

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 20, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Doug Patterson - Excused

Committee staff present:

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

Conferees appearing before the committee:

Charles Simmons, Secretary, Kansas Department of Correction  
Marilyn Scafe, Kansas Parole Board  
Mark Gleeson, Office of Judicial Administration  
Senator Dwayne Umbarger  
Representative Jerry Williams  
Doug Wareham, Kansas Agribusiness Retailers Association  
Jerry Boettcher, Boettcher Enterprises  
Tony Dyer, Kansas Farmers Service Association  
Scott Anderson, Kansas Farmers Service Association  
Joe Lieber, Kansas Cooperative Council  
Jere White, Kansas Corn Growers Association  
Greg Foley, Assistant Secretary of Agriculture  
Rick Tucker, Kansas Trial Lawyers Association  
Paul Davis, Kansas Bar Association  
Representative Karen DiVita  
Kathy Porter, Office of Judicial Administration  
Judge Tom Graber, Sumner County

Hearing on **SB 339 - Procedure for early release of functionally incapacitated persons by the Secretary of Corrections**, was opened.

Charles Simmons, Secretary, Kansas Department of Correction, explained that many states have procedures in place for the release of inmates who are functionally incapacitated as a result of terminal illness or some other condition. The bill would allow the Secretary of Corrections to recommend these types of releases to the Kansas Parole Board, who will make the final decision. (Attachment 1)

Written testimony in support of the bill was provided by Marilyn Scafe, Kansas Parole Board. (Attachment 2)

Hearing on **SB 339** was closed

Hearing on **HB 3010 - Placement in court services or community corrections in Johnson County**, was opened.

Marilyn Scafe, Kansas Parole Board, appeared before the committee in support of the proposed bill which would allow for a pilot program in Johnson County called the Level of Service Inventory-Revised (LSI-R). The LSI-R is a tool that is used to identify risk and needs of offenders. She hoped to receive a grant from the National Institute of Corrections to provide training and education to those who would staff the pilot program. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 20, 2002 in Room 313-S of the Capitol.

Mark Gleeson, Office of Judicial Administration, was concerned about the resources and that there has not been a financial grant received from the National Institute of Corrections and that Johnson County has not voiced their support for the pilot project. ([Attachment 4](#))

Hearing on **HB 3010** was closed.

Hearing on **SB 489 - Immunity from liability for certain owners of anhydrous ammonia from acts of tamperers and civil penalties related to certain acts of custom blenders of fertilizers**, was opened.

Senator Dwayne Umbarger appeared before the committee as the sponsor of the proposed bill. He explained that farmers and ag retailers face huge risks due to the growing problem of individuals stealing anhydrous ammonia to make methamphetamine (meth). ([Attachment 5](#))

Representative Jerry Williams, stated that in southeast Kansas meth labs are growing and the local law enforcement is doing its best to close them down but they do not have the finances to keep up with the growth. ([Attachment 6](#))

Doug Wareham, Kansas Agribusiness Retailers Association, explained that the proposed bill would still allow for civil penalties to be assessed if the owner of the anhydrous tank is found not in compliance with standards that ensure the safe storage, transportation and handling of the fertilizer & such products. Fertilizer is a much needed tool in agriculture today, it the cheapest way to give the crops the nutrients it needs. He provided a balloon amendment which would extend immunity to the third party liability for a period of four years. At which time, there should be an additives that has been added to the anhydrous that will render it unusable to make meth. The agriculture community did not ask for this problem but the meth dealers have made it an issue. ([Attachment 7](#))

Jerry Boettcher, Boettcher Enterprises, commented that while no person has been injured, he believes it's only a matter of time. The industry is currently responsible for its own acts but he does not want them to be responsible for the acts of a theft. ([Attachment 8](#))

Tony Dyer, Kansas Farmers Service Association, told the committee that there is an insurance crisis in agriculture. Even before September 11, many companies were withdrawing from the market. It's not due to the frequency of claims but to the severity of claims. What use to be a two hundred thousand dollar claim is now in the millions of dollars. ([Attachment 9](#))

Scott Anderson, Kansas Farmers Service Association, informed members that dealers have tried many things to stop the theft of anhydrous such as removing hoses from tanks, improving lighting, using locks, video surveillance and fences, but these do not deter the thief. They want the anhydrous so bad that they will find a way around any type of security. ([Attachment 10](#))

Joe Lieber, Kansas Cooperative Council, stated that the purpose of the bill is to protect the owners from the tamperer and third party lawsuits. ([Attachment 11](#))

Jere White, Kansas Corn Growers Association, sees anhydrous as a very helpful and inexpensive tool for growing crops, and if farmers have to stop using it there will be an increase in food. ([Attachment 12](#))

Greg Foley, Assistant Secretary of Agriculture, appeared in support of the bill. He informed the committee that Kansas Department of Agriculture is going to propose regulations establishing 60 days as the maximum time allowed for bulk liquid fertilizer storage of greater than 2,000 gallons without triggering containment requirements. ([Attachment 13](#))

Kansas Farm Bureau provided written testimony in support of the bill. ([Attachment 14](#))

Rick Tucker, Kansas Trial Lawyers Association, read his testimony in opposition of the bill. He proposed striking subsection (e) of Section 1, to do away with the English Rule provisions. ([Attachment 15](#))

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 20, 2002 in Room 313-S of the Capitol.

Paul Davis, Kansas Bar Association, was concerned about Section 1 (e) which modifies the "loser pays" rule in cases where a 3<sup>rd</sup> party brings an action against the anhydrous owner for negligence. (Attachment 16)

Hearing on **SB 489** was closed.

Hearing on **HB 3932 - Establish criteria for amount of child support and restrictions**, was opened.

Representative Karen DiVita explained that the proposed bill would close a loophole for those who divorce and live in the same metropolitan area but are getting a break on child support due to the difference in the costs of living. (Attachment 17)

Kathy Porter, Office of Judicial Administration, was concerned with the understaffed, under funded court system and suggested that factors on page 2, lines 28-36 would add to that. (Attachment 18)

Judge Tom Graber, Sumner County, commented that the courts consider all financial situations but did not anticipate this problem.

Hearing on **HB 3932** was closed.

The committee meeting adjourned at 6:30 p.m.

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS  
OFFICE OF THE SECRETARY  
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900 S.W. Jackson — Suite 400-N  
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Bill Graves  
Governor

Charles E. Simmons  
Secretary

MEMORANDUM

To: House Judiciary Committee

From: Charles E. Simmons *Charles E. Simmons* Secretary

Subject: Substitute for SB 339

Date: March 20, 2002

Several months ago, I initiated a multi-agency work group to review the issue of the release and placement of some inmates due to their medical status or age, and to make recommendations for a release mechanism for functionally incapacitated inmates. The work group included representatives from SRS, Aging, KDOC, the department's medical services contractor, and the independent contract staff who oversee the department's medical services contract. The group also consulted with the Chairperson of the Kansas Parole Board during its review of this issue. The provisions of Substitute for SB 339 were recommended by the work group.

Many states have a procedure in place for release of inmates who are functionally incapacitated as a result of terminal illness or some other condition and who, as a result, are no longer a threat to the public. The department's interest in establishing this type of program is to provide for more efficient use of correctional resources because, with these offenders, there is no longer a correctional purpose served by their continued incarceration.

Basically, the substitute bill authorizes the Secretary of Corrections to recommend functional incapacitation releases to the Kansas Parole Board, who would make the final decision based on criteria established by the bill and regulations developed by the board. The bill requires that the KPB consider: the offender's current condition, and whether it is terminal; the offender's age and personal history; the offender's criminal history, nature of the current offense, length of sentence and time served; risk to the community if the offender is released; and, appropriateness of the release plan. Offenders released under the bill would continue to be supervised by KDOC, and would be

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subject to revocation if they violate conditions or if there is a significant change in their incapacitation status. The bill also establishes notification and comment procedures relative to the sentencing court, prosecutor, and victim(s).

If this bill passes, its implementation would be approached very judiciously. Obviously, public safety would be the critical consideration in making functional incapacitation release recommendations and decisions.

I respectfully request that the committee report Substitute for SB 339 favorably, and would be pleased to respond to questions.

Marilyn Scafe  
Chairperson

Larry D. Woodward  
Vice Chairperson

Carl Cushinberry  
Member

Ben Burgess  
Member



**KANSAS PAROLE BOARD**  
LONDON STATE OFFICE BUILDING  
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TOPEKA, KANSAS 66612-1236  
(785) 296-3469

Colene Seidel  
Administrator

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**MEMORANDUM**

**TO: Representative Mike O'Neal, Chairman  
House Judiciary Committee**

**FROM: Marilyn Scafe, Chair *MS*  
Kansas Parole Board**

**DATE: March 20, 2002**

**RE: Alternate SB 339**

This bill authorizes the Kansas Parole Board to consider early release for functionally incapacitated inmates if referred by the Department of Corrections. The board is in support of a process to deal with those inmates who become nonfunctional while incarcerated. There are compassionate reasons, as well as budgetary considerations.

As the bill has been revised, the Board sees positive application of the process. This version does not duplicate the clemency procedure and is more inclusive of the population needing review and subsequent action. The provisions direct responsible and reasonable decision-making by the Board. Notification and the referral system are more clearly defined. It also provides for public safety if the offender is non compliant. The Board is in agreement with this version of the bill.

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Mari .e  
Chairperson

Larry D. Woodward  
Vice Chairperson

Carl Cushinberry  
Member

Ben Burgess  
Member



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Colene Seidel  
Administrator

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**MEMORANDUM**

**TO: Representative Mike O'Neal, Chair  
House of Representatives Judiciary Committee**

**FROM: Marilyn Scafe, Chair  
Kansas Parole Board**

**DATE: March 20, 2002**

**RE: HB 3010**

The proposed changes in this bill pertain to a pilot project the Sentencing Commission would like to conduct in Johnson County. The changes are specific for location and time in order to work with an identified population for the purposes of applying the risk and needs assessment tool known as the Level of Service Inventory-Revised or the LSI-R. The pilot project is more than simply changing the tool used to identify risk and needs of offenders. This is a system that will impact the way offenders are managed statewide. It is a unified and consistent approach with a continuum of management and services using Court Services, Community Corrections and Parole with the goal of reducing recidivism or violations and using scarce resources wisely for the most impact.

The history and content of this project are explained in more detail in the Sentencing Commission's "Report to the 2002 Kansas Legislature" under recommendation three which is the development of a standardized statewide risk/needs assessment tool. (Attachment) This report explains that the original concept for this study was included in a Proviso in the FY 2002 Appropriations bill. The Proviso was not funded due to budget constraints. However, the Sentencing Commission saw the merit of considering this instrument and the associated strategy for case management. A subcommittee of the Sentencing Commission is overseeing the study. The National Institute of Corrections is providing a technical assistance grant to educate and train the Commission along with an Operational Committee which is made up of individuals from Court Services, Community Corrections, and KDOC/Parole.

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The Operational Committee identified Johnson County as the location because of the availability of the resources and the interest among the three agencies. The concept was presented to the court in Johnson County, and the judges have agreed to work with the Commission on the study. This legislation, which exempts Johnson County from the present definition of the target population for community corrections for a two year period, would allow the assignment of offenders to court services and community corrections as defined by the LSI-R as a test of the instrument. The data will be collected and analyzed during this two-year period along with recommendations to the legislature.



### **Recommendation Three: Development of a Standardized Statewide Risk/Needs Assessment Tool**

During the 2001 Legislative session a Proviso was included in the FY 2002 Appropriations bill directing the Sentencing Commission to review and analyze current instruments used to assess the risk and needs of adult felony offenders in the Kansas criminal justice system. The Proviso further directed the Commission to review the best practices nationwide, hold hearings to solicit input and to provide the Legislature by February 1, 2002, with a plan to identify and implement a standardized risk/needs assessment tool. However, due to the state's budget constraints the Proviso was removed prior to the passage of the 2002 Appropriations bill.

Regardless of the fate of the Proviso, the Sentencing Commission felt so strongly about the need for a standardized comprehensive risk/needs instrument and case management strategy, that it was pursued through other means. The Commission applied for and was awarded Technical Assistance Grants from the National Institute of Corrections to assist with this project. Through the NIC grant, the services and expertise of consultants have been used to identify and assist in the development of a statewide strategy for offender management by use of an appropriate and comprehensive risk/needs instrument. The primary goal in developing a comprehensive standardized risk/needs instrument is to identify the offender's level of risk for re-offending, while addressing the needs of an offender to successfully complete community supervision. This information would then be utilized to determine the appropriate level of community supervision and develop a case management plan.

This study is being overseen by a Subcommittee of the Commission, which includes a district judge, the Secretary of Corrections, the Attorney General's designee, the Chair of the Parole Board, the Executive Director of the Sentencing Commission, the Director of a community corrections program, a representative from court services and two members of the House of Representatives. The Subcommittee is chaired by Marilyn Scafe, Chair of the Parole Board. This Subcommittee has in turn appointed an "operational committee" that is comprised of members of the three supervision agencies and DOC staff. The committee is chaired by the Director of Release Planning for DOC. This committee has been directed by the Sentencing Commission to proceed with a study focusing on a validated tool known as the Level of Service Inventory-Revised (LSI-R). With guidance from the Sentencing Commission Subcommittee, the Operational Committee will initiate a first phase pilot project, which implements the use of the LSI-R and related case management in one geographic location, involving all agencies supervising offenders. This pilot will allow us to see how the system works, identify gaps in services needed to supervise and treat offenders, provide information about caseloads, staffing and quality assurance and include a research component that captures information about the impact of the system assessment and case management.

The Operational Committee's goal is to implement the first phase pilot during the summer of 2002 and to present the results for review by the full Sentencing Commission and the Joint Committee on Corrections and Juvenile Justice Oversight. It is the intent of the Sentencing Commission to introduce legislation relating to the adoption and implementation of the risk/needs instrument during the 2003 Legislative session.

The current tool in use by court services, community corrections, and parole was developed to assist all three agencies with decisions-making for risk management but is limited to assigning offenders to appropriate levels of supervision and some case management planning. The limitations are:

- All information is static, meaning that it never changes. This does not permit the measurement of the offender's progress as he/she progresses through the system.
- Only the Department of Corrections and Community Corrections have automated data and information, thus the information about the offender can not be shared throughout all the supervising agencies.
- There is no comprehensive use of the tool for allocation of resources or placement of offenders in programs.
- There is no tool available that provides information to assist the Kansas Parole Board in making release/revocation decisions.
- Under Sentencing Guidelines, sentencing decisions are based on severity level and prior criminal history only. Since no social history or evaluation material is required at sentencing, there is a lack of verified information that is necessary and useful to determine the level of appropriate supervision and to assist in developing supervision strategies.
- The current assessment tool does not guide the supervising officer to the most effective treatment and case management strategies for each individual offender, in consideration of known risk and needs factors.

With the assistance of the services provided through the NIC grant, both the Commission and the Operational Committee have reviewed various sentencing philosophies and the measurements of their success. A clear priority for both groups was support for the philosophy of "reduction of recidivism." The measurement of success used for this approach is the LSI-R. By managing offenders with this intended outcome, the strategy becomes planning for the success of the offender in the community by directing them to appropriate services according to their assessed level of risk to re-offend. Information from the assessments will serve as the basis for the decisions identifying which offenders should be given priorities for resources. It will also be possible to define gaps in services needed and which programs are truly making a successful impact relating to reduced recidivism.

The agenda of the Operational Committee over the next few months is as follows:

- Continue study of the LSI-R and how it would be integrated into our state's offender management system.
- Study and review other state systems with similar offender populations.
- Review and identify what additional scales and tools in current use could operate in conjunction with the LSI-R.
- Review and discuss the option for designing a grid similar to Colorado and Iowa which will direct the offender management strategy for field officers from court services, community corrections and parole.
- Identify funding options.
- Identify a method for resource allocation in order to maximize existing case management and treatment resources during the first phase pilot.
- Identify resources for research, MIS services and quality control for the first phase pilot, and ultimately for implementation statewide.
- Communicate with and educate community stakeholders regarding the basis for and value of this system of assessment and case management with offenders.
- Clearly define outcome measures of success.
- Implementation of a pilot project.

In addition, the Kansas Parole Board and the Department of Corrections were recently awarded one of four national grants from NIC to address parole/postrelease violators. The Center for Effective Public Policy will lead a policy team through the work related to this grant. All parties involved in both grants agree that the two projects reinforce each other, and there will be conscious effort to ensure there is coordination between both efforts. These are very broad and encompassing undertakings, however, the end results should provide the state with a method to balance treatment and offender control in a rational and effective manner.



State of Kansas  
**Office of Judicial Administration**

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Testimony on HB 3010  
House Judiciary Committee  
Mark Gleeson  
Family and Children Program Coordinator  
Office of Judicial Administration  
March 20, 2002

Mr. Chairman, members of the committee, thank you for the opportunity to testify on House Bill 3010 this afternoon. My name is Mark Gleeson and I am the Family and Children Program Coordinator for the Office of Judicial Administration.

House Bill 3010 would allow the 10<sup>th</sup> Judicial District (Johnson County) to participate in a pilot project with the purpose of implementing a statewide risk and need assessment tool. This tool would provide an accurate assessment of an individual offenders level of risk to communities as well as the information needed to develop a reasonable probation plan for the offender. Court Services Officers are supportive of the goals of this initiative and prefer the proposed risk needs instrument over the current instrument. Those CSOs who have worked on the committee from which this proposal is generated believe the LSI-R delivers a better prediction of risk to the community and a better description of the offenders needs than the current instrument used by all Court Services Officers.

With unlimited resources, there would be no concern about this project. However, this committee should be aware of the following unanswered issues:

- There is no firm commitment from the National Institute of Corrections to fund the training and implementation of this project.
- A one-week training course is required to be qualified to use the assessment tool.
- Court Services will feel the largest impact of this project. The assessment is a part of the pre-sentence evaluation, which is prepared by court services officers. There is no defined plan on how many assessments would be required. Johnson County Court services prepares an average of 75 felony PSI's per month; average supervision caseloads are 182 offenders per officer.
- The defense bar in Johnson County has not yet voiced their support of this project. There have already been concerns raised regarding equal protection being afforded to all defendants with this legislation.

We would like to be able to provide Court Services Officers, as well as Community Corrections and Parole Officers, with a stronger, more accurate tool to classify offenders who are supervised in the community. However, the issues raised above should be resolved before Johnson County is carved out of the sentencing practices used by the rest of the state.

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3-20-02

State of Kansas  
Senate Chamber

**DWAYNE UMBARGER**

SENATE MAJORITY WHIP  
SENATOR, FOURTEENTH DISTRICT  
LABETTE & NEOSHO COUNTIES  
AND PARTS OF CHEROKEE  
AND MONTGOMERY COUNTIES  
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(TTY FOR HEARING/SPEECH IMPAIRED)

COMMITTEE ASSIGNMENTS  
CHAIRMAN: EDUCATION  
CHAIRMAN: JOINT COMMITTEE ON RULES  
& REGULATIONS  
MEMBER: AGRICULTURE  
INTERSTATE COOPERATION  
JUDICIARY  
NATURAL RESOURCES  
ORGANIZATION, CALENDAR  
& RULES

March 20, 2002

To: Representative Michael O'Neal, Chairperson  
and Members of the House Judiciary Committee

Re: Testimony in Support of SB489  
Submitted by Senator Dwayne Umbarger

On the surface, Senate Bill 489 appears to primarily be about protecting certain individuals and businesses from lawsuits, but I hope you will realize when you hear from the individuals that will testify after me today that this is a much bigger issue. The risks faced by farmers and ag retailers across Kansas because of the criminal activity associated with the growing problem we have with meth labs is undeniable and I believe warrants some special consideration and protection for farmers and agribusinesses that need anhydrous ammonia to grow wheat, corn, grain sorghum and soybeans.

Agriculture is the number one industry in this state and I'm here to tell you that it is under attack from the illegal meth trade. I hope you will agree with me that this problem has grown beyond the ability of farmers and dealers to cope with. We need to do something to protect lawful owners of anhydrous ammonia from being subjected to costly lawsuits that could also lead to their inability to obtain insurance coverage and/or continue utilizing anhydrous ammonia as a nitrogen fertilizer source.

To illustrate this point, I'd like to share with you a couple of quotes I jotted down during a hearing last week in another Meth-related bill we considered in the Senate Judiciary Committee.

"Counties don't have the finances, the equipment and the manpower necessary to address the meth problem at the local level."

Assistant Prosecutor from Reno County

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Testimony SB489  
Senator Dwayne Umbarger  
March 20, 2002  
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I pose this question. If local law enforcement cannot address the illegal production of meth and the related crimes that go with it such as theft of anhydrous ammonia, then how can we expect farmers and ag retailers to address this situation? I think the answer to that question is that this situation has grown to a level that is beyond the control of the farmer and ag retailer and they have essentially become a victim of this epidemic.

The second quote, I'd like to share is:

"Experience has shown me that these people (ammonia thieves) will do anything to get anhydrous ammonia to make meth. You can not deter these people."

Officer Shawn Buck, Wyandotte County Undercover Drug Enforcement Officer

I've read in the papers recently that opponents of this bill say this is a security issue. We've seen and been told by farmers, ag retailers and our best law enforcement officials that locks, fences, lighting won't stop the meth dealer that needs anhydrous ammonia.

I hope you will act favorably on this bill and I also understand that an amendment will be offered to reinstate immunity from third party lawsuits, which is how the bill I initially introduced was drafted. I support that provision as well and hope you will support it also.

Thank you for the opportunity to visit with you today.

JERRY D. WILLIAMS  
 REPRESENTATIVE, 8TH DISTRICT  
 MOST OF NEOSHO COUNTY  
 AND PART OF ALLEN COUNTY  
 21225 KIOWA ROAD  
 CHANUTE, KANSAS 66720

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TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENT  
 MEMBER: KANSAS FUTURES  
 UTILITIES  
 SOCIAL SERVICES BUDGET

## HOUSE JUDICIARY COMMITTEE

### ANHYDROUS AMMONIA - SENATE BILL 489

Mr. Chairman and members of the House Judiciary Committee, I want to thank you for taking the time to consider Senate Bill 489. This bill addresses the growing problem with criminals that steal anhydrous ammonia from farmers and fertilizer dealers. This situation is particularly troubling in southeast Kansas, where we've seen the number of meth labs explode in the past two years.

I've provided each of you with a graph and a map that was included in a Legislative Post Audit Report completed last year on the meth situation in Kansas. The two counties in my Legislative District alone had 49 meth labs seized during the year 2000. The graph shows the increases we've seen in the total number of meth labs during the past three years and the map shows the number of labs seized in each county in 2000.

My reason for addressing you this morning is to request your support on this bill. The proliferation of meth labs has also led to a proliferation of the theft of anhydrous ammonia from farmers and fertilizer dealers. While local law enforcement officials are doing the best they can, they are simply outnumbered and inadequately financed or equipped to protect law-abiding businesses and farmers from the meth drug trade that is preying upon them.

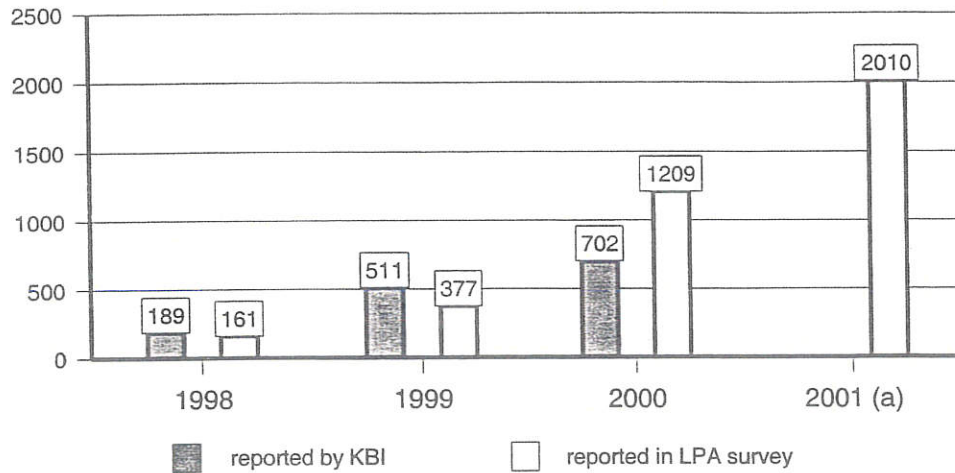
It is my understanding that Senate Bill 489 will accomplish the following:

- This bill protects farmers and agribusinesses from being sued by a thief that injures themselves during the act of stealing anhydrous ammonia.
- This bill enables the court to award compensation for attorney fees when a farmer or fertilizer dealer is sued by a 3<sup>rd</sup> Party that was harmed by the acts of an anhydrous ammonia thief.
- Finally, this bill will ensure that all farmers and fertilizer dealers comply with the security and safety laws currently in place in Kansas by subjecting them to civil penalties if they do not comply.

Once again, I appreciate the opportunity to appear this afternoon in support of Senate Bill 489 and I will be glad to stand for questions.

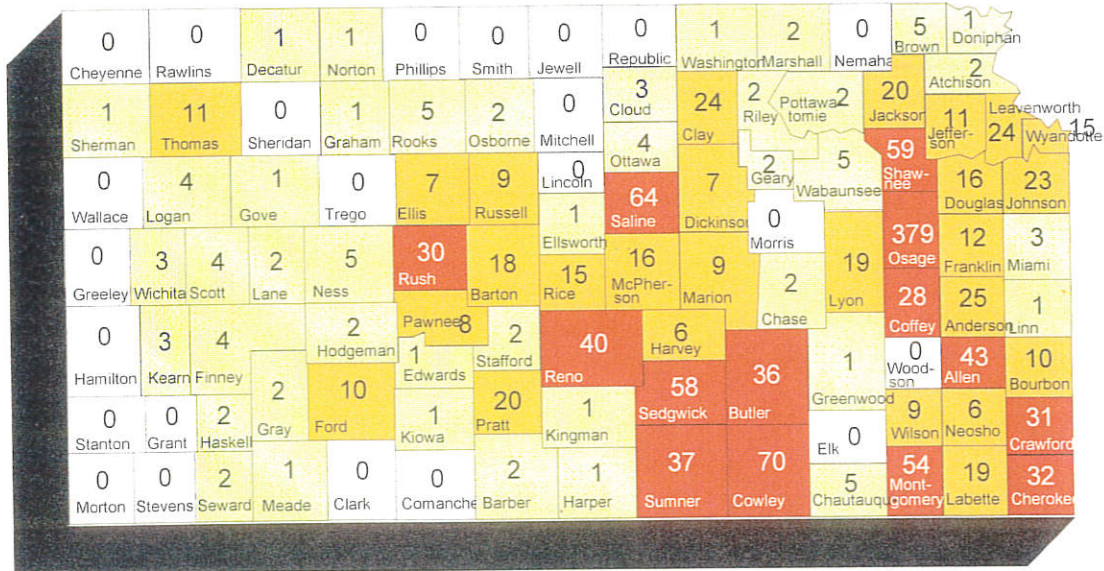
Jerry Williams  
 State Representative  
 District #8

### Number of Labs Reported, In Our Survey and by the KBI



(a) Survey respondents reported 670 labs found from January to April 30, 2001. If labs continue to be found at that same rate, we estimate that as many as 2,010 labs could be found this year.

### Methamphetamine Labs Reported for 2000



Sources: KBI and surveys returned by local law enforcement agencies

1-5 labs

6-25 labs

>25 labs



# KANSAS AGRIBUSINESS RETAILERS ASSOCIATION



**KARA is  
"Committed to  
Professional  
Development  
and Business  
Viability for  
the Retail Crop  
Production  
Industry"**

Statement of the

Kansas Agribusiness Retailers Association

Presented to the

House Judiciary Committee

Representative Mike O'Neal, Chair

Regarding Senate Bill 489

March 20, 2002

Chairman O'Neal and members of the House Judiciary Committee, my name is Doug Wareham and I serve as Senior Vice President for the Kansas Agribusiness Retailers Association (KARA). KARA's membership includes nearly 500 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry.

I appreciate the opportunity to appear in support of S.B. 489. As we view S.B. 489, we believe it contains two very important components. The first component of this bill addresses the epidemic of illegal methamphetamine manufacturing and use in Kansas and the direct impact that epidemic is having on agribusiness retailers that lawfully own and operate anhydrous ammonia facilities and equipment. The second component of this bill provides the Kansas Department of Agriculture with a much needed enforcement tool to ensure that all parties that handle, store and transport fertilizer products, including anhydrous ammonia are doing so in a manner consistent with current laws and regulations that govern those products.

At this time I'd like to focus on the first component I mentioned. If adopted, S.B. 489 will provide persons who lawfully own anhydrous ammonia with immunity from liability suits brought by anhydrous ammonia thieves that tamper with facilities and equipment. S.B. 489 also contains a provision that will enable the court to award compensation for attorney fees to any lawful owner of anhydrous ammonia that successfully defends themselves against a negligence suit brought by a third party.

While on the surface it might appear that the loss of product and potential lawsuits are the only risks faced by agribusiness firms that are impacted by anhydrous ammonia thieves, nothing could be farther from the truth. The pressure from the Meth Industry in Kansas is also threatening the ability of agribusiness firms to obtain affordable property and casualty insurance. I won't pretend to convince you that the present property and casualty insurance situation in Kansas is totally attributable to the Meth Industry, but the fact is that the events of September 11<sup>th</sup> and the subsequent crash in the stock market has created property and casualty insurance crisis for agribusiness retailers in Kansas. The added pressure from anhydrous ammonia thieves has only exacerbated that situation.

I would like to reference a recent article (Green Attachment) that appeared in "Ag Retailer" an official publication of the national Agricultural Retailers Association. While the bulk of this article, which features experts from the property and casualty insurance industry, focuses on the reduction of secondary insurance providers willing to write policies for agribusiness retailers and the skyrocketing premiums from those that will, the article twice mentions the challenges ag retailers face with respect to anhydrous ammonia

thieves. One has to ask, "If an incident caused by the actions of an anhydrous ammonia thief leads to lawsuits and claims against lawful owners of anhydrous ammonia, then how much longer will insurance firms be willing to write this insurance and if they do will it be affordable?" This legislation will help answer that question.

Finally, with respect to the anhydrous ammonia theft/immunity portion of S.B. 489, you may hear from others that our organization's efforts to seek immunity is unwise, since it will only drive third parties to file lawsuits for willful, wanton, reckless or intentional standards of conduct. I'm certain you will hear opponents to this bill state that our members are better off having the suits be filed as negligence suits so that our insurance carriers can defend and protect them. Unfortunately, our very reason for bringing this legislation lies with the insurance issue I addressed earlier. This legislation will help ensure the availability and affordability of property and casualty insurance for agribusiness retailers, which in turn ensures the availability of anhydrous ammonia for Kansas farmers.

Mr. Chairman, I do have a balloon amendment I would like to respectfully submit for the committee's consideration. This amendment will extend immunity to third party lawsuits brought because of harm or damages caused by the actions of an anhydrous ammonia thief. Let me stress that it is not our intent to shield agribusiness retailers or farmers from liability for negligent acts, where they are clearly responsible for damages caused by their own actions. However, we do believe that any harm or damages caused because of the criminal act of an anhydrous ammonia thief should be the sole responsibility of the criminal. Our proposal does sunset immunity from third party lawsuits in four years (July 1, 2006), since it is our hope that an additive will be developed that renders anhydrous ammonia unusable in the meth production process.

The second component in S.B. 489 provides the Kansas Department of Agriculture (KDA) with civil penalty authority to enforce the provisions of the Kansas Commercial Fertilizer Law and subsequent regulations. Our organization believes it is imperative that the KDA be equipped with adequate enforcement tools to enforce the laws and regulations they are charged with. Civil penalty authority is nothing new to the Department of Agriculture. They currently have civil penalty authority to ensure laws and regulations relating to weights and measures, pesticide use, egg production, feed manufacturing and water appropriations are enforced in Kansas. We believe the same enforcement tool is needed to ensure compliance with standards that ensure the safe storage, transportation and handling of fertilizer and fertilizer products. A Legislative Post Audit Report (Yellow Attachment) completed just six months ago concurs with our opinion. The report, which focused on the Kansas Pesticide and Fertilizer Program and how it compares with programs of surrounding states, concluded the Kansas Department of Agriculture needs civil penalty authority to ensure it has the necessary enforcement tools to help protect the public from fraud and the environment from contamination. The language contained in Section 2 of this bill will give KDA that authority and we support that provision.

I want to mention that there has been some concern that civil penalty authority combined with current fertilizer containment regulations that restrict the storage of bulk liquid fertilizers in temporary mobile containers to a period not to exceed 15 days might prove detrimental to Kansas producers. In response to this concern, I would like to state that our organization has reviewed the current regulations pertaining to mobile containers used for temporary storage and we concur that 15 days is too short a time-frame to allow for nursing of bulk fertilizers at the site of application.

Our organization has worked closely with the Kansas Corn Growers Association (KCGA), as well as the Kansas Department of Agriculture during the past few weeks and we have reached a consensus that we believe resolves their concerns to Section 2 of S.B. 489. As part of the agreement we've reached with Kansas farm organizations, I do want to state for the record that we support a time allowance of 60 days for mobile liquid fertilizer storage in addition to civil penalty authority for the Department of Agriculture and that we will work with KDA and KCGA to get that change implemented.

In conclusion, let me summarize by stating that Senate Bill 489 will accomplish three primary objectives:

- S.B. 489 protects farmers and agribusinesses that store and handle anhydrous ammonia from being sued by a thief that injures themselves during the act of stealing anhydrous ammonia. (We do believe that immunity should extend to third party lawsuits based upon the actions of a tamperer.)
- S.B. 489 will help ensure the availability of property and casualty insurance for agribusinesses that sell anhydrous ammonia to Kansas farmers.
- S.B. 489 will provide the Kansas Department of Agriculture with a much-needed tool that will enable them to properly enforce the Kansas Fertilizer Law and subsequent regulations.

Thank you for the opportunity to appear in support of S.B. 489. I would be happy to stand for questions now or at the appropriate time.

3  
4 **SENATE BILL No. 489**

5  
6 By Committee on Judiciary

7  
8 2-1  
9

10 AN ACT concerning *fertilizers; relating to* civil actions and civil pen-  
11 alties; ~~relating to certain fertilizers;~~ owners of anhydrous ammonia,  
12 immunity from liability; civil penalty for certain persons or custom  
13 blenders of fertilizer; *mobile containers*; amending K.S.A. 2-1201b  
14 and repealing the existing section.  
15

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

17 Section 1. As used in this act:

18 (a) (1) "Owner" means:

19 (A) Any person who lawfully owns anhydrous ammonia;

20 (B) any person who lawfully owns a container, equipment or storage  
21 facility containing anhydrous ammonia;

22 (C) any person responsible for the installation or operation of such  
23 containers, equipment or storage facilities;

24 (D) any person lawfully selling anhydrous ammonia;

25 (E) any person lawfully purchasing anhydrous ammonia for agricul-  
26 tural purposes; or

27 (F) any person who operates or uses anhydrous ammonia containers,  
28 equipment or storage facilities when lawfully applying anhydrous am-  
29 monia for agricultural purposes.

30 (2) "Tamperer" means a person who commits or assists in the com-  
31 mission of tampering.

32 (3) "Tampering" means *illegally* transferring or attempting to trans-  
33 fer anhydrous ammonia from its present container, equipment or storage  
34 facility to another container, equipment or storage facility, ~~without prior~~  
35 ~~authorization from the owners.~~

36 (b) A tamperer assumes the risk of any personal injury, death and  
37 other economic and noneconomic loss *to such tamperer or any third*

38 *party* arising from such tamperer's participation in the act of tampering.  
39 A tamperer shall not commence a direct or derivative action against any  
40 owner relating to the act of tampering. ~~Owners are immune from suit by~~  
41 ~~a tamperer or any third party suit based on the tamperer's actions.~~

42 (c) Owners shall not be held liable *or subject to a lawsuit* for any  
43 negligent act or omission which may cause personal injury, death or other

Owners are immune from suit by a tamperer or any third party suit based on a tamperer's actions.
--

or any third party

1 economic or noneconomic loss to a tamperer ~~or any third party~~ relating  
2 to the act of tampering.

3 ~~(c)~~ (d) The immunity from liability and suit authorized by this section  
4 is expressly waived for owners whose acts or omissions constitute willful,  
5 wanton, reckless or intentional conduct.

6 (e) *If any third party brings an action against an owner claim-*  
7 *ing that the owner's negligent acts or omissions caused or contrib-*  
8 *uted to personal injury, death or other economic or noneconomic*  
9 *loss to the tamperer or to any third party relating to the act of*  
10 *tampering, and if the owner prevails, the court may order the plain-*  
11 *tiff to pay the reasonable attorney fees incurred by the owner in*  
12 *defending against the action.*

(f) On July 1, 2006, the immunity by owners from lawsuits as set forth in in (c) shall expire.

13 Sec. 2. K.S.A. 2-1201b is hereby amended to read as follows: 2-  
14 1201b. (a) It shall be deemed a violation of ~~this act~~ K.S.A. 2-1201 and 2-  
15 1201a, and amendments thereto, for any person to: (1) Sell or distribute  
16 in this state any custom blended fertilizer ~~who~~ when such person does  
17 not hold a valid license as required by this act; or ~~to~~ (2) fail to comply  
18 with the requirements of K.S.A. 2-1201a ~~hereof, and amendments thereto~~,  
19 and, *except as otherwise provided*, the provisions of K.S.A. 2-1208, ~~except~~  
20 ~~subsection (1) (a), and amendments thereto. Failure to comply with~~  
21 *the provisions of subsection (1)(a) of K.S.A. 2-1208, and amendments*  
22 *thereto, shall not be deemed a violation of this section. The penalties as*  
23 *provided ~~herein~~ in K.S.A. 2-1208, and amendments thereto shall apply*  
24 *to persons as described in this section who fail to comply with the pro-*  
25 *visions of K.S.A. 2-1208, and amendments thereto .*

26 (b) ~~Any~~ **On and after July 1, 2003, any person or custom blender**  
27 *who violates any provision of article 12 of chapter 2 of Kansas Statutes*  
28 *Annotated, and amendments thereto or the rules and regulations adopted*  
29 *pursuant thereto, may incur a civil penalty in an amount not more than*  
30 *\$5,000 per violation. In the case of a continuing violation, every day such*  
31 *violation continues may be deemed a separate violation. Such civil penalty*  
32 *may be assessed in addition to any other penalty provided by law. Any*  
33 *civil penalty assessed pursuant to this subsection is subject to review in*  
34 *accordance with the act for judicial review and civil enforcement of*  
35 *agency actions. The secretary shall remit any civil penalty collected pur-*  
36 *suant to this act to the state treasurer in accordance with the provisions*  
37 *of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such*  
38 *remittance, the state treasurer shall deposit the entire amount in the state*  
39 *treasury to the credit of the state general fund.*

40 **New Sec. 3. If the secretary of agriculture does not adopt a re-**  
41 **vised regulation related to storage of liquid fertilizer in mobile con-**  
42 **tainers prior to February 1, 2003, then the requirements provided**  
43 **in K.A.R. 4-4-900 et seq. shall be applicable to each mobile container**

1 *or combination of mobile containers which has a combined capacity*  
2 *of 2,000 gallons or more which is used to store liquid fertilizer for*  
3 *more than 60 consecutive days.*

4 Sec. 3 4. K.S.A. 2-1201b is hereby repealed.

5 Sec. 4 5. This act shall take effect and be in force from and after its  
6 publication in the statute book.

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## PROPERTY AND CASUALTY INSURANCE HEADACHES: CAUSES AND SOME MEANS OF RELIEF



**Don Schafer  
Talks About  
Insurance  
Challenges**



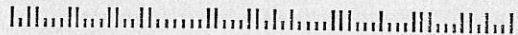
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# Property and Casualty Insurance Headaches: Causes and Some Means of Relief

By Lynn Grooms,  
Contributing Editor

**A**vailability and affordability — these are the biggest headaches that ag retailers face today when it comes to property and casualty insurance. But it's something every retailer must have, especially in these uncertain times. Why are availability and affordability such big issues right now and what can you do to relieve some headaches? *Ag Retailer* asked some experts in the field.

First, why is availability a problem? Consider that over the last 18 months, about a half dozen insurance companies serving agribusiness have left the ag business. What's more, some of the remaining companies are dropping or reducing coverage for certain types of insurance.

Then there are the rate hikes. This year ag retailers can expect a rise in insurance premiums of 25 percent or more. Some retailers, such as Don Schafer, Chebanse Ag Service, Chebanse, IL, have already seen their rates rise 40 percent — and that's without any claims for the last few years. Schafer also says that the insurance company with which he had been doing business said it would not insure his LP business, then later said it would remain at a 58 percent increase.

"It's very difficult to properly insure with property and casualty insurance right now. If we (ag retailers) can't get affordable insurance, we won't be in business long," says Schafer.

Alan Cramer, vice president with the Harry A. Koch Company, Omaha, NE, a regional full-service insurance agency, says some carriers are unwilling to insure retailers for property and casualty or workers compensation. The ag business is a hazardous business, with pollution and chemical misapplication risks, he says. This will continue to put pressure on ag retailers.

If retailers cannot get workers comp insurance from the standard insurance market, they must buy it through a state pool (by law companies must carry workers comp). This could mean paying 20 to 150 percent higher premiums, depending on the state.

All states have an assigned risk fund for workers compensation. This usually is for companies that are considered high risks because they have had loss ratio problems, explains James Graff, vice president, JLT Services, Chicago. JLT Services works with the Agricultural Retailers Association, providing customized insurance services.

Ag retailers can generally get property and casualty insurance; they just may not like the associated high premiums,

says Graff. However, insurance companies may refuse to insure a poorly maintained operation until improvements have been made.



James Graff  
Vice President  
JLT Services

Because of the likelihood that they will be affected by a hurricane, ag retailers in coastal areas also would have trouble finding property insurance. But states such as Florida, Texas and Louisiana often have wind pools. Retailers that have been turned down for insurance are encouraged to contact their state insurance department for information. These departments, found in their

now insurance companies are being forced by stockholders or re-insurance carriers to perform.

Insurance companies have spread their risks by buying re-insurance. For a \$5 million claim, for example, they may pay only \$250,000 while the re-insurance companies pay the rest. Like other companies, re-insurers have been hit hard by the economy and will have to raise their rates. "Re-insurance companies are like wholesalers. If they raise rates, the insurance companies have to increase their rates," says Cramer.

The attacks on the U.S. last September continue to be felt at many different levels and by many different industries, including the insurance industry. "The impact of the September 11 attacks is still unknown as to how many bills will have to be paid, but it could be in the range of \$70 billion to 80 billion," says Cramer. "A lot is coming out of the pockets of re-insurance companies."

"A lot of money is coming out of a finite system," agrees JLT's Graff. "Insurance companies have a certain capacity to absorb catastrophic losses, but when that capacity

---

**"A lot of money is coming out of a finite system. Insurance companies have a certain capacity to absorb catastrophic losses, but when that capacity shrinks, they need to collect more in the way of premiums."**

— James Graff, JLT Services

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respective state capitols, can be accessed by calling or via the Internet, says Graff.

#### Why Rates Are Rising

Insurance rates will escalate this year. Cramer explains that the insurance industry goes through cycles just like other industries. Since the 1990s, it has been in a soft underwriting cycle. "Insurance companies have priced products to get cash flow and have been operating at an underwriting loss," he says. Where they had been making their profit was in investments. But investments have shrunk with the downturn of the stock market, and

shrinks, they need to collect more in the way of premiums." Ag retailers can expect premium increases of 30 to 50 percent, says Graff, adding that increases of 20 percent were not uncommon last fall.

Higher premiums could put some retailers over the edge. Insurance fees may double, but retailers cannot double their rates, says Chebanse Ag Service's Schafer.

#### What to Do?

Given all of this, what can ag retailers do? "If you have a good relationship with a carrier now, I'd suggest staying with the carrier from a stability standpoint," says

Cramer. Some companies are reducing coverage, although Cramer has not seen a great deal of such activity. "We're not seeing insurance companies saying that they're not going to provide ag retailers pollution coverage, for example," says Cramer.

But insurance companies also expect a certain level of commitment to safety and security from the ag retailers they insure. The installation of a central alarm system by a licensed professional, for example, could help an ag retailer qualify for insurance credits or discounts. Some retailers argue, however, that these discounts do not amount to much.



Alan Cramer  
Vice President  
Harry A. Koch Company

"It's important for companies to stress safety and make it part of their corporate culture. The money they spend on safety programs will be saved on premiums, losses or fines," says Cramer. He recommends outsourcing if you do not have the internal resources to set up and run a safety program. This includes paperwork to comply with OSHA or the DOT. You might also hire a consultant to train your personnel to manage the safety program.

Recent thefts of anhydrous ammonia for methamphetamine production have prompted ag retailers to strengthen their security systems. But the potential threat of agroterrorism, especially since Sept. 11, only underscores the continuing need for such systems.

"We need to be aware of agroterrorism threats," says Schafer. The Illinois retailer says his company keeps almost everything under lock and key, but

*continued on page 50*

...continued from page 49

# Cover Story

adds there are new issues to consider. Just recently, for example, one of the company's grain buyers requested railcars to be sealed to avoid any tampering with its food supply en route.

Having safety and security programs in place is especially important now that underwriting is much tougher. Ag retailers that have not focused on safety and loss prevention will have difficulty getting insurance at competitive prices. "Safety is the key to affordability," says Cramer.

Even with a good safety record, some companies have had to contend with higher premiums. "We've never turned in a spray claim," says Schafer. "When there is a problem, we take care of it and sometimes ask the chemical company involved to help."

Economic conditions will make it very difficult to keep premiums manageable. But ag retailers can reduce some costs by using property risk management techniques. That includes self-insuring for



Don Schafer  
Chebanse Ag Service  
Chebanse, IL

Photo courtesy of  
The Daily Journal, Kankakee, IL

losses that they could handle financially (which means higher deductibles), says Cramer. By choosing higher deductibles, one could use the premium savings to buy additional liability insurance.

### How Much Is Enough?

That leads to the question, how much insurance is enough? "From a liability standpoint, you can never have enough insurance," says Cramer. At one time, insurance companies wanted to see ag retailers carry at least \$1 million worth of

coverage; now it's \$2 million. Many ag retailers are encouraged to have \$5 million worth of coverage, and some of the larger cooperatives may be carrying \$10 million policies.

"I would suggest a limit based on a comparable business," says JLT's Graff. He adds that if a retailer wants to insure against the misuse of anhydrous ammonia, one way to find out just how frequently theft of this substance occurs is to check the public record for criminal cases and the cost associated with them.

Determining property values is the owner's sole responsibility. The

owner can utilize a certified appraiser, and some insurance agents also have valuation systems. Some, for example, value grain bins at about \$1.20 per bushel. But this will depend on the type of equipment, says Cramer. Schafer says his company used a formula to value property, which it shared with others.

Ag retailers may want to value their property based on replacement costs. Insurance agents can explain insurance replacement costs, which involves replacing the damaged item with one of like kind and quality, says Graff.

Accountants can help ag retailers establish values for more intangible assets. An accountant, says Cramer, can help establish a limit for business income loss or the lost revenue caused by an insured event. Insurance companies look at the financial condition of the company to be insured. Therefore, it helps to have an accountant that can provide advice on proper credit policies and that can show the company's ability to support its insurance needs.

**"From a liability standpoint, you can never have enough insurance."**

— Alan Cramer,  
Harry A. Koch Company

In addition to an accountant, it is a good idea to consult with an attorney since the retailer may be involved in a contract where it assumes the liabilities of others or where it waives a supplier, for example, from liabilities. As in most cases, it only makes sense to have proper legal counsel before signing a contract.

Current economics and the nature of the ag retail business make getting affordable property and casualty insurance indeed a challenge, and for some retailers this will be a hardship. Fortunately, there are some things retailers can do to reduce their exposure and to save a little on premiums. □

Lynn Grooms is an agricultural writer living in Madison, WI.

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**CONCLUSION:** Kansas' pesticide laws and regulations generally meet minimum federal requirements. There are no federal requirements for fertilizers or chemigation, but Kansas generally meets those suggested in model laws and regulations. We found only a few areas in which Kansas laws or regulations contained more or fewer restrictions than other states. These restrictions address equipment and applicator requirements designed to minimize the risk to people and the environment. Deciding whether Kansas laws and regulations strike the appropriate balance is a matter of public policy. However, many people we talked with thought giving the Department of Agriculture the authority to assess civil penalties for violations of the fertilizer laws would give the State a needed enforcement tool.

**RECOMMENDATIONS:** To ensure that the Department of Agriculture has the enforcement tools it needs to help protect the public from fraud and the environment from contamination caused by equipment that doesn't meet requirements or is improperly maintained or inspected, the House and Senate Agriculture Committees should consider legislation that would authorize the Department to impose civil penalties for violations of fertilizer law. Substitute for SB 255, introduced during the 2001 legislative session and currently in the Senate Agriculture Committee, would give the Department this authority.

# BOETTCHER ENTERPRISES, INC.

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**KANSAS HOUSE OF REPRESENTATIVES  
HOUSE JUDICIARY COMMITTEE  
Mike O'Neal, Chairman  
March 20, 2002**

Testimony of Jarold W. Boettcher, President  
Boettcher Enterprises, Inc., Beloit, Kansas  
Chairperson, Kansas Agribusiness Retailers Association  
Fertilizer and Pesticide Regulations Task Force

Regarding **Senate Bill 489**, Immunity from Liability Involving Tampering with Anhydrous Ammonia Facilities and Imposing Civil Penalties for Violations of Kansas Department of Agriculture Regulations:

Thank you, Mr. Chairman, for the opportunity to testify today in support of Senate Bill 489. I am here today representing the Kansas Agribusiness Retailers Association as a Task Force Chairman and also our Company, Boettcher Enterprises. We are an agribusiness retailer based in Beloit, Kansas. We have over 30 retail locations in Kansas and Nebraska and have been in business in Kansas for over 50 years. We are directly impacted by both provisions in SB489. Our business is heavily regulated by both Federal and State Agencies and properly so. Our facilities, equipment, and records are inspected on a regular basis by officials with the Kansas Department of Agriculture. In addition, we must expect periodic inspections by the Kansas Department of Health and Environment, the Environmental Protection Agency of the Federal Government, the Occupational Safety and Health Agency and both Federal and State Departments of Transportation.

We support both sections of SB489. The first would provide for immunity from liability for damages to a person or persons from tampering with our anhydrous ammonia facilities. An earlier version of the bill also provided for immunity from liability for damages from third parties, where such tampering is illegal under current law. This issue in my judgment, is a disaster waiting to happen. The illegal drug industry is way ahead of reasonable provisions for security and beyond local enforcement. The problem is serious now but growing ever more severe with each passing day. It would be most regrettable were some personal injury were to occur to bring the attention needed.

I would like to take this opportunity to disagree and provide rebuttal to testimony given

in opposition to SB489 in hearings before a Sub-Committee of the Senate Judiciary Committee. The fertilizer industry was accused of trying to obtain immunity from liability for its own irresponsible and illegal acts. Nothing is further from the truth. The bill, as originally proposed, would have provided immunity from lawsuits filed by those persons involved with tampering with the facility or equipment and also derivative lawsuits from third parties. The industry is responsible for its own actions or lack thereof. I previously indicated that we are heavily regulated and inspected by State and Federal officials and in addition, by our insurance carrier. We will be responsible for our own negligence. We would like not to be responsible for the negligence and illegal behavior of a drug dealer.

The second provision of SB489 would institute civil penalties for violations of current regulations of the Kansas Department of Agriculture. For some time, I and others have been concerned about the ability of the Department of Agriculture to enforce its own regulations. As an example, I direct your attention to a growing and serious problem for Agriculture and our State which is the uncontrolled expansion of the use of temporary storage tanks for fertilizer. With the best of intentions, the substance of current regulations were adopted in 1991 to enable the continued use of small tanks for temporary storage of fertilizer at the well-head during seasonal irrigation. Over time, varying interpretations of this part of the regulations has led to a significant expansion in the use of storage tanks, which by any objective measure are not temporary storage. Environmental exposure now exists which was not envisioned by current law. Defining what is temporary has been a contentious issue in agriculture for some time. It now appears that an effective compromise has been reached going across industry boundaries to include both suppliers and users so that we can agree on temporary as being no more than 60 days at a given location. Armed with civil penalties, the Department of Agriculture can much more effectively enforce existing laws and regulations plus those to come, including important regulatory provisions for the storage and use of bulk agricultural chemicals which have been under development for some time. For those who comply with the law, having civil penalties is a moot point. The only ones with exposure or who should object are those who by circumstance, or by intent, do not comply with the regulations.

I urge you to adopt Senate Bill 489.

Jarold W. Boettcher 3/20/02

JWB/jb



# KANSAS FARMERS SERVICE ASSOCIATION

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## **SENATE BILL 489**

March 20, 2002

3:30 p.m. Room 313 S of the State Capitol

My name is Tony Dyer. I'm president of Kansas Farmers Service Association of Hutchinson, Kansas. I'm appearing in support of Senate Bill 489.

KFSA is a regional cooperative service association owned by 121 Kansas cooperatives. We provide legal, tax, safety, compliance, and insurance services for local cooperative owners. KFSA is the 2<sup>nd</sup> largest commercial agricultural agency in the U.S.

1. History of current agricultural insurance crisis
  - a. Started in 2000
  - b. All major lines of insurance
    1. General liability
    2. Auto liability
    3. Umbrella liability
    4. Property
    5. Workers Compensation
  - c. Shock losses
  - d. Depressed rates

2. Affordability	358/532	257/332
Renewal Average	25% - 65%	
\$358,000/\$532,000	=	48.6%
\$257,000/\$332,000	=	29.2%

3. Availability

a. Companies leaving KFSA's agency

1. Grain Dealers/after 53 years
2. Old Republic
3. Zurich
4. Kemper

b. Other companies leaving the market

1. MSI
2. Texas Millers
3. Millers of Alton
4. Mill Mutual

4. This is a real crisis and passage of Senate Bill 489 will be a plus when we are attempting to get insurance companies to consider Kansas as a market.



Testimony  
for  
Kansas House Judicial Committee

Re: Senate Bill 489

March 20, 2002

by  
Scott Anderson  
Kansas Farmers Service Association  
Hutchinson, Kansas

## **Senate Bill 489**

March 20, 2002

3:30 p.m. in Room 313S of the State Capitol

I am appearing in support of Senate Bill 489. My name is Scott Anderson and I am the Director of Risk Management Services for Kansas Farmers Service Association of Hutchinson, Kansas. Our company provides insurance products and services to agri-businesses across the state of Kansas. As Director of Risk Management Services, I along with our staff assist our accounts with their safety and compliance program. These efforts would include assisting them with anhydrous ammonia safety.

I have enclosed a brief overview of anhydrous ammonia to assist the committee in better understanding the need for this product and its use. The summary also discusses how the product is made and some of the more important physical properties of the product. One of the items I always try to discuss with employees when we hold training seminars is that when properly handled, anhydrous ammonia is a very safe product and has a very good safety record. One of the comparisons we use is to compare the misconceptions of anhydrous with propane.

Propane is a product most of us feel very comfortable with, in fact many of us use the product to heat our homes, to cook with it both inside and outside, and some of us even store bottles of propane in our garage. However, propane is highly flammable, anhydrous is not. Propane is heavier than air, which makes it seek low places, and it does not readily dissipate. On the other hand, anhydrous ammonia is lighter than air and does typically dissipate into the atmosphere quickly. Propane also relies on an odorant as a warning agent when released, where anhydrous has a built in pungent odor.

Our company in conjunction with the Kansas Agriculture Retailers Association, the Kansas Department of Agriculture, and Fairbanks Equipment (a retailer of ammonia equipment) hold safety and maintenance schools across the state of Kansas each year. These, of course, are not the only meetings that we hold for our customers. Throughout the year, our company also holds many individual meetings and we provide a tremendous amount of materials for agri-businesses to hold their own meetings. Because of our heavy activity in working directly with ammonia dealers in Kansas, we have developed a strong relationship with EPA.

Three years ago as a result of the Clean Air Act – all anhydrous ammonia dealers were required to develop a Risk Management Program for EPA. This plan required dealers to develop worst-case scenarios of an ammonia release for each plant. This program also requires dealers to develop inspection procedures for their facilities, develop written operating procedures, train and certify that employees have been trained, develop an emergency response plan, and work with local authorities on how to deal with an ammonia release. Each plant was required to certify to the FBI that they held a public meeting or posted their worst-case scenarios from their RMP in the communities in which they operated.

The ammonia industry in Kansas has aggressively complied with the requirements EPA set forth thanks to the efforts of KARA and the Kansas Department of Agriculture. Region 7 in Kansas City has told our firm that the level of compliance they have seen in Kansas is among the highest in the Nation.

**EPA** is certainly not the only regulatory authority the ammonia dealer must work with and comply with. Our dealers must also pass an annual inspection from the **Kansas Department of Agriculture**. The **Federal Highway Administration** and the **Kansas Corporation Commission** regulate the transportation requirements of anhydrous ammonia. **OSHA** has specific requirements for any company who has workers that handle ammonia. If all of these agencies were not enough, **American National Standards Institute** has developed standards for the industry to follow as well.

Some of the requirements for plants and nurse tanks include; relief valves, back check valves, schedule 80 piping, hoses certified for ammonia use only, all tanks certified according to American Society of Mechanical Engineers. Of course in all the requirements, tanks and hoses are required to be secured when not in use. **Even with all of the efforts our industry has made, we still have been unable to stop the ammonia thief.**

Our dealers across the state have worked hard over the last 30 years to handle ammonia safely. When the Nazi method of making methamphetamines started being used in Kansas, like most new processes it was limited to certain areas. Today there is no area of Kansas that has not been affected by ammonia theft. Dealers have tried many things to attempt to stop the thief including locks, removing hoses from tanks, improved lighting, joint efforts with local law

enforcement, video surveillance, and fences. None of these items has deterred the ammonia thief.

Many farmers have also attempted to prevent ammonia theft. Parking tanks in well-lit areas and ordering ammonia when they need it, as opposed to letting a full tank set in a field. Because of the sheer geographical area, the ammonia thief has a huge advantage due to their lack of concern for their own safety and their unquenchable thirst for more meth.

When we think of a terrorist we think of an individual who cares little about his own safety or anyone else's. A terrorist is committed to accomplishing his/her goal regardless of who gets in the way. The ammonia thief operates the same way, because they will do anything to accomplish their goal. All of the safety efforts our industry puts forth go out the window when they trespass onto a dealer's or a farmer's property. When the thief is unable to gain access by opening a valve, they have attempted to use a drill to gain access to the ammonia. We have had sledgehammers used, destroying ammonia equipment that is designed to protect the plant they are trying to access. We have had these criminals attempt to open up manholes (that have 100 psi of pressure) by removing bolts. These criminals really have no understanding of what they are dealing with and they really don't care.

Many times, the ammonia thief is under the influence of one of the most dangerous drugs that law enforcement has ever had to battle. The reward for the thief is more drugs. The efforts to strengthen criminal penalties for persons operating meth labs is helping, but agriculture needs your help today. The family farm in Kansas has been struggling for the past several years with low prices and higher input cost, both of which are out of their control. Ammonia is extremely important for the farming industry and it is essential to protect those individuals and companies that use ammonia. **You do have control to send a strong message to those individuals who are operating responsible, legal businesses – they will be protected from the illegal acts of drug manufactures and that there is no sympathy for trespassers and thieves.**

## AMMONIA AND IT'S CHARACTERISTICS

Ammonia is a chemical compound containing the elements nitrogen and hydrogen. The formula is  $\text{NH}_3$ , indicating that each volume of nitrogen is combined with three volumes of hydrogen. Since the atomic weights of these elements differ, the weight ratio is 82.5% nitrogen to 17.5% hydrogen.

At atmospheric temperature and pressure, ammonia is a colorless gas with a very sharp, characteristic odor. This gas can be liquefied by cooling or by applying pressure. In appearance, liquid anhydrous ammonia resembles water. The boiling point at atmospheric pressure is  $-28^\circ\text{F}$ . Above  $900^\circ\text{F}$ , ammonia begins to decompose, reverting to hydrogen and nitrogen. At  $-107.9^\circ\text{F}$ , anhydrous ammonia freezes to form white crystals.

### HOW IS AMMONIA MADE?

The raw materials of ammonia are (1) natural gas (2) air (3) water.

Step 1 (Gas Reforming) -- Natural gas is primarily methane, a compound of carbon and hydrogen. A mixture of gas, air, and steam is passed at high temperature through catalysts. The reaction products are hydrogen, nitrogen, and oxides of carbon (carbon monoxide-carbon dioxide).

Step 2 (Compression and purification) -- The reformed gas is subjected to several stages of compression. Between stages the carbon dioxide and carbon monoxide are removed by scrubbing with liquids. The gas leaving the last stage of compression is a mixture of nitrogen and hydrogen at a pressure of several thousand pounds per square inch.

Step 3 (Synthesis) -- The mixture of nitrogen and hydrogen is passed through another catalyst to form ammonia. Since only partial conversion takes place on each pass, the unreacted gases are recycled. The ammonia is liquefied by cooling ( $-28^\circ\text{F}$ ) and sent to storage.

### IS AMMONIA FLAMMABLE?

No, ammonia is classified as a non-flammable gas by the Department of Transportation. However, ammonia will burn, but only if ammonia gas is mixed with the proper proportion of air. The flammable limits of a mixture are reported as 16-25 percent of ammonia vapor in air. In addition, ammonia-air mixtures are difficult to ignite. They require an intense source of ignition and a relatively high concentration of gas. The ignition temperature is in excess of 1560 degrees Fahrenheit.

You should never let the flammable limits and high ignition temperature lull you into a false sense of security. It is impossible to test mixture percentage inside a storage tank, nurse tank, applicator, or piping.

## ANHYDROUS AMMONIA FACTS

1. Ammonia has been widely used as a nitrogen fertilizer in the United States for over 40 years.
2. Records show that handling gasoline is more dangerous than handling ammonia.
3. Ammonia is the highest analysis nitrogen fertilizer, also the lowest in price.
4. Made from water, air, and natural gas.
5. Weighs five pounds per gallon at 80 degrees Fahrenheit.
6. A liquid under pressure or at temperatures colder than 28 degrees below zero.
7. It has pressure of 75 lbs. at 50 degrees F., 197 lbs. at 100 degrees F.
8. Ammonia vapor is much lighter than air. It rises and disappears quickly unless held down by down drafts of air or conditions of high humidity.
9. Vapor is irritating to eyes, nose, lungs, etc. at low concentrations. At high concentrations will blister human skin and kill tree leaves, also some annual plants.
10. Is not combustible like most pressure gases, but will burn by open flame or spark at 16 to 25% ammonia and 75 to 84% air at temperatures of about 1560°F. It is so difficult to ignite ammonia that it is classified non-flammable by the DOT.
11. Ammonia is not corrosive to iron or steel; but because of chemical reactions, brass or copper fittings cannot be used in ammonia equipment.
12. Ammonia is 82.24% nitrogen.
13. Midwest agricultural colleges agree that a pound of nitrogen from ammonia is just as valuable to growing plants as a pound of nitrogen from any other source. Most of it is in the nitrate form when plants use it.
14. Ammonia changes to nitrate nitrogen in about four to six weeks in favorable conditions, slower in cold soils.
15. Ammonia changes to nitrates by bacterial action. The bacteria are quite inactive at temperatures below 57 degrees F. and in extremely wet soil.
16. Ammonia does not leak out, even with heavy rains or flooding, while in the ammonia form.
17. Ammonia must be released in the soil at depths of five inches or more. It spreads about four inches from point of release until it attaches to organic matter or clay particles - it moves further in sandy soil.

18. Land treated with ammonia can be plowed without loss of nitrogen as soon as no odor can be detected at center of application area - usually within 2-3 days after application.
19. Ammonia causes an acid effect on the soil but no more for the same amount of nitrogen than does ammonium nitrate or urea, and far less than ammonium sulfate.
20. One ton of limestone per acre will offset the acidity caused by 13 applications of ammonia, each at the rate of 100 lbs. of ammonia per acre.
21. Ammonia is a "first stage" in making most synthetic nitrogen fertilizer; from it is made ammonium nitrate, ammonium sulfate, urea, nitrogen solutions, and even ammonium phosphates.
22. Nitrogen will not take the place of other elements. Soil must be balanced with phosphate, potash, lime, and micronutrients to get best results from nitrogen.
23. With other elements in proper supply, one pound nitrogen should produce up to an extra one-half bushel of corn, one-third bushel of wheat, two bushels of oats, or when applied to pasture, three pounds of beef.
24. A bushel of corn from well-fertilized land will average 25% more protein than corn not fertilized.
25. Corn and bromegrass are able to use large amounts of nitrogen fertilizer.

Testimony on SB 489  
House Judiciary Committee  
March 20, 2002  
Prepared by Joe Lieber  
Kansas Cooperative Council

Mr. Chairman and members of the committee, I'm Joe Lieber, President of the Kansas Cooperative Council. The Council has a membership of over 200 cooperative businesses, who have a combined membership of nearly 200,000 Kansans. Over 100 of our members are farm supply cooperatives who own and sell anhydrous ammonia.

The provisions in SB 489 are a logical step to prevent unwarranted lawsuits to the owners of anhydrous ammonia containers, equipment and storage facilities. One reason that our members' insurance premiums have gone up so much is frivolous law suits. One of our member's premiums went up \$130,000 this year while another one went up \$200,000. The average increase for property and casualty insurance has gone up 20 % to 50%.

The Council is in support of SB 489 because it seems only right that these owners should not be liable or punished for an act committed by someone who is doing something unlawful such as tampering.

We also feel that Section 2 of the bill is important because it will help ensure that those people who do not abide by the law can be punished.

Again, we support SB 489. Thank you. I will stand for questions.





## TESTIMONY

TO: House Committee on Judiciary  
FROM: Jere White, Executive Director  
DATE: March 20, 2002  
RE: SB 489

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Thank you Mr. Chairman and members of this committee. I am Jere White, Executive Director of the KS Corn Growers and KS Grain sorghum Producers Associations. I would first like to wish you all a very Happy Agriculture Day! We are here today in support of SB 489.

Our organizations stand in support of the effort to minimize liability for the lawful possession and use of anhydrous ammonia in Kansas. It would seem only reasonable that the illegal acts of others should not create a liability to anyone-but the ones performing the illegal acts, when there are no wanton or reckless acts or omissions that are committed by the legitimate owners. The use of anhydrous ammonia is a cost effective way of providing necessary nutrients to our corn and grain sorghum crops. Anything that can minimize the indirect costs to Kansas farmers from the illegal use of anhydrous ammonia, such as those associated with the production of meth-amphetamines, should be in the best interest of the State. Certainly, in the world of litigation that we live in, it is reasonable to limit the liability when someone doing the right thing, is a victim of someone who is not. The potential loss of this production tool from dealers wanting to minimize their liability, or for that matter, wanting to be able to pay their insurance premiums, would be a travesty. It would place Kansas farmers at a competitive disadvantage to producers in other areas. Kansas is an agricultural state. It is appropriate for the state to preserve that status.

During our testimony in the Senate, we expressed concerns in the original bill with Section 2. Specifically, we have an issue with fertilizer regulations that we have sought revisions on for over seven years. The current regulations require that "tip tanks" (portable containers with over 2000 gallons of capacity) be emptied every 15 days or be subject to containment. When fertilizer containment was first adopted in Kansas, the time frame was every 90 days. Our current policy on tip tanks, for both organizations, supports a 60 day requirement. We now have agreement between industry, producers, and the Secretary of the Kansas Department of Agriculture to support the promulgation of such 60 day time frame.

With this agreement, we remove our original opposition to Section 2 and support SB 489 as amended by the Kansas Senate and we ask for favorable consideration by this committee. Thank you.

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 Judiciary Committee**

**March 20, 2002**

**Testimony Regarding Senate Bill 489**

**Greg A. Foley, Assistant Secretary of Agriculture**

Good afternoon Chairman O'Neal and members of the committee. I am Assistant Secretary of Agriculture Greg Foley. Thank you for the opportunity to testify today on behalf of the Kansas Department of Agriculture.

**Section 1**

KDA is charged under K.S.A. 2-1212 to implement an anhydrous ammonia program to address general safety standards covering the design, construction, location, installation and operation of equipment for the storage, handling and transportation of anhydrous ammonia.

All agricultural anhydrous ammonia facilities are inspected annually for equipment defects and to ensure that all items required for safe handling of anhydrous ammonia are properly positioned and serviceable. Upon successfully completing an inspection, a dated inspection decal is placed on the storage unit in a way that it is visible to delivery personnel. Only storage units displaying current inspection decals may receive anhydrous ammonia deliveries. As an outreach, the program participates in the anhydrous ammonia safety schools presented by the regulated community several times each year.

**Section 2**

We believe the Legislative Post Audit recommendation that additional enforcement tools, such as the authority to impose civil penalties for violations of fertilizer laws, will enhance our ability to protect the agricultural industry, the residents of Kansas and the environment.

**Section 3**

KDA has spent considerable time and resources updating the regulations for fertilizer containment. Producer groups, industry representatives and KDA met to discuss proposed regulations and changes in industry practices that have occurred since the regulations were last revised. One area of concern dealt with mobile liquid storage containers. KDA will propose modifications to the existing regulation establishing 60 days as the maximum time allowed for bulk liquid fertilizer storage of greater than 2,000 gallons without triggering containment

House Judiciary  
Attachment 13  
3-20-02

requirements. Sixty days was derived from the agronomic planting dates for corn, which is approximately 30 days, and a typical preplant application period of 30 days. The 60-day time period chosen after we received input from our agriculture statistics program, the KSU Extension and Ray Laymond, a soil fertility expert at KSU.

Thank you for the opportunity to present this information and I am willing to answer questions at the appropriate time.

This brochure has been developed by the Kansas Dept. of Agriculture's fertilizer staff to provide an overview of the statues and regulations governing Anhydrous Ammonia storage and safe handling tips.

Anhydrous Ammonia storage facilities are inspected on an annual basis. Once the facility has passed the inspection process a proof of inspection seal will be applied by the Kansas Department of Agriculture.

**Why an annual inspection?** K.A.R. 4-10-17 states, in part, no person shall fill a permanent storage container with anhydrous ammonia unless the container has affixed to it a proof of inspection seal issued within the preceding 365 calendar days.

**Why is the equipment inspected?** K.S.A 2-1217 states, in part, it shall be the duty of Kansas Department of Agriculture employees to notify the owner or operator of any defect or deficiency in construction, installation or operation of an anhydrous ammonia facility, and of any defect or deficiency in the safety equipment or use thereof.

**Why report an anhydrous ammonia release?** K.A.R. 4-10-2k(c) requires each accident involving the storage, transportation or application of anhydrous ammonia to be reported by telephone within 72 hours of the accident, it must be followed by a written report mailed within five working days after the accident.

Anhydrous ammonia is an alkali. Compared to acids which tend to burn and seal off a wound, alkalies cause liquification of tissue. As a result, anhydrous ammonia burns keep spreading until the chemical is diluted. Anhydrous ammonia primarily affects three areas of the body; the lungs, eyes, and skin. It is important to generously flush any exposed area with water. Training and prior planning are the keys to a successful emergency response, just as aggressive safety policies are the keys to prevention. It is important to train individuals handling ammonia on what to do if exposed, especially the need for quick and aggressive decontamination. All employees need to know the location and proper use of safety equipment. It is recommended to store your safety equipment in a central location, easily accessible in case of an emergency.

The following are some of the areas inspected along with the type of violation, major, minor or advisory. If a major violation is found the facility will not receive the proof of inspection seal until the violations have been corrected.

**Major violations include:**

- Outdated or damaged hoses, K.A.R. 4-10-2g
- Water containers broken or missing K.A.R 4-10-4(i), K.A.R 4-10-4(k), K.A.R 4-10-6(e)
- Outdated or missing safety equipment K.A.R 4-10-4(i)
- Non-functional pressure gauges K.A.R 4-10-2i, K.A.R 4-10-4(c), K.A.R. 4-10-6(c)
- Missing or incomplete safety chains, two per trailer K.A.R 4-10-6(e)
- Plumbing leaks K.A.R. 4-10-2f(g)
- Safety water at facility K.A.R. 4-10-4(i)

**Minor violations include:**

- Improper or incomplete markings K.A.R 4-10-2c, K.A.R 4-10-4, K.A.R 4-10-5, K.A.R 4-10-6
- Missing rain caps on relief valves

- K.A.R 4-10-2h, K.A.R 4-10-6(c)  
Failure to protect piping or appurtenances K.A.R 4-10-6(c), K.A.R. 4-10-2f(f)
- Poor paint K.A.R 4-10-2k
- Trash around the storage facility K.A.R. 4-10-4(g)
- Plumbing modifications K.A.R. 4-10-2f, K.A.R. 4-10-2g
- Security K.A.R. 4-10-4(g)
- Grounding K.A.R. 4-10-4(g)

Any safety advisories found will be noted on inspection reports and discussed with facility management. Safety advisory violations may include:

- Missing hydrostatic relief valves or procedures K.A.R 4-10-2g
- Bent nurse tank trailer tongue or undercarriage K.A.R 4-10-6(e)
- Poor nurse tank trailer tires K.A.R 4-10-6(e)

Complete text of the statues can be found at the State of Kansas website:  
[www.ink.org](http://www.ink.org)

Inhalation Hazard, Hazardous Materials Code 1005 and Slow Moving Vehicle Signs are regulated by other enforcement agencies.

# Anhydrous Ammonia



Kansas Department of  
Agriculture  
Pesticide & Fertilizer Program  
109 SW 9<sup>th</sup> St., 3<sup>rd</sup> Floor  
Topeka, Kansas 66612-1281  
(785) 296-3786

Rev. 10/00



## ***Kansas Farm Bureau***

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### ***PUBLIC POLICY STATEMENT***

#### **HOUSE COMMITTEE ON JUDICIARY**

**RE: SB 489 – Relating to owners of anhydrous ammonia, immunity from liability and civil penalty for certain persons or custom blenders of fertilizer.**

**March 20, 2002  
Topeka, Kansas**

**Presented by:  
Leslie Kaufman, Associate Director  
Public Policy Division**

---

Chairman O'Neal and members of the House Judiciary Committee, thank you for the opportunity to appear today in partial support of SB 489. My name is Leslie Kaufman, and I serve the members of Kansas Farm Bureau as Associate Director of Public Policy. Kansas Farm Bureau is a grassroots agricultural organization representing more than 43,000 farmer and rancher members actively engaged in production agriculture. Our member-enacted policy is developed over a 12-month process, culminating with the ratification of policy language at our annual meeting. The resolutions adopted this past November at the 83<sup>rd</sup> Annual Meeting of Kansas Farm Bureau guide the policy implementation efforts our organization is pursuing during 2002.

Kansas Farm Bureau appears today in partial support of Senate Bill 489. Member-adopted policy is founded on respect for private property rights. Farm Bureau members are concerned about safety and crime prevention. Additionally, farmers and ranchers are extremely concerned with trespass and vandalism.

Last fall, in an effort to address member concerns, our organization implemented a crime prevention program. One of the tasks of the crime prevention specialist is to assist Farm Bureau members in making their farms and ranches less susceptible to crime, including criminal activities surrounding the production of methamphetamine.

Kansas Farm Bureau policy supports the first part of Senate Bill 489 and the provisions to protect responsible, innocent owners of anhydrous ammonia from liability resulting from actions of a tamperer.

***We recommend strengthening the statutes concerning trespass and vandalism and the increase of penalties for these offenses. We support legislation to establish a mandatory fine and full restitution for property damaged by individuals found guilty of trespassing and/or vandalism. We support legislation to remove from the landowner all liability for injury and damages to trespassers and vandals. (Gov-14)***

***We support stringent penalties for individuals convicted of drug crimes and crimes committed to obtain ingredients for manufacturing methamphetamines. (Gov-5).***

Anhydrous ammonia is a plant nutrient that is valuable to Kansas farmers. Please understand that farmers often are the owners of the anhydrous when that product leaves a retail facility and is taken to the application site. The intent of SB 489 is a solid step to ensuring this input remains a viable choice for Kansas farmers. Furthermore, we support the intent of the amendment offered by the Kansas Agriculture Retailers Association.

Kansas Farm Bureau offers partial support for SB 489 because of the second component of the bill that would grant civil penalty authority for the Kansas Department of Agriculture. Member-adopted policy does not support granting judicial functions to executive agencies.

***We support an independent judiciary and impartial administration of law. The judicial function should be performed by the judicial branch and not by executive agencies. (GOV-8)***

We have appreciated the opportunity to take part in the working group reviewing fertilizer regulations within the Kansas Department of Agriculture. The department has current regulations in place, but convened a working group, prior to promulgation of updated regulations. If this bill advances, we would respectfully ask that it do so with the language of New Section 3 (Senate Committee version) intact and encourage the Secretary of Agriculture to promulgate regulations that would allow producers access to crop nutrients which they may apply in a timely fashion. Temporary storage of liquid fertilizer for sixty days is one way to afford farmers the opportunity to apply crop nutrients in a timely, environmentally sound manner.

As such, we would ask for favorable action by the committee. Thank you.

*Kansas Farm Bureau represents grassroots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*



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KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the House Judiciary Committee  
FROM: Rick Tucker, KTLA  
DATE: March 20, 2002  
RE: Opposition to 2002 SB 489 (request to delete subsection (e) of section 1)

Representative O'Neal and members of the committee, I am Rick Tucker, an attorney from Parsons, here to represent the Kansas Trial Lawyers Association. Thank you for this opportunity to present testimony in opposition to SB 489.

Anhydrous ammonia is an effective fertilizer that Kansas farmers have been using on their crops for many years. It is also an extremely hazardous chemical which, when released into the environment, can cause blindness, severe respiratory damage, burns or even death. Unfortunately, this hazardous chemical has become the target of thieves who use it in the production of illegal methamphetamines. Meth production and anhydrous ammonia theft are on the rise in Kansas, threatening law enforcement, fire fighters and other first responders, and the general public.

It is against this backdrop that we discuss SB 489. It is important to understand that this bill will not curb illegal meth production or improve the secure storage of anhydrous ammonia or make law enforcement, firefighters or other first responders safer. This bill was introduced for the purported purpose of improving the insurance climate for agribusiness. In his testimony to the Senate Judiciary Committee, Doug Wareham, senior vice president for the Kansas Agribusiness Retailers Association, succinctly summarized what SB 489 is all about: "This legislation is about protecting and ensuring the availability and affordability of property and casualty insurance for lawful owners of anhydrous ammonia."

*Terry Humphrey, Executive Director*



Agribusiness, like other businesses, is feeling the pinch of rising insurance premiums. But there is nothing in SB 489 that guarantees insurance will become more available or more affordable. That's because the bill does not address the root causes of the insurance problem. According to the January 2002 issue of *Ag Retailer*, the official publication of the Agricultural Retailers Association, rising insurance premiums are the result of cyclical changes in the insurance industry. Insurance companies make their profits from investments. When investment income was good, insurance companies offered lower-priced policies just to get cash to invest. With the downturn in the economy, compounded by the events of September 11, investment income dried up and so did those low-priced policies.

Proponents of SB 489 would like us to believe that this bill is necessary to protect lawful owners of anhydrous ammonia from being sued by meth criminals. However, current laws in Kansas already protect lawful owners from suits by criminal "tamperers." Lawyers familiar with premises liability law already know this—and so do the insurance companies who serve agribusiness. While we do not object to *this* provision of SB 489, it's important to understand that it merely codifies current common law and will have no impact on insurance rates.

Where SB 489 threatens to set a dangerous precedent is in subsection (e) of section 1. Subsection (e) of section 1 proposes a modified form of what is known as the English rule. Under the English rule, the losing party in a lawsuit pays the prevailing party's attorney fees and costs. In practice, the English rule prevents anyone who cannot risk financial ruin from accessing the courts. In other words, under this rule, only the wealthiest of Kansans could hold a negligent owner of anhydrous ammonia accountable.

This rule stands in sharp contrast to the American rule, in which both parties are responsible for their own legal fees and costs. Kansas has always recognized the American rule, as have American courts historically. That's because the American rule, unlike its English counterpart, is about more than "who has to pay." The American rule reflects our nation's deeply rooted belief that *all* citizens have a right to access the courts, not just the rich.

SB 489 rejects the American rule in favor of a form of the English rule. Subsection (e) of section 1 proposes that an injured plaintiff may be forced to pay an owner's attorney fees if the plaintiff loses in a lawsuit. Regardless of the outcome, however, the owner-defendant would *not* have to pay the injured plaintiff's attorney fees. This provision is unfair. Injured persons who are already burdened with medical bills and lost time from work are the least able to afford the risk of paying the wrongdoer's legal fees. This is especially true when the wrongdoer is a large company with abundant financial resources. Imagine being blinded because of the negligence of a company that supplies anhydrous ammonia. You can no longer work, and the medical bills are piling up. You want to hold the negligent company accountable, but you also know the company employs a department-full of well-paid defense attorneys. Win or lose, the defense attorneys will get their paycheck. But if you lose, you risk the remainder of your life savings and the kids' college fund in order to pay the company's legal fees. Are you willing to take that risk? We don't think so, and neither do proponents of this bill. In fact, they're counting on it. Put simply, under the English rule access to the courts is not based on the merits of your case or on justice. It is based on the size of your bank account.

In short, SB 489 will not improve the insurance climate for agribusiness. Worse yet, it advocates a form of the English rule that provides special protection to negligent owners of anhydrous ammonia at the expense of the individual they harmed. The English rule is contrary to our country's ideal of justice and access to the courts for all citizens, regardless of income. We strongly urge the committee to delete subsection (e) of section 1 of SB 489. Thank you.

Enc: KTLA balloon amendment

1 *As Amended by Senate Committee*

2 *Session of 2002*

3 **SENATE BILL No. 489**

4  
5  
6 By Committee on Judiciary

7  
8 2-1

9  
10 AN ACT concerning *fertilizers; relating to* civil actions and civil pen-  
11 alties; ~~relating to certain fertilizers~~; owners of anhydrous ammonia,  
12 immunity from liability; civil penalty for certain persons or custom  
13 blenders of fertilizer; *mobile containers*; amending K.S.A. 2-1201b  
14 and repealing the existing section.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. As used in this act:

18 (a) (1) "Owner" means:

19 (A) Any person who lawfully owns anhydrous ammonia;

20 (B) any person who lawfully owns a container, equipment or storage  
21 facility containing anhydrous ammonia;

22 (C) any person responsible for the installation or operation of such  
23 containers, equipment or storage facilities;

24 (D) any person lawfully selling anhydrous ammonia;

25 (E) any person lawfully purchasing anhydrous ammonia for agricultural  
26 purposes; or

27 (F) any person who operates or uses anhydrous ammonia containers,  
28 equipment or storage facilities when lawfully applying anhydrous am-  
29 monia for agricultural purposes.

30 (2) "Tamperer" means a person who commits or assists in the com-  
31 mission of tampering.

32 (3) "Tampering" means *illegally* transferring or attempting to trans-  
33 fer anhydrous ammonia from its present container, equipment or storage  
34 facility to another container, equipment or storage facility, ~~without prior~~  
35 ~~authorization from the owners.~~

36 (b) A tamperer assumes the risk of any personal injury, death and  
37 other economic and noneconomic loss *to such tamperer or any third*  
38 *party* arising from such tamperer's participation in the act of tampering.  
39 A tamperer shall not commence a direct or derivative action against any  
40 owner relating to the act of tampering. ~~Owners are immune from suit by~~  
41 ~~a tamperer or any third party suit based on the tamperer's actions.~~

42 (c) Owners shall not be held liable *or subject to a lawsuit* for any  
43 negligent act or omission which may cause personal injury, death or other

1 economic or noneconomic loss to a tamperer or any third party relating  
2 to the act of tampering.

3 ~~(e) (d)~~ The immunity from liability and suit authorized by this section  
4 is expressly waived for owners whose acts or omissions constitute willful,  
5 wanton, reckless or intentional conduct.

6 ~~(e) If any third party brings an action against an owner claim-~~  
7 ~~ing that the owner's negligent acts or omissions caused or contrib-~~  
8 ~~uted to personal injury, death or other economic or noneconomic~~  
9 ~~loss to the tamperer or to any third party relating to the act of~~  
10 ~~tampering, and if the owner prevails, the court may order the plaintiff~~  
11 ~~to pay the reasonable attorney fees incurred by the owner in~~  
12 ~~defending against the action.~~ ←

KTLA amendment to strike language in subsection (e) of section 1.

13 Sec. 2. K.S.A. 2-1201b is hereby amended to read as follows: 2-  
14 1201b. (a) It shall be deemed a violation of ~~this act~~ K.S.A. 2-1201 and 2-  
15 1201a, and amendments thereto, for any person to: (1) Sell or distribute  
16 in this state any custom blended fertilizer ~~who~~ when such person does  
17 not hold a valid license as required by this act; or ~~to~~ (2) fail to comply  
18 with the requirements of K.S.A. 2-1201a ~~hereof, and amendments thereto,~~  
19 and, ~~except as otherwise provided, the provisions of K.S.A. 2-1208, except~~  
20 ~~subsection (1) (a), and~~ and amendments thereto. Failure to comply with  
21 the provisions of subsection (1)(a) of K.S.A. 2-1208, and amendments  
22 thereto, shall not be deemed a violation of this section. The penalties as  
23 provided ~~therein~~ in K.S.A. 2-1208, and amendments thereto shall apply  
24 to persons as described in this section who fail to comply with the pro-  
25 visions of K.S.A. 2-1208, and amendments thereto.

26 ~~Any~~ **On and after July 1, 2003, any person or custom blender**  
27 **who violates any provision of article 12 of chapter 2 of Kansas Statutes**  
28 **Annotated, and amendments thereto or the rules and regulations adopted**  
29 **pursuant thereto, may incur a civil penalty in an amount not more than**  
30 **\$5,000 per violation. In the case of a continuing violation, every day such**  
31 **violation continues may be deemed a separate violation. Such civil penalty**  
32 **may be assessed in addition to any other penalty provided by law. Any**  
33 **civil penalty assessed pursuant to this subsection is subject to review in**  
34 **accordance with the act for judicial review and civil enforcement of**  
35 **agency actions. The secretary shall remit any civil penalty collected pur-**  
36 **suant to this act to the state treasurer in accordance with the provisions**  
37 **of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such**  
38 **remittance, the state treasurer shall deposit the entire amount in the state**  
39 **treasury to the credit of the state general fund.**

40 **New Sec. 3. If the secretary of agriculture does not adopt a revised**  
41 **regulation related to storage of liquid fertilizer in mobile containers**  
42 **prior to February 1, 2003, then the requirements provided**  
43 **in K.A.R. 4-4-900 et seq. shall be applicable to each mobile container**

1 *or combination of mobile containers which has a combined capacity*  
2 *of 2,000 gallons or more which is used to store liquid fertilizer for*  
3 *more than 60 consecutive days.*

4 Sec. ~~3~~ 4. K.S.A. 2-1201b is hereby repealed.

5 Sec. ~~4~~ 5. This act shall take effect and be in force from and after its  
6 publication in the statute book.

7



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**LEGISLATIVE TESTIMONY**

March 20, 2002

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE  
HOUSE JUDICIARY COMMITTEE

FROM: PAUL DAVIS, KBA LEGISLATIVE COUNSEL

RE: SENATE BILL 489

Chairman O'Neal and Members of the Committee:

My name is Paul Davis and I serve as Legislative Counsel to the Kansas Bar Association. The Kansas Bar Association appears today to request the deletion of Section 1, subsection (e) of Senate Bill 489, which institutes a modified "loser pays" rule in cases where a third party brings an action against an anhydrous ammonia owner for negligence. The adoption of a "loser pays" rule would fly in the face of the general rule with regard to the awarding attorney fees in Kansas and set a dangerous precedent.

The Kansas Bar Association has a longstanding position opposing "loser pays" provisions because such provisions have a chilling effect on plaintiffs who have no access to justice without contingent fee availability and attorneys who are willing to accept this risk.

The "loser pays" rule is commonly referred to as the "English rule" and provides that the losing party in a lawsuit pay the prevailing party's attorney fees and costs. American courts, including Kansas courts, have recognized the "American rule" where each party is responsible for their own attorney fees.

The American rule is about more than "who has to pay." It is a reflection of our nation's deeply rooted belief that all citizens, regardless of income, have a right to access the courts---not just those who have the financial resources to do so. It is quite likely that a person who brings an action against an anhydrous ammonia owner was injured because of the alleged negligence on the part of the anhydrous ammonia owner. This injured person probably has substantial medical bills and may have lost wages because of an inability to work. If Senate Bill 489 becomes law, this person would now have to risk their financial future when they bring a lawsuit.

We strongly urge you to delete the "loser pays" provision from the bill and to maintain the current rule with reward to the awarding of attorney fees in Kansas. Thank you for your consideration.

## CASE ANNOTATIONS

37. Factors trial court must consider before allowing plaintiff to amend claim to include punitive damages discussed. *Fusaro v. First Family Mtg. Corp.*, 257 K. 794, 802, 897 P.2d 123 (1995).

38. Responsibility of plaintiff whose recovery depends on contract provision to comply with subsection (h). *Bennett v. Van Doren Industries, Inc.*, 262 K. 426, 430, 939 P.2d 874 (1997).

39. Claim of fraud against appellant's attorneys sufficiently pled but damages delineated were not caused by attorneys but from plaintiff being sued for malpractice. *Miller v. Sloan, Listrom, Eisenbarth, Sloan & Classman*, 267 K. 245, 261, 978 P.2d 922 (1999).

40. Reference to a document attached to parental termination pleading does not constitute an allegation stating a claim. *In re C.H.W.*, 26 K.A.2d 413, 418, 988 P.2d 276 (1999).

**60-211. Signing of pleadings, motions and other papers; sanctions.** (a) Every pleading, motion and other paper provided for by this article of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's address and telephone number shall be stated. A pleading, motion or other paper provided for by this article of a party who is not represented by an attorney shall be signed by the party and shall state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by an affidavit.

(b) The signature of a person constitutes a certificate by the person that the person has read the pleading, motion or other paper and that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If a pleading, motion or other paper provided for by this article is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper provided for by this article is signed in violation of this section, the court, upon motion or upon its own initiative upon notice and after opportunity to be heard, shall impose upon the person who signed it or a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees. A motion for sanctions under this section may be served and filed at any time during the pendency of the action but not later than 10 days after the entry of judgment.

(d) Subsections (a) through (c) do not apply to disclosures and discovery requests, responses, objections and motions that are subject to the provisions of K.S.A. 60-226 through 60-237 and amendments thereto.

(e) The state of Kansas, or any agency thereof, and all political subdivisions of the state shall be subject to the provisions of this section in the same manner as any other party.

(f) If the court imposes monetary sanctions on an inmate in the custody of the secretary of corrections, the secretary is hereby authorized to disburse any money in the inmate's account to pay such sanctions.

**History:** L. 1963, ch. 303, 60-211; amended by Supreme Court order dated July 28, 1976; L. 1982, ch. 241, § 2; L. 1986, ch. 215, § 1; L. 1997, ch. 173, § 6; July 1.

**Law Review and Bar Journal References:**

"Frivolous Litigation, Discretionary Sanctioning and a Safe Harbor: The 1993 Revision of Rule 11," Karen Kessler Cain, 43 K.L.R. 207, 208, 228, 229, 230 (1994).

"Plaintiff's Guide To Court Awarded Attorney Fees," Gerald W. Scott and Mark A. Scott, J.K.T.L.A. Vol. XVII, No. 6, 4 (1994).

"Property Law: The Termite Legacy in Real Estate—Caveat Inspector [*Horsch v. Terminix International Co.*, 865 P.2d 1044 (Kan. Ct. App. 1993)]," Eric S. Heath, 34 W.L.J. 614, 616, 625 (1995).

"The Fork in the Road: A Practitioner's Guide to the 1997 Changes in the Code of Civil Procedure," J. Nick Badgerow, 66 J.K.B.A. No. 5, 32 (1997).

"Caveat plaintiff: Congress has defederalized private securities litigation." Steven A. Ramirez, 67 J.K.B.A. No. 9, 16 (1998).

"A practitioner's guide to summary judgment Part 1," Robert W. Parnacott, 67 J.K.B.A. No. 10, 36 (1998).



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TOPEKA

HOUSE OF REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: EDUCATION  
 KANSAS FUTURES  
 JUDICIARY

March 20, 2002

### Testimony on HB2932

Thank you, Mr. Chairman and members of the House Judiciary Committee, for this opportunity to address some concerns arising from our current child support statutes and the Supreme Court guidelines for child support.

HB2932 has been drafted to amend 60-1610 to reduce the harmful unintended consequences of the Cost of Living Differential Adjustment that is required to be applied in the determination of child support when parents reside in two different states. This differential is applied regardless of the actual distance between the two parents' residences, even when they live in the same metropolitan area. This adjustment is also applied without regard to the occupations of the parents. Additionally, the figures from the US Bureau of Labor and Statistics which are utilized to calculate the adjustment are only based upon payroll data for employers obligated to pay state and federal unemployment insurance. These figures do not include the wages of self-employed individuals, in particular self-employed individuals who earn larger incomes.

**While the application of the Cost of Living Adjustment may be appropriate when parents live a significant distance apart, this adjustment is grossly unfair to the children when parents live in the same metropolitan area or within a short distance of each other. When parents live in the same metropolitan area, there is no cost differential to justify an adjustment.**

Clever lawyers and clients have discovered this cost of living adjustment and are using it as a convenient loophole to lower child support obligations. The parent obligated to pay only needs to move across the state line to the "higher cost of living" state to reduce the child support obligations. An example of this can be seen when a parent moves from Johnson or Wyandotte County Kansas to Kansas City Missouri:

The most recent average annual wage for Kansas is \$29,357; the average for Missouri is \$31,386. The decrease in child support resulting from a move across the state line to Missouri is 7%.

Worse than that, however, is the fact that the actual annual average cost of living for the Kansas City Metro area is \$34,993, which is 19% higher than the average annual wage for the entire state of Kansas. What this means to a child in Kansas is that this child is being deprived of appropriate child support for the actual costs of living in his or her community in Kansas. Because the guidelines fail to apply the increased costs of the metropolitan areas and the guidelines reduce child support when the state average differential is applied, a child from the KC Metro area who lives on the Kansas side suffers a total loss of 26% of needed child support.

The ability of parents and lawyers to manipulate this loophole to deprive children of their needed child support is abhorrent and should not be allowed to continue. HB2932 is a remedy to stop this inequity

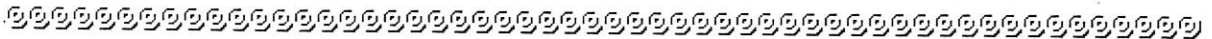
Respectfully submitted,

A handwritten signature in cursive script that reads "Karen M. DiVita-Johnson". The signature is written in black ink and is positioned below the text "Respectfully submitted,".

Karen M. DiVita-Johnson



# Kansas Child Support Guidelines



## Appendix IV

### Cost of Living Differential

Adjustments for differences in costs of living in various locations are computed using the state average annual pay. A table for 1995 and 1996 average annual pay for the United States is provided in this appendix. In calculating the cost of living differential, use the most recent chart. Updates to this information are distributed annually and can be obtained by contacting the United States Department of Labor, Bureau of Labor Statistics at (202) 606-6567. The internet address for the Bureau of Labor Statistics is: <http://stats.bls.gov:80/newsrels.htm>.

The Average Annual Pay by State and Industry reports the average annual pay for all workers covered by State and Federal Unemployment Insurance (UI). The most recent report was released September 11, 1997. The Bureau of Labor Statistics also publishes a report on the Average Annual Pay for all covered workers by metropolitan area. This report includes figures for Lawrence, Topeka, and Wichita, Kansas, as well as Kansas City, Missouri.

Employers subject to state and federal unemployment laws report pay information quarterly to the Department of Labor. This applies to 118.0 million full and part-time workers. Payroll data includes wages, bonuses, cash value of meals and lodging when supplied, tips and other gratuities, and, in some states, employer contributions to certain deferred compensation plans such as 401(k) plans and stock options. Employment and wage data reported by the Department of Labor is classified in accordance with the 1987 Standard Industrial Classification (SIC) Manual. This classification manual is updated every three years.

The previous cost of living differential was computed using indexes from the American Chamber of Commerce Rating Association (ACCRA). The Child Support Guidelines Advisory Committee received testimony and information recommending the Average Annual Pay by State and Industry as a more valid and objective method to use in determining the cost of living differential. This method also simplifies the equation by which the cost of living differential is computed.

To compute the cost of living differential, develop a value by dividing the average annual salary of Kansas (Kansas (KS) = \$23,709) by the average annual salary of the new state (i.e., Alaska (AL) = \$32,685). Average annual salaries are found in this Appendix. Example:

$$\text{KS Avg.} / \text{AL Avg.} = \text{Value}$$

$$\$23,709 / 32,685 = .7254$$

A parent moving to Alaska and earning \$3,000 per month would have a gross monthly income for the Kansas worksheet in the amount of:

$$\$3,000 \times .7254 = \$2,176.20$$

The Alaska parent's income of \$3,000 is reduced by the value .7254 for an adjusted income of \$2,176.20. The net amount of \$2,176.20 is entered on Line A.1. or Line B.1. of the child support worksheet, as appropriate.

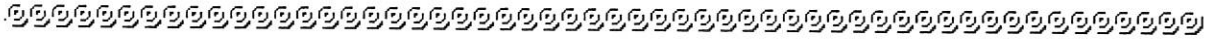
Source: Average Annual Pay by State and Industry, 1996, a news release from the United States Department of Labor, Bureau of Labor Statistics dated Thursday, September 11, 1997.

Source: Letter from William T. Terrell, Ph.D. Dated October 16, 1997.

Table For 1995 And 1996 Average Annual Pay For The United States

(Actual table to be provided at a later time.)

Go back to the Child Support Guidelines [Table of Contents](#) || -- || On to [Appendix V](#).



URL: <http://www.kscourts.org/ctruls/csapp4.htm>

IN THE \_\_\_\_\_ JUDICIAL DISTRICT  
 DISTRICT COURT, \_\_\_\_\_ COUNTY, KANSAS

IN THE MATTER OF THE MARRIAGE OF:

\_\_\_\_\_  
 and  
 \_\_\_\_\_

CASE NO. \_\_\_\_\_

CHILD SUPPORT WORKSHEET OF

(name)

A.	<u>INCOME COMPUTATION - WAGE EARNER</u>	<u>PARENT A</u>		<u>PARENT B</u>
†1.	Domestic Gross Income (Insert on Line C.1. below)*	\$ _____		\$ 832
B.	<u>INCOME COMPUTATION - SELF-EMPLOYED</u>			
†1.	Self-Employment Gross Income*	<u>3,000</u>		_____
†2.	Reasonable Business Expenses	(-) <u>1,232</u>		_____
†3.	Domestic Gross Income (Insert on Line C.1. below)	<u>1,768</u>		_____
C.	<u>ADJUSTMENTS TO DOMESTIC GROSS INCOME</u>			
†1.	Domestic Gross Income	<u>1,768</u>		<u>832</u>
2.	Court-Ordered Child Support Paid	(-) <u>0</u>		<u>0</u>
3.	Court-Ordered Maintenance Paid	(-) <u>0</u>		<u>0</u>
4.	Court-Ordered Maintenance Received	(+) <u>0</u>		<u>0</u>
†5.	Child Support Income (Insert on Line D.1. below)	<u>1,768</u>		<u>832</u>
D.	<u>COMPUTATION OF CHILD SUPPORT</u>			
†1.	Child Support Income	<u>1,768</u>	+	<u>832</u>
			=	<u>2,600</u>
†2.	Proportionate Shares of Combined Income (Each parent's income divided by combined income)	<u>68</u> %		<u>32</u> %
†3.	Gross Child Support Obligation** (Using the combined income from Line D.1., find amount for each child and enter total for all children)			
	Age of Children	0-6	7-15	16-18
Total	Number Per-Age Category	<u>1</u>	<u>1</u>	<u>0</u>
	Total Amount	<u>252</u>	+ <u>293</u>	+ <u>0</u> = <u>545</u>

† Examples provided in Appendix VIII.

\* Cost of Living Differential Adjustment?  Yes  No

\*\* Multiple Family Adjustment?  Yes  No

	<u>PARENT A</u>		<u>PARENT B</u>
4. Health and Dental Insurance Premium	\$ 125	+	\$ 0
5. Work-Related Child Care Costs	<u>0</u>	=	<u>125</u>
Formula: Amt. - ((Amt. x %) + (.25 x (Amt. x %)))			<u>125</u>
for child care credit		=	<u>125</u>
Example: 200 - ((200 x .30%) + (.25 x (200 x .30%)))			
†6. Parent's Total Child Support Obligation (Line D.3. plus Lines D.4. & D.5.)			<u>795</u>
†7. Parental Child Support Obligation (Line D.2. times Line D.6. for each parent)	<u>541</u>		<u>254</u>
†8. Adjustment for Insurance and Child Care (Subtract for actual payment made for items D.4. and D.5.)	(-) <u>125</u>		<u>125</u>
†9. Basic Parental Child Support Obligation (Line D.7. minus Line D.8.; Insert on Line F.1. below)	<u>416</u>		<u>129</u>

**E. CHILD SUPPORT ADJUSTMENTS**

APPLICABLE	N/A	CATEGORY	AMOUNT ALLOWED	
			<u>PARENT A</u>	<u>PARENT B</u>
1. <input type="checkbox"/>	<input checked="" type="checkbox"/>	Long Distance Visitation Costs	(+/-) _____	(+/-) _____
2. <input type="checkbox"/>	<input checked="" type="checkbox"/>	Visitation Adjustment	(+/-) _____	(+/-) _____
3. <input type="checkbox"/>	<input checked="" type="checkbox"/>	Income Tax Considerations	(+/-) _____	(+/-) _____
4. <input type="checkbox"/>	<input checked="" type="checkbox"/>	Special Needs	(+/-) _____	(+/-) _____
5. <input type="checkbox"/>	<input checked="" type="checkbox"/>	Agreement Past Minority	(+/-) _____	(+/-) _____
6. <input type="checkbox"/>	<input checked="" type="checkbox"/>	Overall Financial Condition	(+/-) _____	(+/-) _____
7. TOTAL (Insert on Line F.2. below)			<u>0</u>	<u>0</u>

**F. DEVIATION(S) FROM REBUTTABLE PRESUMPTION AMOUNT**

	AMOUNT ALLOWED	
	<u>PARENT A</u>	<u>PARENT B</u>
1. Basic Parental Child Support Obligation (Line D.9. from above)	<u>416</u>	<u>129</u>
†2. Total Child Support Adjustments (Line E.7. from above) (+/-)	<u>0</u>	<u>0</u>
3. Adjusted Subtotal (Line F.1. +/- Line F.2.)	<u>416</u>	<u>129</u>
†4. Enforcement Fee Allowance (Applied only to Noncustodial parent) ((Line F.3. x Collection fee %) x .5) or (Monthly Flat fee x .5) (+)	Percentage <u>4</u> % Flat Fee \$ <u>0</u> <u>8</u>	<u>0</u>
5. Net Parental Child Support Obligation (Line F.3. + Line F.4.)	<u>424</u>	<u>129</u>

/s/ \_\_\_\_\_  
Judge/Hearing Officer Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Prepared by

\_\_\_\_\_  
Date Prepared



**Table 1. State 1/ average annual pay for 1999 and 2000 and percent change in pay for all covered workers 2/**

Table 1. State(1) average annual pay for 1999 and 2000 and percent change in pay for all covered workers(2)

State	Average annual pay		Percent change, 1999-2000
	1999	2000 (3)	
UNITED STATES (4) .....	\$33,340	\$35,296	5.9
Alabama.....	28,095	29,037	3.4
Alaska.....	34,033	35,125	3.2
Arizona.....	30,525	32,606	6.8
Arkansas.....	25,371	26,307	3.7
California.....	37,577	41,194	9.6
* Colorado.....	34,191	<u>37,167</u>	8.7
Connecticut.....	42,682	45,445	6.5
Delaware.....	35,157	36,677	4.3
District of Columbia.....	50,885	53,018	4.2
Florida.....	28,935	30,549	5.6
Georgia.....	32,332	34,182	5.7
Hawaii.....	29,794	30,630	2.8
Idaho.....	26,044	27,709	6.4
Illinois.....	36,296	38,044	4.8
Indiana.....	30,027	31,015	3.3
Iowa.....	26,953	27,928	3.6
* * Kansas.....	28,031	<u>29,357</u>	4.7
Kentucky.....	27,783	<u>28,829</u>	3.8
Louisiana.....	27,216	27,877	2.4
Maine.....	26,887	27,664	2.9
Maryland.....	34,489	36,373	5.5
Massachusetts.....	40,352	44,326	9.8
Michigan.....	35,750	37,016	3.5
Minnesota.....	33,487	35,418	5.8
Mississippi.....	24,391	25,197	3.3
* Missouri.....	29,967	<u>31,386</u>	4.7
Montana.....	23,260	<u>24,264</u>	4.3
* Nebraska.....	26,632	<u>27,662</u>	3.9
Nevada.....	31,213	<u>32,276</u>	3.4
New Hampshire.....	32,141	34,731	8.1
New Jersey.....	41,038	43,691	6.5
New Mexico.....	26,267	27,498	4.7
New York.....	42,179	44,942	6.6
North Carolina.....	29,462	31,077	5.5
North Dakota.....	23,751	24,678	3.9
Ohio.....	31,395	32,510	3.6
* Oklahoma.....	25,813	<u>26,980</u>	4.5
Oregon.....	30,872	<u>32,765</u>	6.1
Pennsylvania.....	32,696	33,999	4.0
Rhode Island.....	31,169	32,618	4.6
South Carolina.....	27,132	28,173	3.8
South Dakota.....	23,767	24,803	4.4
Tennessee.....	29,478	30,558	3.7
Texas.....	32,898	34,948	6.2
Utah.....	27,895	29,226	4.8
Vermont.....	27,597	28,920	4.8

15% Δ

7% Δ

(6%) Δ

(9%) Δ

17-7

Virginia.....	33,025	35,151	6.4
Washington.....	35,736	37,059	3.7
West Virginia.....	26,018	26,887	3.3
Wisconsin.....	29,607	30,697	3.7
Wyoming.....	25,647	26,837	4.6
Puerto Rico.....	18,553	18,796	1.3
Virgin Islands.....	26,111	27,633	5.8

1 Includes the District of Columbia, Puerto Rico, and the Virgin Islands.

2 Includes workers covered by Unemployment Insurance (UI) and Unemployment Compensation for Federal Employees (UCFE) programs.

3 Data are preliminary.

4 Totals for the United States do not include data for Puerto Rico and the Virgin Islands.

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Other comments: [feedback@bls.gov](mailto:feedback@bls.gov)





## Table 1. Average annual pay for 1999 and 2000 for all covered workers 1/ by metropolitan area

Table 1. Average annual pay for 1999 and 2000 for all covered workers(1) by metropolitan area

Metropolitan area(2)	Average annual pay			Rate of change, 1999-2000
	1999	2000 (3)	Percent change, 1999-2000	
Metropolitan areas(4).....	\$34,890	\$36,986	6.0	
Abilene, TX.....	22,997	24,487	6.5	
Akron, OH.....	30,976	32,166	3.8	
Albany, GA.....	26,750	27,655	3.4	
Albany-Schenectady-Troy, NY.....	31,899	33,815	6.0	
Albuquerque, NM.....	28,935	30,397	5.1	
Alexandria, LA.....	24,023	24,926	3.8	
Allentown-Bethlehem-Easton, PA.....	32,188	33,046	2.7	
Altoona, PA.....	25,358	26,296	3.7	
Amarillo, TX.....	25,623	26,394	3.0	
Anchorage, AK.....	35,706	36,619	2.6	
Ann Arbor, MI.....	35,773	37,446	4.7	
Anniston, AL.....	24,593	25,252	2.7	
Appleton-Oshkosh-Neenah, WI.....	30,776	31,824	3.4	
Asheville, NC.....	26,537	27,521	3.7	
Athens, GA.....	26,715	27,649	3.5	
Atlanta, GA.....	37,303	39,704	6.4	
Atlantic-Cape May, NJ.....	28,989	29,974	3.4	
Auburn-Opelika, AL.....	24,627 (5)	24,790 (6)	0.7	
Augusta-Aiken, GA-SC.....	28,590	29,699	3.9	
Austin-San Marcos, TX.....	38,940	41,012	5.3	
Bakersfield, CA.....	27,034	28,536	5.6	
Baltimore, MD.....	33,862	35,578	5.1	
Bangor, ME.....	26,219	26,774	2.1	
Barnstable-Yarmouth, MA.....	29,713	29,718	0.0	
Baton Rouge, LA.....	28,786	29,242	1.6	
Beaumont-Port Arthur, TX.....	30,243	30,716	1.6	
Bellingham, WA.....	25,612	26,307	2.7	
Benton Harbor, MI.....	30,043	30,906	2.9	
Bergen-Passaic, NJ.....	41,511	43,789	5.5	
Billings, MT.....	25,551	26,744	4.7	
Biloxi-Gulfport-Pascagoula, MS.....	26,351	27,635	4.9	
Binghamton, NY.....	29,174	30,216	3.6	
Birmingham, AL.....	32,092	33,284	3.7	
Bismarck, ND.....	24,794	25,812	4.1	
Bloomington, IN.....	26,133	27,390	4.8	
Bloomington-Normal, IL.....	32,895	34,226	4.0	
Boise City, ID.....	29,862	32,480	8.8	
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH.....	40,892	45,191	10.5	
Boulder-Longmont, CO.....	40,002	45,565	13.9	
Brazoria, TX.....	33,264	34,361	3.3	
Bremerton, WA.....	29,114	30,543	4.9	
Brownsville-Harlingen-San Benito, TX.....	20,998	21,561	2.7	
Bryan-College Station, TX.....	23,441	24,627	5.1	
Buffalo-Niagara Falls, NY.....	30,489	31,421	3.1	
Burlington, VT.....	31,721	33,122	4.4	
Canton-Massillon, OH.....	27,743	28,353	2.2	
Casper, WY.....	25,682	29,196	13.7	
Cedar Rapids, IA.....	32,506	34,109	4.9	

Champaign-Urbana, IL.....	28,017	29,158	4.1
Charleston-North Charleston, SC.....	26,394	27,634	4.7
Charleston, WV.....	29,113	30,110	3.4
Charlotte-Gastonia-Rock Hill, NC-SC.....	34,374	36,193	5.3
Charlottesville, VA.....	29,394	31,075	5.7
Chattanooga, TN-GA.....	28,270	29,331	3.8
Cheyenne, WY.....	25,234	25,928	2.8
Chicago, IL.....	39,525	41,549	5.1
Chico-Paradise, CA.....	24,147	25,100	3.9
Cincinnati, OH-KY-IN.....	33,627	35,049	4.2
Clarksville-Hopkinsville, TN-KY.....	23,744	24,967	5.2
Cleveland-Lorain-Elyria, OH.....	33,435	34,704	3.8
Colorado Springs, CO.....	30,678	33,036	7.7
Columbia, MO.....	26,551	27,366	3.1
Columbia, SC.....	27,935	29,036	3.9
Columbus, GA-AL.....	26,134	26,983	3.2
Columbus, OH.....	32,400	33,946	4.8
Corpus Christi, TX.....	26,945	28,175	4.6
Corvallis, OR.....	33,693 (5)	35,355 (6)	4.9
Cumberland, MD-WV.....	24,083	24,532	1.9
Dallas, TX.....	39,259	42,133	7.3
Danville, VA.....	24,693	25,139	1.8
Davenport-Moline-Rock Island, IA-IL.....	29,252	30,510	4.3
Dayton-Springfield, OH.....	32,360	33,172	2.5
Daytona Beach, FL.....	23,650	24,901	5.3
Decatur, AL.....	28,933	29,409	1.6
Decatur, IL.....	32,062	32,599	1.7
Denver, CO.....	38,115	41,413	8.7
Des Moines, IA.....	32,270	33,066	2.5
Detroit, MI.....	40,781	42,303	3.7
Dothan, AL.....	25,944	27,239	5.0
Dover, DE.....	26,425	27,052	2.4
Dubuque, IA.....	26,592	27,322	2.7
Duluth-Superior, MN-WI.....	27,189	28,255	3.9
Dutchess County, NY.....	35,274	36,063	2.2
Eau Claire, WI.....	25,316	26,626	5.2
El Paso, TX.....	24,282	25,067	3.2
Elkhart-Goshen, IN.....	29,648	30,353	2.4
Elmira, NY.....	26,599	27,659	4.0
Enid, OK.....	22,700	23,262	2.5
Erie, PA.....	27,873	28,372	1.8
Eugene-Springfield, OR.....	26,932	27,867	3.5
Evansville-Henderson, IN-KY.....	29,162	29,934	2.6
Fargo-Moorhead, ND-MN.....	25,969	27,003	4.0
Fayetteville, NC.....	25,123	26,098	3.9
Fayetteville-Springdale-Rogers, AR.....	27,702	28,947	4.5
Flagstaff, AZ-UT.....	23,815	24,673	3.6
Flint, MI.....	35,808	36,418	1.7
Florence, AL.....	24,815	25,140	1.3
Florence, SC.....	26,358	27,462	4.2
Fort Collins-Loveland, CO.....	30,020	32,394	7.9
Fort Lauderdale, FL.....	31,208	33,232	6.5
Fort Myers-Cape Coral, FL.....	26,458	28,138	6.3
Fort Pierce-Port St. Lucie, FL.....	26,021	26,978	3.7
Fort Smith, AR-OK.....	24,745	25,950	4.9
Fort Walton Beach, FL.....	23,836	25,246	5.9
Fort Wayne, IN.....	30,048	30,844	2.6
Fort Worth-Arlington, TX.....	32,941	34,587	5.0
Fresno, CA.....	24,748	25,956	4.9
Gadsden, AL.....	24,776	25,252	1.9
Gainesville, FL.....	25,180	26,150	3.9
Galveston-Texas City, TX.....	28,382	29,531	4.0
Gary, IN.....	30,454	31,493	3.4
Glens Falls, NY.....	26,150	27,366	4.7
Goldensboro, NC.....	23,812	24,532	3.0
Grand Forks, ND-MN.....	23,383	24,288	3.9
Grand Junction, CO.....	25,313	26,223	3.6
Grand Rapids-Muskegon-Holland, MI.....	31,990	32,994	3.1
Great Falls, MT.....	23,154	23,893	3.2
Greeley, CO.....	27,383	29,273	6.9
Green Bay, WI.....	30,637	31,520	2.9
Greensboro--Winston-Salem--High Point, NC.....	29,752	30,897	3.8
Greenville, NC.....	26,520	27,711	4.5

Greenville-Spartanburg-Anderson, SC.....	28,693	29,761	3.7
Hagerstown, MD.....	27,608	28,410	2.9
Hamilton-Middletown, OH.....	30,963	31,520	1.8
Harrisburg-Lebanon-Carlisle, PA.....	31,492	32,345	2.7
Hartford, CT.....	40,059	42,394	5.8
Hattiesburg, MS.....	23,608	24,302	2.9
Hickory-Morganton-Lenoir, NC.....	25,933	26,840	3.5
Honolulu, HI.....	30,993	31,871	2.8
Houma, LA.....	27,094	28,365	4.7
Houston, TX.....	38,107	40,986	7.6
Huntington-Ashland, WV-KY-OH.....	25,560	26,421	3.4
Huntsville, AL.....	34,177	35,650	4.3
Indianapolis, IN.....	33,658	34,880	3.6
Iowa City, IA.....	28,594	30,204	5.6
Jackson, MI.....	30,797	31,703	2.9
Jackson, MS.....	28,055	29,205	4.1
Jackson, TN.....	27,785	28,664	3.2
Jacksonville, FL.....	30,039	31,427	4.6
Jacksonville, NC.....	20,278	21,057	3.8
Jamestown, NY.....	24,814	25,418	2.4
Janesville-Beloit, WI.....	30,496	31,136	2.1
Jersey City, NJ.....	43,046	47,514	10.4
Johnson City-Kingsport-Bristol, TN-VA.....	26,117	27,250	4.3
Johnstown, PA.....	24,026	24,348	1.3
Jonesboro, AR.....	24,388	25,106	2.9
Joplin, MO.....	24,248	25,028	3.2
Kalamazoo-Battle Creek, MI.....	31,194	32,026	2.7
Kankakee, IL.....	27,312	28,490	4.3
*Kansas City, MO-KS.....	33,030	34,993	5.9
Kenosha, WI.....	30,083	31,394	4.4
Killeen-Temple, TX.....	23,879	24,894	4.3
Knoxville, TN.....	28,589	29,514	3.2
Kokomo, IN.....	39,651	40,240	1.5
La Crosse, WI-MN.....	25,972	26,831	3.3
Lafayette, LA.....	26,121	27,478	5.2
Lafayette, IN.....	29,305	30,543	4.2
Lake Charles, LA.....	27,972	28,179	0.7
Lakeland-Winter Haven, FL.....	26,928	28,023	4.1
Lancaster, PA.....	29,447	30,711	4.3
Lansing-East Lansing, MI.....	32,358	33,908	4.8
Laredo, TX.....	22,648	23,570	4.1
Las Cruces, NM.....	22,798	23,602	3.5
Las Vegas, NV-AZ.....	30,632	31,663	3.4
Lawrence, KS.....	23,639	24,961	5.6
Lawton, OK.....	23,086	23,820	3.2
Lewiston-Auburn, ME.....	25,364	26,193	3.3
Lexington, KY.....	29,253	30,378	3.8
Lima, OH.....	28,181	28,813	2.2
Lincoln, NE.....	27,431	28,511	3.9
Little Rock-North Little Rock, AR.....	28,608	29,621	3.5
Longview-Marshall, TX.....	25,847	26,701	3.3
Los Angeles-Long Beach, CA.....	37,788	39,671	5.0
Louisville, KY-IN.....	30,616	31,824	3.9
Lubbock, TX.....	24,731	26,302	6.4
Lynchburg, VA.....	26,854	27,660	3.0
Macon, GA.....	28,345	29,501	4.1
Madison, WI.....	31,101	32,817	5.5
Mansfield, OH.....	27,232	28,193	3.5
McAllen-Edinburg-Mission, TX.....	21,111	21,695	2.8
Medford-Ashland, OR.....	25,672	26,565	3.5
Melbourne-Titusville-Palm Bay, FL.....	29,955	32,107	7.2
Memphis, TN-AR-MS.....	32,429	33,248	2.5
Merced, CA.....	23,499	24,793	5.5
Miami, FL.....	32,067	33,328	3.9
Middlesex-Somerset-Hunterdon, NJ.....	46,200	48,977	6.0
Milwaukee-Waukesha, WI.....	33,372	34,612	3.7
Minneapolis-St. Paul, MN-WI.....	37,229	39,549	6.2
Missoula, MT.....	24,127	25,321	4.9
Mobile, AL.....	26,583	27,288	2.7
Modesto, CA.....	27,009	28,202	4.4
Monmouth-Ocean, NJ.....	34,610	36,463	5.4
Monroe, LA.....	25,354	25,735	1.5
Montgomery, AL.....	27,333	28,157	3.0
Muncie, IN.....	26,777	28,075	4.8

Myrtle Beach, SC.....	21,701	22,881	5.4
Naples, FL.....	28,021	29,941	6.9
Nashville, TN.....	31,717	33,268	4.9
Nassau-Suffolk, NY.....	36,948	38,941	5.4
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT...	47,133	50,585	7.3
New London-Norwich, CT.....	35,404	36,727	3.7
New Orleans, LA.....	29,360	29,859	1.7
New York, NY.....	52,467	56,377	7.5
Newark, NJ.....	44,647	48,733	9.2
Newburgh, NY-PA.....	27,671	28,934	4.6
Norfolk-Virginia Beach-Newport News, VA-NC.....	27,148	28,279	4.2
Oakland, CA.....	40,994	44,170	7.7
Ocala, FL.....	24,156	24,938	3.2
Odessa-Midland, TX.....	27,772	29,264	5.4
Oklahoma City, OK.....	26,838	28,267	5.3
Olympia, WA.....	29,701	31,722	6.8
Omaha, NE-IA.....	30,079	31,233	3.8
Orange County, CA.....	37,452	39,208	4.7
Orlando, FL.....	28,718	30,197	5.2
Owensboro, KY.....	25,084	25,980	3.6
Panama City, FL.....	24,298	25,027	3.0
Parkersburg-Marietta, WV-OH.....	26,806	27,366	2.1
Pensacola, FL.....	25,182	26,269	4.3
Peoria-Pekin, IL.....	31,790	32,096	1.0
Philadelphia, PA-NJ.....	37,333	39,197	5.0
Phoenix-Mesa, AZ.....	32,430	34,915	7.7
Pine Bluff, AR.....	25,343	26,400	4.2
Pittsburgh, PA.....	33,048	33,837	2.4
Pittsfield, MA.....	29,616	31,310	5.7
Pocatello, ID.....	23,324	24,033	3.0
Portland, ME.....	30,413	30,752	1.1
Portland-Vancouver, OR-WA.....	34,382	37,043	7.7
Providence-Warwick-Pawtucket, RI.....	31,040	32,426	4.5
Provo-Orem, UT.....	26,558	27,910	5.1
Pueblo, CO.....	24,594	25,493	3.7
Punta Gorda, FL.....	23,371	24,743	5.9
Racine, WI.....	32,747	32,538	-0.6
Raleigh-Durham-Chapel Hill, NC.....	34,803	37,775	8.5
Rapid City, SD.....	23,413	24,342	4.0
Reading, PA.....	30,999	31,995	3.2
Redding, CA.....	26,065	27,054	3.8
Reno, NV.....	31,381	32,747	4.4
Richland-Kennewick-Pasco, WA.....	30,122	31,533	4.7
Richmond-Petersburg, VA.....	32,987	34,480	4.5
Riverside-San Bernardino, CA.....	28,341	29,540	4.2
Roanoke, VA.....	28,016	29,250	4.4
Rochester, MN.....	35,023	36,111	3.1
Rochester, NY.....	32,582	33,213	1.9
Rockford, IL.....	31,442	31,917	1.5
Rocky Mount, NC.....	26,788	27,735	3.5
Sacramento, CA.....	34,269	36,598	6.8
Saginaw-Bay City-Midland, MI.....	33,947	35,335	4.1
St. Cloud, MN.....	26,283	27,408	4.3
St. Joseph, MO.....	26,016	27,170	4.4
St. Louis, MO-IL.....	33,354	34,913	4.7
Salem, OR.....	26,943	27,691	2.8
Salinas, CA.....	28,498	29,986	5.2
Salt Lake City-Ogden, UT.....	29,498	30,960	5.0
San Angelo, TX.....	24,513	25,365	3.5
San Antonio, TX.....	28,067	29,678	5.7
San Diego, CA.....	34,722	37,516	8.0
San Francisco, CA.....	50,125	59,314	18.3
San Jose, CA.....	61,117	76,076	24.5
San Luis Obispo-Atascadero-Paso Robles, CA.....	26,454	28,067	6.1
Santa Barbara-Santa Maria-Lompoc, CA.....	30,099	32,518	8.0
Santa Cruz-Watsonville, CA.....	31,025	35,826	15.5
Santa Fe, NM.....	27,585	29,054	5.3
Santa Rosa, CA.....	32,092	35,796	11.5
Sarasota-Bradenton, FL.....	26,193	(7)	(7)
Savannah, GA.....	28,690	29,195	1.8
Scranton--Wilkes-Barre--Hazleton, PA.....	26,591	27,742	4.3
Seattle-Bellevue-Everett, WA.....	43,925	45,171	2.8
Sharon, PA.....	25,402	26,098	2.7
Sheboygan, WI.....	29,619	30,556	3.2

Sherman-Denison, TX.....	28,102	29,671	5.6
Shreveport-Bossier City, LA.....	26,265	27,150	3.4
Sioux City, IA-NE.....	25,453	26,188	2.9
Sioux Falls, SD.....	26,959	27,980	3.8
South Bend, IN.....	28,649	29,649	3.5
Spokane, WA.....	27,573	29,771	8.0
Springfield, IL.....	33,988	34,529	1.6
Springfield, MO.....	25,507	26,327	3.2
Springfield, MA.....	30,281	31,644	4.5
State College, PA.....	27,968	29,067	3.9
Steubenville-Weirton, OH-WV.....	26,738	28,458	6.4
Stockton-Lodi, CA.....	27,920	29,250	4.8
Sumter, SC.....	22,807	23,570	3.3
Syracuse, NY.....	30,426	31,383	3.1
Tacoma, WA.....	28,644	30,161	5.3
Tallahassee, FL.....	27,565	28,678	4.0
Tampa-St. Petersburg-Clearwater, FL.....	29,360	30,781	4.8
Terre Haute, IN.....	26,408	26,810	1.5
Texarkana, TX-Texarkana, AR.....	24,825	25,968	4.6
Toledo, OH.....	30,876	31,645	2.5
* Topeka, KS.....	28,468	29,373	3.2
Trenton, NJ.....	42,445	44,576	5.0
Tucson, AZ.....	28,203	29,204	3.5
Tulsa, OK.....	29,285	30,420	3.9
Tuscaloosa, AL.....	28,367	29,067	2.5
Tyler, TX.....	28,493	29,485	3.5
Utica-Rome, NY.....	25,876	26,875	3.9
Vallejo-Fairfield-Napa, CA.....	29,674	32,130	8.3
Ventura, CA.....	33,978	37,102	9.2
Victoria, TX.....	25,710	27,551	7.2
Vineland-Millville-Bridgeton, NJ.....	30,535	31,674	3.7
Visalia-Tulare-Porterville, CA.....	22,701	23,722	4.5
Waco, TX.....	26,488	27,032	2.1
Washington, DC-MD-VA-WV.....	42,660	45,333	6.3
Waterloo-Cedar Falls, IA.....	26,569	27,858	4.9
Wausau, WI.....	27,845	28,888	3.7
West Palm Beach-Boca Raton, FL.....	32,824	35,219	7.3
Wheeling, WV-OH.....	24,794	25,198	1.6
* Wichita, KS.....	30,773	31,726	3.1
Wichita Falls, TX.....	23,603	24,602	4.2
Williamsport, PA.....	26,092	26,906	3.1
Wilmington-Newark, DE-MD.....	38,071	39,899	4.8
Wilmington, NC.....	27,009	28,070	3.9
Yakima, WA.....	22,402	23,245	3.8
Yolo, CA.....	32,362	33,395	3.2
York, PA.....	29,943	30,924	3.3
Youngstown-Warren, OH.....	27,925	28,489	2.0
Yuba City, CA.....	25,139	26,140	4.0
Yuma, AZ.....	20,362	21,487	5.5
Aguadilla, PR.....	16,766	17,489	4.3
Arecibo, PR.....	15,499	15,728	1.5
Caguas, PR.....	17,475	17,802	1.9
Mayaguez, PR.....	16,054	16,086	0.2
Ponce, PR.....	16,158	16,556	2.5
San Juan-Bayamon, PR.....	19,745	19,997	1.3

1 Includes workers covered by Unemployment Insurance (UI) and Unemployment Compensation for Federal Employees (UCFE) programs.

2 Includes data for Metropolitan Statistical Areas and Primary Metropolitan Statistical Areas as defined in OMB Bulletin No. 99-04. In the New England areas, the New England County Metropolitan Area (NECMA) definitions were used. See Technical Note.

3 Data are preliminary.

4 Totals do not include the six MSAs within Puerto Rico.

5 Data are provided for over-the-year comparison purposes only.

6 Data consists of a new MSA.

7 Data are not available for release.

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(4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. The court may, and upon request of a party shall, require the child, the mother and the alleged father to submit to appropriate tests.

(5) Testimony, records and notes of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth. Such testimony, records and notes are not privileged.

(6) Any other evidence relevant to the issue of paternity of the child, including but not limited to voluntary acknowledgment of paternity made in accordance with K.S.A. 38-1138 and amendments thereto.

(b) Testimony relating to sexual access to the mother by a man at a time other than the probable time of the conception of the child is inadmissible in evidence.

(c) For any child whose weight at birth is equal to or greater than five pounds 12 ounces, or 2,608.2 grams, it shall be presumed that the child was conceived between 300 and 230 days prior to the date of the child's birth. A presumption under this section may be rebutted by clear and convincing evidence.

(d) Evidence consisting of the results of any genetic test that is of a type generally acknowledged as reliable by accreditation bodies designated by the secretary of social and rehabilitation services shall not be inadmissible solely on the basis of being performed by a laboratory approved by such an accreditation body.

(e) Evidence of expenses incurred for pregnancy, childbirth and genetic tests may be admitted as evidence without requiring third-party foundation testimony and shall constitute *prima facie* evidence of amounts incurred for such goods and services.

**History:** L. 1985, ch. 114, § 10; L. 1991, ch. 110, § 2; L. 1994, ch. 292, § 9; L. 1997, ch. 182, § 64; July 3.

**Research and Practice Aids:**

Children Out-Of-Wedlock ¶ 44 et seq.

C.J.S. Children Out-of-Wedlock § 101.

**CASE ANNOTATIONS**

1. Cited in dissent; workers compensation judge may determine parentage for purposes of workers compensation benefits only. *R.L.J. v. Western Sprinkler, Inc.*, 17 K.A.2d 749, 754, 844 P.2d 37 (1992).

**38-1120. Civil action; trial to court.** (a)

An action under this act is a civil action governed by the rules of civil procedure.

(b) Trial of all issues in actions under this act shall be to the court.

**History:** L. 1985, ch. 114, § 11; July 1.

**Research and Practice Aids:**

Children Out-Of-Wedlock ¶ 30.

C.J.S. Children Out-of-Wedlock §§ 70, 71.

**38-1121. Judgment or order.** (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for all purposes has not been joined as a party, a determination of the paternity of the child shall have only the force and effect of a finding of fact necessary to determine a duty of support.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued, but only if any man named as the father on the birth certificate is a party to the action.

(c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for support and education of the child including the necessary medical expenses incident to the birth of the child. The court may order the support and education expenses to be paid by either or both parents for the minor child. When the child reaches 18 years of age, the support shall terminate unless: (1) The parent or parents agree, by written agreement approved by the court, to pay support beyond that time; (2) the child reaches 18 years of age before completing the child's high school education in which case the support shall not automatically terminate, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (c)(3), may impose

such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (c)(2), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(2). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (c)(3), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(3). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). The judgment shall specify the terms of payment and shall require payment to be made through the clerk of the district court or the court trustee except for good cause shown. The judgment may require the party to provide a bond with sureties to secure payment. The court may at any time during the minority of the child modify or change the order of support, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, as required by the best interest of the child. If more than three years has passed since the date of the original order or modification order, a requirement that such order is in the best interest of the child need not be shown. The court may make a modification of support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.

(d) If both parents are parties to the action, the court shall enter such orders regarding custody, residency and parenting time as the court considers to be in the best interest of the child.

If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best interest of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interest of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed parenting plan to the court for consideration at such time before the final hearing as may be directed by the court.

(e) In entering an original order for support of a child under this section, the court may award an additional judgment to reimburse the expenses of support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under K.S.A. 38-1114 and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

(f) In determining the amount to be ordered in payment and duration of such payments, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:

- (1) The needs of the child.
- (2) The standards of living and circumstances of the parents.
- (3) The relative financial means of the parents.
- (4) The earning ability of the parents.
- (5) The need and capacity of the child for education.
- (6) The age of the child.
- (7) The financial resources and the earning ability of the child.
- (8) The responsibility of the parents for the support of others.
- (9) The value of services contributed by both parents.

(g) The provisions of K.S.A. 23-4,107, and amendments thereto, shall apply to all orders of support issued under this section.

(h) An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. 23-701, and amendments thereto, or

under the uniform child support enforcement act.

**History:** L. 1985, ch. 115, § 39; L. 1986, ch. 131, § 22; L. 1988, ch. 131, § 1; L. 1992, ch. 273, § 1; L. 1997, ch. 182, § 5; L.

**Cross References to Related Sections:**  
Expedited process for enforcement of parenting plan, see 60-1602.  
Modification of final order, see 60-1602.

**Research and Practice Aids:**  
Children Out-Of-Wedlock Support, see 60-1602.  
C.J.S. Children Out-of-Wedlock Support, see 60-1602.

**Law Review and Bar Journals:**  
"Kansas Child Support Guidelines: Fairness in Support Orders," 104, 107, 113 (1987).  
"Survey of Kansas Law: 1987-1988," 37 K.L.R. 801, 817 (1989).  
"Dissolution of Non-Married Parents," J.K.T.L.A. Vol. XXII, No. 1 (1989).

**CASE A:**  
1. L. 1985 cited; Kansas child support act; actively; unwed parent has duty to support child. parent. LaGrone v. LaGrone, 252 K. 474 (1986).

2. Kansas has no statute for action to increase child support. Swartz v. Swartz, P.2d 1291 (1989).

3. Evidence concerning child support is necessary in determination of paternity. Marriage of O'Brien, 13 K. 474 (1989).

4. Absence of jurisdiction without mother, child and father. Secretary of SRS v. SRS, 252 K. 474 (1989).

5. Standard for modification of child support is the best interest of the child. K.A.2d 12, 14, 780 P.2d 1291 (1989).

6. Purpose of Kansas child support act is to enforce duty of support. Marriage of Ross, 245 K. 474 (1989).

7. Noted where term of child support act (44-501) is not retroactive. Sworth v. City of Wichita, 252 K. 474 (1992).

8. Act contemplates duty of support. 252 K. 646, 652, 847 P.2d 1291 (1989).

9. Incarceration in connection with child support for suspension or modification of guidelines. Rupp v. Rupp, 252 K. 474 (1998).

10. Trial court lacks jurisdiction to issue birth certificate without child support. 25 K.A.2d 172, 173, 950 P.2d 1291 (1998).

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## House Judiciary Committee

Wednesday, March 20, 2002

Testimony on HB 2932  
Kathy Porter

Thank you for the opportunity to explain the Office of Judicial Administration's concerns about the additional workload that may result from the enactment of this bill.

K.S.A. 20-165 mandates that the Supreme Court is to adopt rules establishing guidelines for the amount of child support to be ordered in any action in this state. The statute further states, "In adopting such rules, the court shall consider the criteria in K.S.A. 38-1121." The criteria in K.S.A. 38-1121(f), which are to be considered in determining the amount to be ordered in payments in determination of parentage cases, are identical to the factors noted on page 2, lines 28 through 36 of the bill.

The factors noted in the bill are considered in the Child Support Guidelines. This committee meets as required by Public Law 100-485, which mandates that the state guidelines for child support must be "reviewed at least every four years to ensure that their application results in the determination of appropriate child support amounts." The Child Support Guidelines Advisory Committee historically has included attorneys, custodial parents, noncustodial parents, court trustees, legislators, judges, mediators, SRS officials, and other interested parties as members, and a university professor provides assistance in economic matters.

What HB 2932 appears to do is to take factors that have already been considered and, to the extent possible, incorporated into the child support guidelines, and require the court to once again consider those factors. While courts currently do consider testimony from the parties as to why deviations from the guidelines are appropriate, the concern is that this provision of the bill will invite the parties to litigate issues that might be better addressed through the guidelines. If the courts were not understaffed, underfunded, and inundated with an ever-increasing caseload, or if only a small number of cases were potentially impacted, this certainly would not be as great a concern. This concern can be illustrated by considering that, in FY 2001, 16,521 divorce cases were filed. If 70% of those cases involve child support issues, 11,565 cases would be impacted by the requirement that these factors be considered by the court. If in only 20% of the 11,565 cases the judge spent an additional on-half day on these issues, courts would experience an additional workload of 1,156 days of trial. This would equate to over five additional judicial positions. The cost of an additional judgeship, with associated staff, is \$200,389.

I would be glad to try to answer any questions you might have.

House Judiciary  
Attachment 18  
3-20-02