

Approved: March 27, 2002
Date

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on March 12, 2002 in Room 423-S of the Capitol.

All members were present except: Senators Huelskamp and Umbarger (both excused)

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

Conferees appearing before the committee:

Steve Baccus, Minneapolis, Kansas
Janet McPherson, Assistant Director, Public Policy Division, Kansas Farm Bureau
Jeff Mercer, Kansas Department of Commerce and Housing
Clint Riley, Kansas Department of Wildlife and Parks
Tom Bruno, Travel Industry Association of Kansas
L. J. Leatherman, Kansas Trial Lawyers Association

Others attending: See attached list

HB 2818 - Creating the sunflower commodity commission

Steve Baccus, a sunflower producer, Minneapolis, Kansas, testified in support of **HB 2818**, stating the legislation enacts a procedure for a check-off for Kansas sunflower producers. Kansas is one of the largest sunflower producing states, planting 330,000 acres in 2001 and harvesting over 400 million pounds of seed valued at nearly \$40 million, who does not have a check-off. The proposed legislation limits the assessment to a maximum of \$.03 per cwt. The bill also extends the deadline date for submission of a petition to be on the commission election ballot from October 31 to November 30, to bring uniformity to legislation previously heard by the Committee.

Mr. Baccus stated the goal of any commodity check-off is to raise the funds necessary to increase the amount of research, sales and consumption associated with a particular commodity in order to increase net returns to producers. A Kansas funded and controlled check-off is vital to solving production and marketing problems unique to sunflowers produced in the high plains. The \$.03 per cwt will raise approximately \$123,000 per year. Mr. Baccus stated that presently, sunflowers are more profitable than wheat. (Attachment 1)

Janet McPherson, Assistant Director, Public Policy Division, Kansas Farm Bureau (KFB), testified in support of **HB 2818**, stating KFB has long been supportive of producer-led marketing, research and educational efforts to improve the production and sales of the commodities grown in the state. **HB 2818** establishes a new Sunflower Commission directed and managed by Kansas sunflower growers. KFB supports the creation of the Commission. (Attachment 2)

There being no other conferees present who wish to be heard, the hearing was closed.

SB 607 - Limiting liability of property owners to persons entering premises for agritourism and ecotourism purposes

Jeff Mercer, Kansas Department of Commerce & Housing, Division of Travel and Tourism, testified in support of **SB 607**, stating the Division feels amending the language in **SB 607** would allow for greater flexibility for any farmers and ranchers who want to diversify their farming activities to allow others onto their property for leisure or recreational purposes. Agri-tourism was recommended by the Tourism study completed four years ago, to be nourished and expanded. **SB 607** is important for the tourism industry to be able to expand their farm and ranch opportunities to travelers who might want to

CONTINUATION SHEET

experience rural life. (Attachment 3)

Clint Riley, Kansas Department of Wildlife & Parks, testified in support of **SB 607**, stating the legislation specifies certain activities as within the scope of the existing statutes that limit liability for landowners who open their property for recreational purposes. The legislation adds encouragement for development of agritourism and ecotourism. **SB 607** adds horseback riding and recreational farming and ranching activities in the definition of "recreational purpose". The current definition of "recreation purpose" states that it includes, but is not limited to, the listed activities; however, by specifying the additional activities, the bill could lend confidence to landowners who are interested in allowing these activities on their property. (Attachment 4)

Tom Bruno, Travel Industry Association of Kansas, stated the Association supports passage of **SB 607**, and submitted written testimony. (Attachment 5)

L. J. Leatherman, Kansas Trial Lawyers Association (KTLA), testified in opposition to **SB 607**, stating the bill expands immunity to persons who engage in for-profit horseback riding and other recreational "farming and ranching activities". KTLA does not oppose the development of agritourism and ecotourism opportunities in the state, but does oppose expansion of these activities at the cost of allowing for-profit recreational enterprises to operate negligently without regard to the resulting injury to the citizens of Kansas. KTLA specifically opposes inclusion of new Section 2 (C) which provides that "horseback riding . . . and recreational farming and ranching activities" be added to the recreational use immunity.

Mr. Leatherman stated the modifications to **SB 607** significantly change the legislative intent of the original recreational use statute in which the immunity flows from the natural state of the land which is an appropriate and in fact codification of the common law. The introduction of commercial activities is a significant departure from the original purpose and existing common law. The modification to existing law complicates the issue of whether injury is caused by a condition of the land, or caused by the horses or other equipment provided by vendors. Mr. Leatherman stated this is a significant departure from the existing public policy and tort law. Tampering with expanding the original Kansas Recreational Use Statute which protected farmers from hunters and fishermen who they opened their land to for recreational purposes would cause the courts to re-examine the recreational use statute expansion into commercial enterprises and away from the land's natural use. (Attachment 6)

The Chair stated, in light of the concerns raised at the hearing, he would make arrangements for a working group to meet on **SB 607** to make the necessary amendments for passage of the bill. The time and place will be announced by the Chair.

The meeting concluded at 9:30 a.m.

The next meeting is scheduled for March 13, 2002

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: March 12, 2002

NAME	REPRESENTING
Tom Bruno	TIAX
LS Leatherman	KTLA
Barb Covert	KTLA
Jerry Humphrey	KTLA
Kevin Barone	Hein law firm
Sabrina Malm	DPS
Keith Bradshaw	Dir of Budget
Karla	Gov's office
Edd Johnson	KLA
Clint Biley	KDWP
Connie Fischer	KDOCH - Ag. Marketing
JEFF Merveer	KDOCH - Travel & Tourism
Chris Wilson	KSIA
Janet McPherson	Ks Farm Bureau

SENATE COMMITTEE ON AGRICULTURE

RE: HB 2818 Requesting a Commodity Commission for Sunflowers

**March 12, 2002
Topeka, Kansas**

**Presented by:
Steve Baccus, Sunflower Producer
Minneapolis, Kansas**

Chairman Schmidt and members of the Senate Committee on Agriculture, thank you for the opportunity to appear before you today and present testimony in support of HB 2818. My name is Steve Baccus and I am a sunflower producer from north central Kansas. I am here representing the Sunflower Check-off Exploratory Committee. This is a group of sunflower producers who have been meeting for quite some time with the intent of establishing a Sunflower Commission for Kansas producers.

In 2001, Kansas producers planted 330,000 acres of sunflowers and harvested over 400 million pounds of seed valued at nearly \$40 million! Sunflower production in Kansas has definitely become a significant portion of Kansas agriculture. Kansas is the largest sunflower producing state without a check-off. Consequently, we are asking that Kansas, like most other sunflower producing states, levy a .03 per cwt. check-off. This check-off would raise approximately \$123,000 per year.

The goal of any commodity check-off is to raise the funds necessary to increase the amount of research, sales and consumption associated with a particular commodity in

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Attachment # *1-1 thru 1-2*

order to increase net returns to producers. A Kansas funded and controlled check-off is vital to solving production and marketing problems unique to sunflowers produced in the high plains. Currently, much of the sunflower research conducted in the U.S. is funded by and aimed at solving northern plains production and marketing problems. Currently, the National Sunflower Association (NSA) has requests for stem weevil and sunflower moth research proposals totaling nearly \$25,000. One is from Kansas State University and the other is from USDA ARS with research locations in the Colby area and Colorado locations. This check-off would be invaluable in assisting in this type of research.

As Kansas sunflower producers, we ask this Committee's support for a check-off identical to existing programs in Kansas that are voluntary, producer controlled and producer focused.

Thank you for your time, your attention and your support.

Steve Baccus
707 N. Third Ave.
Minneapolis, Ks. 67467
785-392-2587



Kansas Farm Bureau

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PUBLIC POLICY STATEMENT

SENATE AGRICULTURE COMMITTEE

Re: HB 2818 – requesting a Commodity Commission for Sunflowers

March 11, 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 submit testimony today in support of HB 2818 allowing for the creation of a sunflower commodity commission.

Our members have long been supportive of producer-led marketing, research and educational efforts to improve the production and sales of the commodities we grow, and thus the profitability of our farmers and ranchers.

HB 2818 establishes a new Sunflower Commission directed and managed by Kansas sunflower growers. We support the creation of this Commission and reference our member-adopted policy, shown below, regarding Commodity Promotion Programs.

Kansas producers of agricultural commodities and products should have the opportunity to give financial support for research, utilization, public education and/or market development of the commodities and products.

We support commodity commissions that place producers in charge of the commission activities and the farmer check-off dollars. We strongly urge all producers to actively participate in operating their commissions and continuing their support of commodity check-off programs.

Reflective of this policy, we urge the favorable passage of HB 2818. 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 char

Senate Agriculture Committee

Date *March 12, 2002*

Attachment # *2*

Senate Agriculture Committee

**Testimony of the
Kansas Department of Commerce & Housing
Division of Travel and Tourism
Jeff Mercer**

March 12, 2002

SB 607

Good morning, Mr. Chairman, and members of the Senate Agriculture Committee. My name is Jeff Mercer, and I am the Director of the Kansas Department of Commerce and Housing, Travel and Tourism Division.

I am here today to offer support of SB 607. The Division feels amending the language in this bill allows for greater flexibility for any farmers and ranchers wanting to diversify their farming activities to allow others onto their property for leisure or recreational purposes. Such diversification will increase the number of tourism experiences available in Kansas and it provides additional value-added opportunities for farmers and ranchers.

Agri-tourism is one of the Division's marketing niches as recommended in the tourism study completed four years ago and we are eager to help with building that infrastructure to accommodate those who want to participate in that type of experience. This bill is important for the tourism industry to be able to expand their farm and ranch opportunities to travelers who might want to experience rural life.

We urge the passage of SB 607.

Senate Agriculture Committee

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Attachment #

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STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612-1233
785/296-2281 FAX 785/296-6953



SENATE BILL NO. 607

**Testimony Provided to
Senate Committee on Agriculture
February 19, 2002**

Senate Bill No. 607 would specify certain activities as within the scope of the existing statutes that limit liability for landowners who open their property for recreational purposes. In the statute describing the purpose of these statutes, the bill would add encouragement for development of agritourism and ecotourism. In the definition of "recreational purpose" covered by the law, the bill would add horseback riding and recreational farming and ranching activities provided as agritourism activities to the list of covered activities.

We are not certain these amendments necessarily change the activities that may already be covered by the current law, because the current definition of "recreation purpose" states that it includes, but is not limited to, the listed activities. However, by specifying these additional activities, the bill might lend confidence to landowners interested in allowing these activities on their property. In our agency's role to promote outdoor recreation in Kansas, therefore, we support this bill to the extent it can encourage landowners to open their lands to new forms of public recreational use.

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Senate Agriculture Committee
Date *March 12, 2002*

Attachment # *7*



300 SW Eighth, Third Floor
Topeka, Kansas 66603-3912
785/233-9465 • FAX 785/233-2206
rcarter@tiak.org • www.tiak.org

To: Senate Agriculture Committee
From: Sandy Braden
Re: SB 607

Mr. Chairman & Members of the Senate Agriculture Committee,

The Travel Industry Association of Kansas supports SB 607 and its goal of expanding tourism opportunities in Kansas. TIAK encourages the Legislature to pass legislation that enables local farmers and ranchers to confidently open their operations to tourism possibilities.

TIAK hopes that the Legislature will work to limit liability of landowners who open their land for agri-tourism and eco-tourism.

Thank you,

Sandy Braden

Sandy Braden

Senate Agriculture Committee
Date *March 12, 2002*

Attachment # *5*



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Agriculture Committee

FROM: LJ Leatherman
Kansas Trial Lawyers Association

RE: SB 607

DATE: March 12, 2002

Chairman Schmidt and members of the Senate Agriculture Committee: thank you for the opportunity to submit comments on SB 607. I am LJ Leatherman, a Topeka attorney and a member of the KTLA Board of Governors.

KTLA opposes this bill because it expands immunity to persons who engage in for-profit horseback riding and other recreational "farming and ranching activities" and who, through their negligence injure third persons and children. While KTLA does not oppose encouraging "the development of agritourism and ecotourism opportunities in this state," KTLA does oppose expansion of these activities at the cost of allowing for-profit recreational enterprises to operate negligently without regard to the resulting injury to Kansas citizens, both adult and children.

KTLA specifically opposes inclusion of new Section 2 (C), which provides that "horseback riding . . . and recreational farming and ranching activities" be added to the recreational use immunity.

While appearing to be a slight modification in language it significantly modifies the intent of the immunity granted in 58-3201 and 3202 in both its 1965 enactment and 1988 modifications.

The Council of State Government "model acts"¹ on which the Kansas act was based and other similar state recreational use statutes provide that "owners, those persons with a fee interest in recreational and agribased land," will have immunity for the "natural state" of the land. The statutes generally apply to owners and grant them immunity for injuries while engaging in activities on the property.

Most courts in determining the type of premises immunized from liability, provided by recreational use statutes, have determined they are intended to only apply to non-residential, rural or semi-rural property where sports and recreation activities enumerated

¹ *Scheck v. Houndville Construction Materials Inc.*, 121 N.J. super 335, 297 A2D17; see Sec. 24 Am. Jur. Premises Liability (Kansas Recreational Use Act).

Terry Humphrey, Executive Director

Senate Agriculture Committee
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in the statute are conducted not to the activity itself. (i.e. the immunity does not apply to the activity) .²

The Recreational Use Statutes, (RUS's) were not intended to extend immunity to the commercial activities which are provided by landowners on that land. To the extent there is immunity it should be limited to natural condition and not extended to the activity itself.

It must be pointed out that the Kansas Supreme Court has only reviewed the application of the immunity granted in K.S.A. 58-3201, et seq. on one occasion. The case *Bingaman v. Kansas City Power & Light Company*, 1 F3d 976 (1993). The case involved KCP&L being immune for their intake manifold causing an undertow which killed Mr. Bingaman. There have been no reported cases of farmers being protected by the Kansas Recreational Use Statute.

The addition of horseback riding and recreational ranching activities changes the nature of this immunity. Innocent third parties will not be protected when vendors provide faulty equipment.

The addition of the activities listed in SB 607 are martially different than "hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and historical archeological, scenic or scientific sights." The previously listed activities are all consistent in that they are traditional outdoor activities which do not contemplate the owner of the land supplying anything in addition to providing the location of the activity.

By adding the listed activities and granting immunity to negligent service providers who may "have a financial interest" in the land, the State would excuse careless behavior of operators and sacrifice the safety of all Kansans while leaving injured people who are innocent of fault to deal with their injuries and the financial burdens on their own. This, of course, also comes at the possible expense of Kansas taxpayers. If such immunity is granted, SB 607 puts Kansans at risk while immunizing those who profit by providing inadequate safety equipment or poorly trained staff.

The modifications to SB 607 significantly change the legislative intent of the original recreational use statute in which the immunity flows from the natural state of the land which is an appropriate and in fact codification of the common law. Most commentators acknowledge that the recreational use statute has been said to codify tort principles that are universally recognized in common law jurisdictions with regard to duties owed by owners and occupiers of property to those who come upon such property merely if licensees to use it for outdoor recreational purposes.³ In essence the statutory scheme

² *Ratcliffe v. Mandeville*, 502 SO.2d 566; see also *Odor v. Chase Manhattan Bank*, 138 N.J. super, 464, 351 AD2d 389 (recreational use statute applied to frozen pond on land owned by an estate for which defendant/bank was trustee came within the term premises to which the state recreational use statute applied.

³ *Crawford v. Consumer Power Company*, 108 MI App. 232, 310 NW 2d 343.

treats all persons entering for recreational purposes as “trespassers” in that the landowner is liable only for malicious and willful acts committed against such persons. The introduction of commercial activities is a significant departure from that original purpose and existing common law. The modification to existing law in SB 607 complicates the issue of whether the injury was caused by a condition of the land, or caused by the horses or other equipment provided by vendors. This is a significant departure from the existing public policy and tort law in the State of Kansas and therefore opposed by the Kansas Trial Lawyers Association.

Thank you for the opportunity to express our opposition to this bill. We encourage you to oppose the bill and to maintain the integrity of the purpose of enactment of the original Kansas Recreational Use Statute in 1965 protecting farmers from hunters and fishermen who they opened their land to for the recreational purposes. Tampering with this, expanding it to commercial enterprises, would cause the courts to re-examine the recreational use statute expansion into commercial enterprises and away from the land’s natural use.