performance. Section 2(a)(4) appears to be the type of clause best left to the actual contract so that the parties may alter the terms when necessary to meet shifting marketplace conditions. Again, some of these provisions regarding the weighing of animals are currently within the Packers and Stockyards Act. Is it the intent of the bills to provide additional protection and if so, what additional protection is intended? Section 2(f) is another provision that would be best left to the parties to negotiate to adjust to changing circumstances.

Finally KLA members are concerned with the costs this law will impose on the industry. We respectfully request that the legislature conduct an analysis of the cost of the imposition of these bills on the contractor, the producer, and the government. After listening to the testimony and visiting with our member "producers" and "contractors," we believe the costs and confusion this legislation may create outweigh any perceived benefit.

In summary, KLA supports producers' rights to contract freely and we oppose legislation that interferes with these fundamental rights. We respectfully request that the legislature not pass these bills.



STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND THE
KANSAS FERTILIZER & CHEMICAL ASSOCIATION
PRESENTED TO
HOUSE AGRICULTURE COMMITTEE
REGARDING SB 2278, SB 2280 & SB 2281
REPRESENTATIVE DAN JOHNSON, CHAIR
FEBRUARY 14, 2001

KGFA & KFCA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 – 785-234-0461

House Agriculture Committee
February 14, 2001
Attachment 8

Chairman Johnson and members of the committee, I am Doug Wareham appearing today on behalf of both the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). KGFA is comprised of more than 1100 member firms including country elevators -- both independent and cooperative -- terminal elevators, grain merchandisers, feed manufacturers and associated businesses. KGFA's membership represents 99% of the over 860 million bushels of commercially licensed grain storage space in the state of Kansas. KFCA's over 550 members are primarily plant nutrient and crop protection retail dealers with a proven record of supporting Kansas producers by providing the latest crop protection products and services, but also consists of distribution firms, equipment manufacturers and businesses related to the crop production industry.

Both the Kansas Grain and Feed Association and Kansas Fertilizer and Chemical Association have serious concerns regarding House Bills 2278, 2280 and 2281 and for that reason I appear in opposition to this bill. Before I raise some of our specific concerns, I would like to first inform this committee that in response to the introduction of legislation during the 2000 Legislative Session regarding agriculture contracting, the following policy statement entitled, "Free Enterprise", was adopted by our respective organizations last fall.

Free Enterprise Policy: KGFA/KFCA support the free enterprise system and believe state governments should refrain from adopting laws that restrict marketing options for agricultural producers or agribusiness. While the federal government and state governments clearly have a role in protecting against fraud and deception, these responsibilities should not be universally or carelessly applied in the hopes of protecting individuals or business from making poor choices in today's marketplace. Attempting to protect agricultural producers and agribusiness interests from themselves will only prove counterproductive by eliminating marketing options or profit margins guaranteed by production contracts. KGFA/KFCA believe agricultural producers and agribusiness interests have a responsibility to inform themselves and to make choices that best suit their needs. Therefore, KGFA/KFCA support a marketplace free of unnecessary government intervention and regulation.

As I stated previously, both the Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association share various concerns regarding these three bills. Some of those concerns include:

- The requirements of H.B. 2278 appear to apply to oral contracts, which may lead to a “he said, she said” scenerio with regards to agricultural contracts.
- The requirements of H.B. 2278 appear to be applied retroactively and would impact existing contracts that contain terms that were agreed to by producers and contractors.
- H.B. 2278 also restricts the rights of parties to waive provisions of the law that are collectively agree upon by producers and agribusiness. Kansas law allows parties to waive terms in real estate agreements and employment agreements. Why not agricultural agreements?
- If H.B. 2280’s objective is to provide an obligation of good faith as presently defined and required by the Uniform Commercial Code, then why do we need this bill?
- H.B. 2281 restricts the rights of agricultural producers and agribusiness that want and agree to confidentiality terms.

Mr. Chairman, to highlight additional concerns our industry has with the aforesaid bills, I would like to introduce and call upon the respective legislative committee chairman of our two associations.

- Mr. Gary Beachner, General Manager, Beachner Grain Inc.
KGFA Legislative Committee Chairman
- Mr. Max Sudbeck, Agronomist, Taylor Seed Farms
KFCA Legislative Committee Chairman

We felt it would be best for this committee to hear directly from individuals that could be impacted by the adoption of these bills. Mr. Chairman, I will now turn the podium over to Mr. Beachner and would be happy to respond to questions at the appropriate time.

KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT PRESENTED BY:

GARY BEACHNER, BEACHNER GRAIN INC.
ST. PAUL, KANSAS

KGFA LEGISLATIVE COMMITTEE CHAIRMAN

PRESENTED TO:

HOUSE AGRICULTURE COMMITTEE
REPRESENTATIVE DAN JOHNSON, CHAIR

FEBRUARY 14, 2001

**KGFA, PROMOTING A VIABLE BUSINESS CLIMATE THROUGH
SOUND PUBLIC POLICY FOR MORE THAN A CENT**



House Agriculture Committee
February 14, 2001
Attachment 9

Chairman Johnson, and members of the committee, my name is Gary Beachner. I am the general manager for Beachner Grain, Inc., a family owned business with country elevators in eight southeast Kansas counties. I also partner in our family owned farming operation, where we primarily raise wheat, soybeans, and corn. We also produce and process, field seeds and grass seeds. Our operations are based in St. Paul, Kansas, a small town in Neosho County.

As indicated by Mr. Wareham, I do currently serve as the Legislative Committee Chairman for the Kansas Grain and Feed Association. I am also a current member of KGFA's Board of Directors, and served as Board Chairman in 1997 & 1998.

I am very concerned with the introduction of House Bills 2278, 2280 & 2281. It is my understanding that the primary objective of these bills, is to provide greater protection for Kansas farmers that enter into livestock or grain production contracts. After reviewing these bills, especially H.B. 2278, I strongly believe this legislation would enable, and perhaps encourage, a producer dissatisfied with a contractor, to simply claim a contractor engaged in any of the unlawful acts described in H.B. 2278, declare the contract unlawful, or declare a breach of contract by the contractor.

While I would agree that some of the provisions in H.B. 2278 seem reasonable, such as Section 2 subsection c, which states that compensation formulas should be specified in the contract, and this data should be disclosed to the producer, and Section 2, subsection d, which allows a producer to actually observe the weights and measures devices used to determine compensation, the remainder of the bill is vague and extremely one-sided.

With regards to the restrictions on confidentiality contained in H.B. 2280, I would simply state that forcing the marketplace to have open access to each and every contract could force buyers into situations of justifying the pricing differences of products under a wide range of market conditions and circumstances and leave the buyer open to charges of discrimination under the provisions of H.B. 2278.

As a family business involved in farming, grain handling & storage, and seed production and processing, we understand the responsibility

associated with entering into any contractual agreement. We also understand the need for a balance of power between buyers and sellers, farmers and grain elevators or ag retailers, producers and contractors. While I believe the intent of this legislation was to provide guidelines that would protect farmers, the reality of this legislation will be additional government oversight, fewer new and innovative marketing options provided by agribusiness, and increased litigation between agribusiness (contractors) and their producer customers.

These bills simply tip the scale too far in one direction, and for that reason, I stand in opposition to House Bills 2278, 2280 and 2281. Thank you for the opportunity to appear today, and I would be happy to answer any questions at the appropriate time.

KANSAS FERTILIZER AND CHEMICAL ASSOCIATION

Statement of the

Kansas Fertilizer and Chemical Association

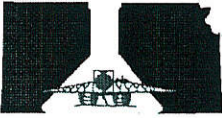
Presented to the

House Agriculture Committee

Representative Dan Johnson, Chairman

Regarding H.B. 2278, 2280 & 2281

February 14, 2001



KFCA IS
COMMITTED TO
PROFESSIONAL
DEVELOPMENT
AND BUSINESS
VIABILITY FOR
THE PLANT
NUTRIENT AND
CROP
PROTECTION
INDUSTRY IN
KANSAS.

Mr. Chairman and members of the House Agriculture Committee, my name is Max Sudbeck and I am the Agronomist for Taylor Seed Farms. Taylor Seed Farms is a family owned farm business along with being one of the largest Kansas based seed distributorships, of which we distribute corn, soybean and wheat seed. We are based out of White Cloud. I office out of my home near Hiawatha, but as the agronomist for the company I cover those areas where we have a dealer network established. That includes some counties in north west and west central Missouri, south east Nebraska, and in north east Kansas west to about highway 81 and south to near Wichita. As indicated by Mr. Wareham, I do currently serve as the Legislative Committee Chairman for the Kansas Fertilizer and Chemical Association as well as a director on KFCA's Board.

I appear in opposition to H.B. 2278, H.B. 2280 and H.B. 2281. I would like to begin by stating that while I am very comfortable making recommendations on crop production inputs, delving into proposed legislation that impacts agricultural contracts in Kansas is not in my normal daily routine. With that in mind, I do want to share with you some questions and concerns I have with the three bills you are considering today. I must admit that I do not have the answers to some of the questions and concerns I'd like to raise, but believe they should be addressed before any action is taken on these initiatives.

With respect to H.B. 2278:

This bill includes oral agreements in its definition of "production contracts" and further outlines that production contracts include the production of a commodity or provision of management services relating to the production of a commodity>

- My concern lies with oral agreements being included in this definition. Does this mean that any fertilizer or chemical dealer, consulting agronomist or anyone selling crop advising services would be considered "under contract" if this legislation passes?

As I read Section 2, subsection 3, I believe this provision would make it unlawful for a contractor, which would include our firm as a seed dealer that contracts for production, to reward their customers.

- Does this mean that customer appreciation dinners are now unlawful? Furthermore, does this mean it would be unlawful for our company to dock a contract seed producer because the seed they produced had more foreign material that was agreed to?

The language contained in H.B. 2278 appears to be very one-sided as if the agricultural producer needs special protection if they choose to enter into a production contract. I know from practical experience that in production agriculture today the farmer and the agricultural retailer enter into "contracts" nearly everyday, by agreeing on a certain price for fertilizer, crop protection

chemicals, seed and custom application services. More than 20 years experience in the retail business has shown me that the producer, not the retailer, is normally the one with the greatest bargaining power. This power lies with the farmers ability to shop and compare services and prices from dealer to dealer. As retailers, we are in the business of competing for customers and must be willing to address any concerns raised by our customers when it comes to contract terms.

With respect to H.B. 2281:

Universally restricting "confidentiality clauses" within agricultural contracts, could reduce premiums or incentives that have historically been paid to producers that consistently out perform their counterparts.

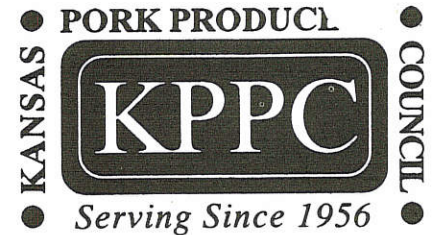
- For example, if it is not possible to maintain in confidence the premiums we pay to our top-performing seed producers, then we will be placed under significant pressure to reduce the \$.30 to \$.50 premiums we provide to our top performers and in turn reward under-achievers for poor performance.

H.B. 2281 would make it difficult to continue incorporating incentives for top performers because those who failed to meet performance standards would also expect the same level of compensation and if H.B. 2281 and H.B. 2278 were both adopted I'm quite certain our firm would be subjecting ourselves to litigation should any contract producer ever "feel" they were inappropriately denied a premium.

- Also, if it is not possible to maintain in confidence what a particular "contract Producer" is growing or intends to grow on a contract field it may jeopardize any potential competitive advantage we may hope to gain over another seed company.

I have read these bills several times, and while there are some provisions that seem reasonable, I firmly believe the adoption of this legislation will open an can of worms that will provide little benefit to Kansas farmers and will force agricultural retailers and grain handlers to re-evaluate the contract and marketing tools they currently afford their customers. The only real benefit will belong to those individuals in Kansas that possess a law degree and seek financial gain from the many legal battles that will likely ensue should these bills become law.

Thank you for the opportunity to appear in opposition to H.B. 2278, H.B. 2280 and H.B. 2281 and I would be happy to answer questions at the appropriate time.



Testimony in Opposition to HB No.'s 2278, 2280 and 2281

Presented on behalf of the Kansas Pork Association

by Mike Jensen, President

Mr. Chairman, members of the committee, I am Mike Jensen, I serve as President of the Kansas Pork Association. Our membership base includes the production of the overwhelming majority of pork produced in this state.

Our organization has significant differences of opinion with those of the proponents, as to the need for this type of legislation.

For some, the term “contracting” conjures images of an evil dragon. In fact, contracting is a form of financial risk management. In essence, it is no different than utilizing futures contracts or other forms of agreements so prevalent in modern agriculture. Our membership is adamant that they want **less government, not more!** They perceive governmental intrusion and oversight in this arena as nothing more than a big brother approach. It effectively says: “We as your government do not feel you have the intellectual ability to fairly enter into a business agreement without our involvement and oversight”.

As these bills are currently drafted, a number of our own producers, would in effect, be defined as an contractor. Thus, they would incur the same stipulations in the bill as the apparent “dragons” that we seem so concerned with protecting others from.

Our membership feels that current law already exists to adequately protect any of their rights. Additionally, our Association has long been active in producing educational materials as well as serving as a clearinghouse for information on contracting. Our membership feels strongly that this “voluntary” approach is much more palatable than government oversight.

In the years to come, successful agricultural enterprises will be defined as those that have continually adopted not only new production practices, but also those who recognize the globalization of agriculture. They must be allowed to capitalize on our principles of free enterprise, and not rely on unnecessary government protectionism as represented in these bills.

ConAgra pays up for cheating growers

ConAgra agreed to a \$6.75 million settlement to a lawsuit filed by Georgia contract poultry growers. ConAgra denied the charges in the suit, but settled one day before trial. The counts in the case:

- Breach of contract (for shorting growers on the number and quality of chicks and other inputs);
- Conspiracy to defraud, fraud and deceit (for planning to cheat growers by mis-weighing of birds, feed, etc);
- Packers and Stockyards Act violations (for unfair, unjustly discriminatory, or deceptive practices, subjecting growers to unreasonable prejudice or disadvantage, and conspiring to do all of the above);
- Federal mail fraud (for mailing documents used in the above schemes through the U.S. mails); and Racketeering (for conspiring and agreeing to conduct its business so as to defraud the growers).

PERDUE BEING INVESTIGATED BY USDA
"LIGHT" CHICKENS, "HEAVY" TRUCKS

1/7/00

Frank Perdue, the man who has boasted that his company's chickens often live in better conditions than people do, is being investigated by the U.S. Department of Agriculture as whether **Perdue** is cheating farmers who grow those chickens.

If such an investigation finds that **Perdue**, based in Salisbury, Maryland., has violated federal law, the matter will be handed over to the U.S. Department of Justice for possible prosecution.

Carole Morison, a Pocomoke City, Maryland, family farmer with a contract to raise chickens for **Perdue**, one of the nation's five largest chicken producers and processors, said the complaints involve whether **Perdue** has been misrepresenting the weight of company tractor-trailers hauling chickens grown under contract.

By claiming the trucks weigh more than they do, the company could cheat farmers when the chickens and trucks are weighed together, she told the Associated Press. She claims the weight of some **Perdue** trucks have been overestimated by as much as 3,500 pounds.

"The tractor-trailers go on their scales with the chickens, and that's 3,500 pounds of meat that's not going to be counted. It's going to be counted as the weight of the truck," she said. By that estimate, a farmer getting paid about 3.7 cents per pound of chicken would lose \$129.50 per truck. "As a contract farmer, there's no way to verify anything they do," she said.

"We're looking at several issues," Dan VanAckeren, director of field operations for the USDA's Grain Inspection, Packers and Stockyards Administration, told AP.

Tita Cherrier, a spokeswoman for **Perdue** said she did not know about the investigation, but said she knows some growers under contract to raise broilers for **Perdue** are "unhappy."

"I'm sure the USDA is compelled to investigate complaints," she said. "We do know that there are some growers, they've formed groups, who are dissatisfied and may have made complaints."

In 1992, some 300 southern Alabama and northern Florida poultry growers were awarded by a federal court jury in Alabama nearly \$17 million after being cheated by **ConAgra** on the weight of their birds. The company's poultry-processing plant at Enterprise, Alabama had deliberately made trucks seem heavier before they left the plant and then tinkered with the scales when they returned loaded to make the trucks appear lighter. Growers were paid on the basis of the weight difference.

Later, in the summer of 1995, **ConAgra** abruptly canceled poultry producing contracts with over 178 independent contract growers in the U.S. South. In offering new and what one producer described as "abusive" contracts **ConAgra** demanded binding arbitration be included.

A typical poultry contract is a unilateral contract, often referred to as a contract of adhesion. An adhesion contract is simply a "take it or leave it" contract. Frequently a farmer who has borrowed one-third to a half million dollars in order to secure a business contract with a processor like **ConAgra** has no option other than to sign, even if it means giving up his or her constitutional right to access their state and federal courts should anything go amiss in terms of fraud or dispute.

Some 53 families, at the risk of losing their farms and their homes, refused to accept such terms, saying it was clearly a violation of their freedom of speech. **ConAgra's** cancellation of contracts, many of the producers believed, came in retaliation for the earlier court suit brought on and won by the aforementioned 300 poultry growers.