

Approved: February 26, 2002
Date

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on February 20, 2002 in Room 423-S of the Capitol.

All members were present except: Senator Downey (excused)

Committee staff present: Raney Gilliland, Legislative Research Department
Betty Bomar, Secretary

Conferees appearing before the committee:

Mike Beam, Kansas Livestock Association
Mike Helbert, Kansas Trial Lawyers Association
Steve McAllister, Dean, Kansas University School of Law
Leslie Kaufman, Kansas Farm Bureau

Others attending: See attached list

SB 548 - Control and eradication of sericea lespedeza

Greg Foley, Assistant Secretary, Department of Agriculture, distributed a balloon amending **SB 548**, striking the noxious weed division language and that language referring to the "old agriculture board".

Senator Morris moved, seconded by Senator Umbarger, that SB 548 be amended as reflected in the balloon (Attachment 1). The motion passed unanimously by voice vote.

SB 556 - Establishment of sericea lespedeza research and experiment station at Toronto state park.

Senator Corbin moved, seconded by Senator Morris, that substitute for SB 556 be recommended favorably for passage. The motion passed unanimously by voice vote.

SB 549 - Immunity from liability for livestock producers in certain circumstances

Mike Beam, Kansas Livestock Association, testified in support of **SB 549**, stating the key policy change in the legislation is found at Page 1, Line 26, which provides immunity from damages in civil actions caused by a meat food product under certain conditions: derived from livestock that has passed a premortem inspection; has passed a postmortem inspection, and was inspected and approved by state or federal officials.

Mr. Beam stated the request for this legislation is the result of USDA officials proposing an identification regulatory program and producers utilizing the advanced identification technology for managing their herds and obtaining vital production and performance records. As a result of the identification technology being available and the benefits to producers in making adjustments in their breeding and management program and the need for effective disease control there is a risk for producers who run a risk of civil lawsuits. The increased liability risk, accompanied by technological changes, has caused KLA members to be hesitant to move forward with individual animal identification programs.

KLA supports **SB 549**, as a means of giving immunity to producers who raise livestock in a legal manner and who pass inspection at the processing plant. (Attachment 2)

In response to questions raised by the Committee, Allie Devine, KLA, stated the proposed legislation applies only to Kansas producers, and the bill should be amended to cover illegal drug use.

Michael Helbert, Kansas Trial Lawyers Association (KTLA), testified in opposition to **SB 549**, stating it is important to assure the safety of products produced by the agricultural industry to all citizens of Kansas and the entire world to whom the state markets its products and not only to the agriculture community. **SB 549** provides immunity to any livestock producer, for any defective meat food product

CONTINUATION SHEET

produced in which a state or federal official has inspected the animal either before or after slaughter. This legislation is anti-consumer and establishes a dangerous precedent. **SB 549** provides immunity for the producer by placing all of the burden upon the packers for any defective meat food product. KTLA strongly urges the Committee to be a voice for the consumer and oppose **SB 549**. (Attachment 3)

SCR 1622 - Urging University of Kansas school of law to establish an agriculture law teaching professorship and an agriculture law clinic

Steve McAllister Dean of the University of Kansas School of Law, stated that by growing up in rural Kansas, he is acutely aware of the state's agricultural economy and the many challenges the small Kansas farmer faces with respect to the laws that regulate their activities and those with whom they deal. Farmers rarely receive legal assistance in organizing and financing their operations, engage in tax planning, or in expanding their activities. Dean McAllister, therefore, testified in support of **SCR 1622**, stating an investment in a chair in agricultural law and an agricultural law clinic at the KU School of Law would generate significant rewards for the state.

A chair in agricultural law would permit the School to recruit an outstanding individual to Kansas to: (1) teach substantive courses that address the legal issues fundamental to the success of the agricultural industry; (2) write and lecture about legal issues of special importance to the agricultural industry; (3) provide expertise to the Legislature on issues involving the agricultural industry; and (4) supervise a clinic in agricultural law that would permit KU law students to work with small farmers in addressing the many legal issues they confront. (Attachment 4)

In response to a question from the Committee, Dean McAllister stated the approximate cost for such a program would be approximately \$200,000 annually.

Leslie Kaufman, Associate Director, Kansas Farm Bureau (KFB), submitted written testimony in support of **SCR 1622**. The testimony stated KFB supports an increased emphasis on agriculture law in all of the state law schools. (Attachment 5)

The meeting concluded at 9:30 a.m.

The next meeting is scheduled for February 26, 2002.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 20, 2002

NAME	REPRESENTING
SUE PETERSON	LC STATE
Carla Foley	KDA
Mike Jensen	Ks Pork Assn.
Jon Josseland	Univ. of Kansas
Laure	Lawrence Office
Don Repor	KACD
Rodney Biesenthal	Pott Co NWWD
Kirk Bradshaw	Dir. of Budget
Jeff Kuske	KLA
Clayton Huseman	KLA
Joe Lieber	KCS Co-op Council
Doug Wareham	KLFA/KARA
Roger Hamm	KDOR-PUD
Alli Swin	KLA
Michael Helbert	KTLA
Steve McAllister	KU Law School
Leslie Kaufman	Ks Farm Bureau

Session of 2002

SENATE BILL No. 548

By Committee on Agriculture

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AN ACT concerning agriculture; relating to control and eradication of sericea lespedeza; powers of secretary of agriculture; expenditures by conservation districts; amending K.S.A. 2-1315, 2-1908 and 2-1915 and repealing the existing sections.

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

Section 1. K.S.A. 2-1315 is hereby amended to read as follows: 2-1315.

The ~~state board~~ secretary of agriculture is hereby empowered to decide and adopt methods as official for control and eradication of noxious weeds and to publish such methods, and to make and publish such rules and regulations as in ~~its~~ the secretary's judgment are necessary to carry into effect the provisions of this act, and to alter or suspend such rules and regulations when necessary. ~~There is hereby created within the state board department of agriculture, a noxious weeds division which shall consist of a director, assistant directors and other employees all of whom shall be under the classified service of the Kansas civil service act. The state board secretary of agriculture is authorized to appoint a director of the noxious weeds division and fix the director's salary, and such director shall be the executive officer thereof and shall be under the supervision of the secretary of the board.~~ The state board secretary of agriculture may establish not to exceed five (5) noxious weed control districts within this state and define the boundaries ~~thereof, of such districts~~. Such districts ~~to be constituted shall be established~~ to provide for the most efficient control and eradication of noxious weeds and for the most economical supervision ~~thereof~~ by the state. Commencing on July 1, 2002, and ending on June 30, 2005, the secretary may designate any county as a sericea lespedeza disaster area to provide for the control and eradication of sericea lespedeza within such county.

~~The director, with the approval of the board secretary, shall appoint an assistant state weed control director for each district so established, and it shall be the duty of each such assistant to consult, advise, render assistance and direction to county and city weed supervisors as to the best and most practical methods of noxious weed control and eradication. and to render every possible assistance and direction to such supervisors for~~

The secretary of agriculture may _____ or _____

Senate Agriculture Committee

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Attachment # 1-1 thru 1-2

1 ~~the most effective control and eradication of noxious weeds; to aid in~~
2 ~~investigations and prosecutions of violations of this act; and to prepare~~
3 ~~such records and reports and to perform such other services and duties~~
4 ~~as the state weed control director shall direct. The assistant director shall~~
5 ~~reside in the district for which he or she ~~such assistant director~~ is appointed~~
6 ~~during the time he or she shall serve ~~served~~ as such assistant~~
7 ~~director. The director, with the approval of the board ~~secretary~~ of agriculture,~~
8 ~~may also appoint such additional assistants and clerical employees~~
9 ~~as may be deemed necessary to properly conduct the work of the noxious~~
10 ~~weeds division. It shall be the duty of the county agricultural agent to~~
11 ~~cooperate with and assist the county weed supervisors in an intensive~~
12 ~~educational program on weed control. The director of the noxious weeds~~
13 ~~division of the state board ~~department~~ of agriculture shall enforce the~~
14 ~~rules and regulations of the board and all provisions of this act and acts~~
15 ~~amendatory and supplemental ~~amendments~~ thereto. The state board ~~secretary~~~~
16 ~~of agriculture is hereby authorized to enter into agreements with~~
17 ~~any agencies of the federal government for cooperation in the control and~~
18 ~~eradication of noxious weeds in Kansas in keeping with the provisions of~~
19 ~~this act.~~

20 Sec. 2. K.S.A. 2-1908 is hereby amended to read as follows: 2-1908.

21 A conservation district organized under the provisions of K.S.A. 2-1901
22 *et seq.*, and amendments thereto, shall constitute a governmental subdi-vision
23 of this state, and a public body corporate and politic, exercising
24 public powers, and such district, and the supervisors thereof, shall have
25 the following powers, in addition to others granted in other sections of
26 this act:

27 (a) To conduct surveys, investigations, and research relating to the
28 character of soil erosion, flood damage and the preventive and control
29 measures needed, to publish the results of such surveys, investigations,
30 or research, and to disseminate information concerning such preventive
31 and control measures. In order to avoid duplication of research activities,
32 no district shall initiate any research program except in cooperation with
33 the government of this state or any of its agencies, or with the United
34 States or any of its agencies;

35 (b) to conduct demonstrational projects within the district on lands,
36 owned or controlled by this state or any of its agencies, with the coop-eration
37 of the agency administering and having jurisdiction thereof, and
38 on any other lands within the district upon obtaining the consent of the
39 occupier of such lands or the necessary rights or interests in such lands,
40 in order to demonstrate by example the means, methods, and measures
41 by which soil and soil resources may be conserved, and soil erosion in the
42 form of soil blowing and soil washing may be prevented and controlled;



Since 1894

To: The Senate Agriculture Committee
Senator Derek Schmidt, Chairman

From: Mike Beam, KLA Staff

Subject: Testimony in Support of SB 549 - Livestock Producer Immunity

Date: February 20, 2002

I would first like to express KLA's appreciation to this committee for agreeing to introduce Senate Bill No. 549. Thank you Mr. Chairman for scheduling a hearing on this legislation.

The key policy issue of this legislation is found in subsection (b) of Section 1. The bill says a livestock producer shall not be liable for damages in a civil action caused by a meat food product if (1) it is derived from livestock that has passed a premortem inspection by state or federal officials, (2) it has passed a postmortem inspection, and (3) was inspected and approved by state or federal officials.

Before I discuss the purpose of this proposal I must first give the committee some background as to why we believe this immunity is necessary.

For at least twenty years the beef cattle industry has discussed and cussed the merits and feasibility of adopting a nation wide, uniform individual animal identification system. Much of this debate has centered around the question of a government mandated program verses a voluntary and market based system that could be standardized and utilized by all segments of the industry. In recent years the level of discussion has heightened as USDA officials has proposed an identification regulatory program. In addition to regulatory proposals, many producers are beginning to utilize advanced identification technology for managing their herds and obtaining vital production and performance records.

Our members concluded last fall that KLA should initiative efforts for an industry wide individual animal identification system. The sudden interest in this concept was a result of two basic factors.

First, many of our members are pursuing marketing arrangements that recognize and reward cow-calf producers for breeding, growing, and feeding animals with optimum performance and superior carcasses that result in a positive eating experience for consumers. The ultimate goal for these producers is to participate in alliances that allow the farmer and rancher to capture a greater share of the consumer's expenditure for beef.

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It is difficult for beef producers to make improvements in their herds if they do not know which genetics need culling and what animals provide the greatest opportunity for profitability. As one observer has said, "you cannot manage what you cannot measure".

Individual animal identification programs provide a communication tool that can help our producers make more rapid adjustments in their breeding and management program. I sense a growing demand and interest in such a standardized identification system. The technology is available and is being used by several alliances today. With a little push from producer groups, and some changes in our liability laws, we believe the identification program will become a more common and useful tool that will benefit Kansas's producers and our consumers.

Another issue that is driving the interest in a standard and universal identification system is the need for effective disease control purposes. In our policy discussions last fall, several producers stressed that a national identification system would allow the animal health regulators to quickly identify the source of the infected animal(s). If we experience a case of foot and mouth disease, it will be important to quickly isolate the source and contain the spread of this highly infectious disease. Some animal health experts have suggested a more sophisticated and encompassing identification system would have likely allowed the beef and dairy industries to eradicate diseases like Brucellosis in a much shorter period and resulted in billions of dollars of savings to producers and taxpayers.

It should be obvious, by now, that KLA believes there is a great deal of potential for advancements in the beef industry through a more coordinated and extensive individual animal identification system. **There is a potential risk and impediment, however, if such technology is utilized.**

There are legal experts that believe animals, and products derived from animals, constitute "products" and a producer that is in the business of selling and/or distributing food products is liable to anyone who is harmed by defective meat. This liability is considered "strict liability" and an injured plaintiff is not required to establish that any one party was at fault in order to recover.

Historically, liability for damages caused by meat and meat products has rested with the packer, processor, and retailer. This liability is assigned because (1) the defect is often the result of mishandling at this stage of production, (2) the packer, processor and retailer usually carry insurance and are often viewed as having deeper pockets than the producer, and (3) it has been difficult, if not impossible, to trace the meat product beyond the initial packer.

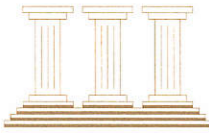
If a standardized individual animal identification system is adopted it will become much easier for plaintiffs to wrap their lawsuits around the entire beef production chain, including the farmers and ranchers who are merely trying to improve their product and compete with other protein sources such as poultry.

It's this increased liability risk, accompanied by these technological changes, that has caused our members to be hesitant to move forward with individual animal identification.

We support this legislation as a means of giving immunity to producers who raise livestock in a legal manner and which pass inspection at the processing plant.

We also believe that now is the time to address this issue with the passage of SB 549.

Thank you for your consideration. I would be happy to respond to any questions or comments.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Agriculture Committee

FROM: Michael Helbert, immediate past president
Kansas Trial Lawyers Association

RE: SB 549

DATE: Feb. 20, 2002

Chairman Schmidt and members of the Senate Agriculture Committee: thank you for the opportunity to appear before you today in opposition of SB 549. I am Michael Helbert, a practicing attorney from Emporia and as immediate past president of the Kansas Trial Lawyers Association, I appear before you today on behalf of our members and the consumers of Kansas.

At the outset, we all know that agriculture is extremely important to this state. However, assuring the safety of the products produced by the agricultural industry is of great importance not only to those citizens that are involved in agriculture, but to all citizens of Kansas and citizens of the entire world to whom we market our products.

This bill would provide immunity to any livestock producer, for any defective meat food product produced in which a state or federal official has inspected the animal either before or after slaughter. Immunity is just another way of saying that a livestock producer will be free or exempt from any obligation in any respect for the product which he or she has produced for public consumption. To put it another way, the livestock producer will not be accountable to the very people upon which the producer derives his livelihood.

This is an extremely anti-consumer bill. I know of no other product for which we allow the producer of that product to have immunity from liability simply because a state or federal inspector has inspected the product. For example, the FDA routinely approves the production of drugs for use by the public. However, it does not act as a guarantor nor does it vouch for the safety of the product. The ultimate responsibility for the drug that is placed before the public belongs to the producer of the drug. The same situation holds true for many other products that are produced in this state. The State of Kansas produces automobiles, airplanes, drugs and a wide variety of other consumer oriented products. In none of those instances do we provide the producer of that product freedom from all obligations to the public. This bill would establish that dangerous precedent.

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Terry Humphrey, Executive Director

The Kansas Legislature is a body that has been blessed with the trust of the Kansas people. The Kansas people count on their legislators to make sure that they, as consumers, are protected. This bill does exactly the opposite.

As a practical matter, this is providing immunity for the producer by placing all of the burden upon the packers for any defective meat food product. It is clear from the experiences that we have seen in Europe, many times the tainted meat is tainted before it is ever received by the meat processor. In an age where many people are concerned about the safety of the meat products they consume, we should be taking steps to assure higher quality meat products produced in Kansas and not creating an environment in which we tell the meat producers that they are exempt from responsibility to their public.

We also live in an agricultural economy that needs to be able to market its products worldwide. When we market the high quality of Kansas meat products, should we also tell our potential customers that the producers have no legal responsibility to make sure that the livestock they have raised are fit for human consumption? This is the type of legislative act that looks, acts and feels exactly like it is. It is an attempt to protect the few at the expense of the many. That type of attitude will not help Kansas and will not help the state's agricultural industry. We urge you to be a voice for the consumers of the State and the responsible producers of livestock products and oppose SB 549.

Thank you for the opportunity to express our opposition to SB 549.

TESTIMONY OF STEPHEN R. McALLISTER
DEAN OF THE UNIVERSITY OF KANSAS SCHOOL OF LAW

**On A Senate Resolution To Create A Chair And Clinic In Agricultural Law
At The University Of Kansas School Of Law**

February 20, 2002

Good morning. My name is Steve McAllister and it is my privilege to appear before you as the dean of the University of Kansas School of Law. I am a native Kansan. I was born in Lawrence and lived in Hiawatha and Chanute before ending up in the place I call my hometown, Lucas, Kansas--the home of the Garden of Eden.

Growing up in rural Kansas, I was acutely aware of the state's agricultural economy and the challenges that our small farmers face. My father was the banker in Lucas, so I was a "town" kid, but virtually all of my classmates and friends were farm kids. And I was fortunate enough to have the experiences of baling hay, discing fields, and working cattle during the summers as I grew up. Many of my childhood friends are still part of the agricultural industry.

Now I am a lawyer and the leader of our state's law school. As a lawyer, I have learned to appreciate the value and importance of good lawyering to the success of industry and the economy. The agricultural industry is no exception.

Small farmers in Kansas face many challenges with respect to the laws that regulate their activities and those with whom they deal. Commercial transactions are increasingly complex, as are the tax laws and the laws regulating agricultural trade. It was my experience growing up that most farmers rarely, if ever, consulted a lawyer. They rarely received legal assistance in organizing and financing their operations, engaging in tax planning, or expanding their activities.

But I think such assistance could benefit countless farmers across this state, the Kansas agricultural industry as a whole and, ultimately, the State of Kansas.

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Attachment # *H-1 thru H-2*

Thus, I speak in support of the resolution currently before this honorable Committee. An investment in a chair in agricultural law and an agricultural law clinic at the University of Kansas School of Law would generate significant rewards for the state.

Currently very few law schools in any way, much less in any significant way, train lawyers specifically to represent agricultural interests and agricultural clients. We obviously teach our students the fundamentals of contract law, business planning, tax law, regulatory law and so forth, but there is a real opportunity for Kansas to take the lead in this area and prepare generations of lawyers to promote and advance the interests of the Kansas agricultural industry.

Law has become increasingly complex, and the agriculture industry is no exception. And there is every reason to believe that the trend toward greater complexity will continue. Agricultural producers in this state increasingly will need legal advice and assistance from lawyers with a sophisticated background in the areas of special interest to agriculture.

A chair in agricultural law at the KU Law School would permit us to recruit an outstanding individual to Kansas to do several things: (1) teach substantive courses that address the legal issues fundamental to the success of the agricultural industry; (2) write and lecture about legal issues of special importance to the agricultural industry; (3) provide expertise to the Legislature on issues involving the agricultural industry; and (4) supervise a clinic in agricultural law that would permit KU law students to work with small farmers in addressing the many legal issues that they confront and for which they currently often receive no legal advice.

My vision is not of a clinic that would litigate cases that arise from disputes within the agricultural industry, but of a clinic that would focus on business planning and forward-looking transactional work, in some ways the very best of lawyering--helping people to achieve their goals. I thank you for your time and attention.



Kansas Farm Bureau

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785.587.6000 • Fax 785.587.6914 • www.kfb.org
800 S.W. Jackson, Suite 817, Topeka, Kansas 66612 • 785.234.4535 • Fax 785.234.0278

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

RE: SCR 1622 – encouraging the University of Kansas to establish an agriculture law teaching professorship and agriculture law clinic.

**February 20, 2002
Topeka, Kansas**

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

Chairman Schmidt and members of the Senate Agriculture Committee, thank you for the opportunity to present testimony on supporting the concept of an increased agriculture law focus at the University of Kansas School of Law.

Our members strongly encourage private organizations, governmental agencies and educational institutions to develop and promote educational programs and material that provide technical and practical information about contract production, marketing contracts and cooperative business. Our members understand the importance of seeking legal advice, not only as it might pertain to agricultural contracts, but on many facets of modern production agriculture. In order for farmers and ranchers to receive solid legal advice relative to their farming and ranching enterprises, a corps of Kansas attorneys who are well trained in agriculture law will be essential.

SCR 1622 is one approach to foster increased opportunities for Kansas farmers and ranchers to access legal advice from practitioners well versed in agriculture law. The bill seeks to accomplish this through encouraging the University of Kansas School of law to establish an agriculture law teaching professorship ar

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5-1 thru 5-2

We appreciate the goal of the bill. Being a farm organization, we would support an increased emphasis on agriculture law in all of our law schools.

If a program such as the one envisioned in SCR 1622 would be implemented, we would hope farmers and ranchers across the state could find additional legal resources through the clinic and an ever-increasing number of attorneys practicing in Kansas that understand agriculture law and modern production agriculture.

As such, we respectfully request the Committee act favorably on SCR 1622 in order to enhance the agriculture law opportunities available in Kansas. 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.