

MINUTES OF THE HOUSE COMMITTEE ON TOURISM AND PARKS.

The meeting was called to order by Chairperson Becky Hutchins at 3:38 p.m. on March 10, 2003 in Room 243-N of the Capitol.

All members were present except: Representative Broderick Henderson - excused  
Representative Margaret Long - excused

Committee staff present: Mary Torrence, Revisor of Statutes' Office  
Hank Avila, Legislative Research Department  
Russell Mills, Legislative Research Department  
Sarah Samuelson, Committee Secretary

Conferees appearing before the committee:

proponents: Sandy Braden, Travel Industry Association of Kansas  
Derenda Mitchell, Kansas Livestock Association

opponents: Gary White, Kansas Trial Lawyers Association  
Leslie Kaufman, Kansas Farm Bureau

written testimony: Marci Penner, Director, Kansas Sampler Foundation

Others attending: see attached list

**SB 134 - Limiting liability of property owners to persons entering premises for agritourism and ecotourism purposes.**

**Proponents**

Sandy Braden, representing the Travel Industry Association of Kansas, addressed the committee as a proponent of the bill (Attachment 1). She discussed the increase in leisure travel and in people's interest in visiting rural areas and participating in such activities as farm visits and birdwatching. These activities provide alternatives for landowners to replace and supplement traditional farm operations with other ventures, but these efforts are in some cases being hindered by the issue of liability.

Representative Osborne asked about other states' policies on this issue. Staff member Hank Avila distributed a document addressing this (Attachment 2).

Representative Ruff requested definition of the activities referred to in the bill, and asked whether this expands immunity from liability for farmers. Ms. Braden replied that it does.

Representative Schwab asked whether Castle Rock is now closed because of their liability. Ms. Braden said she isn't sure about that. He asked whether this bill limits liability or caps it. Ms. Braden said it expands the activities for which a landowner is immune from liability. The caps for the current liability remain the same.

Representative Beggs asked how different this is from the concept of a hold-harmless law. Staff member Mary Torrence said that the two may be equivalent, that this legislation might be Kansas' way of doing the same thing.

Chairperson Hutchins recognized Gary White, representing the Kansas Trial Lawyers Association, from the gallery. His testimony is discussed below, with the opponents.

Derenda Mitchell, representing the Kansas Livestock Association, addressed the committee as a proponent of the bill (Attachment 3). She said that protection from litigation is a fair exchange for the cultural, educational, historical, and recreational opportunities that landowners can provide. SB 134 offers these protections by expanding and clarifying what constitutes "recreational purpose." However, the KLA has reservations about amending the present statutes, which are working well. Ms. Mitchell expressed concern that the legislature not erode existing protections, and not introduce uncertainty into the

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TOURISM AND PARKS at 3:30 p.m. on March 10, 2003 in Room 243-N of the Capitol.

statutory language. The KLA supports SB 134 in its current form, but would oppose amendments that lessen or remove the protections provided by law.

Representative Ruff asked why the KLA opposes the amendment in which landowners are liable for people riding on farm equipment. Ms. Mitchell explained that activities such as riding along on farm equipment or hayrack rides are subject to the current protections of the law, and that those are recreational activities that are currently allowed under the language in the statute; consequently, it's not appropriate to carve out an exception that would preclude those activities.

Representative Ruff requested clarification on whether the KLA supports the bill as it stands now, without further amendments. Ms. Mitchell said that is true, unless such amendments were merely for clarification of wording.

Representative Schwab asked, regarding the willfulness issue, to what extent a person riding on a hayrack assumes upon himself the risk of falling, under the current statute. Ms. Mitchell said that the hayrack driver would be immune under current law; he might then be sued, and be subject to liability under some other theory, but under this law he is immune from liability.

Representative Schwab asked whether this legislation really would change much in terms of the liability placed on farmers and the responsibility placed on the visitor. Ms. Mitchell replied that this bill does not change the current law very much, and that is one reason the KLA is in support of it. Primarily, it clarifies what the existing law says.

Representative Hutchins requested clarification about the list of "includes, but not limited to" in the definition of recreational purpose, and why "hayrack riding" is not in that list; and whether it is covered by current law. Ms. Mitchell replied that it is. Representative Hutchins asked whether it could be added to the list, just to clarify things; Ms. Mitchell said that it could.

### **Written Testimony**

Chairperson Hutchins called the attention of the committee to written testimony from proponent Marci Penner, Director of the Kansas Sampler Foundation (Attachment 4). In her testimony, Ms. Penner shared many specific examples of Kansans who have had ideas for rural entrepreneurship, but have been discouraged or hindered from carrying out these ideas because of the fear of liability.

### **Opponents**

Gary White, representing the Kansas Trial Lawyers Association, addressed the committee as an opponent of the bill (Attachment 5). He explained that this legislation provides for immunity for negligent acts or wanton acts, but not for willful or malicious acts, in which the landowner knows about a dangerous condition but intentionally doesn't warn people of it. KTLA recommended an amendment (Attachment 6) that would allow for immunity for recreational farming and ranching activities, but would exclude activities that are particularly dangerous, such as operating or riding upon agricultural equipment.

Representative Beggs asked whether, with this amendment, farmers would be liable for people driving all-terrain vehicles on their property. Mr. White replied that they would not be liable except for misconduct, because the visitors are bringing their own equipment onto the property. If, for example, a farmer has taken out a bridge and fails to warn someone he has invited to come use his ATV, then he would be liable, but he would not be liable for someone driving into a tree or another ATV.

Representative Osborne asked whether the farmer would be liable for such conditions as ruts or potholes in the trail. Mr. White said he wouldn't.

Representative Schwab asked whether it would be considered willfulness for a landowner to send visitors with their ATV down a trail without warning them of a bridge on that trail that he knew was out. Mr. White said that is true, but that if the landowner didn't think the visitors would be using that trail, it would be considered recklessness. The issue is degrees of negligence: first is negligence, which is a failure to exercise reasonable care; next is wantonness, which is a reckless disregard for the rights of others; then is

## CONTINUATION SHEET

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willfulness and maliciousness, which includes intent to commit harm.

Staff member Mary Torrence asked about the wording of the proposed amendment, because it says hayrack riding is an activity that is protected, but then it says riding on agricultural equipment is not. She commented that a hayrack is agricultural equipment, and this should be clarified in the language.

Leslie Kaufman, representing the Kansas Farm Bureau, addressed the committee as a qualified opponent of the bill (Attachment 7). She said that the KFB supports rural economic development opportunities, and that the intent of SB 134 seems to be consistent with the policy of the KFB. Statutory limitations on liability for those opening private land to recreational activities are important to the KFB and to the state. It encourages voluntary private efforts to provide recreational opportunities for non-landholders without requiring the state to own larger amounts of land.

However, Ms. Kaufman expressed some concerns about the bill. She said that the "included but not limited to" language currently in the statutes (KSA 58-3201) provides coverage for various activities, even if not specifically enumerated. The current statutes and case law are working well, and the KFB sees no need for change. They fear that opening up the issue might confuse things and allow for amendments that they would oppose. Ms. Kaufman also expressed concern about the current wording on lines 39-42 of page 1, and whether that language clearly identifies, when the bill is read as a whole, that the "person" referred to is not the "owner." Ms. Kaufman suggested that one possible way to add clarity to this section would be to strike the word "person" in line 39 and replace it with "non-owner".

Representative Novascone asked about the line numbering. It was determined that the committee's bill books do not reflect the amendments adopted by the Senate Committee of the Whole. They will be updated by the next meeting.

Chairperson Hutchins notified the committee of the fiscal note for SB 134, which says that there will be no fiscal impact.

Testimony from Sally Hatcher, President of the Kansas Preservation Alliance was distributed (Attachment 8). This addresses an amendment to SB 134 that has not yet been proposed, so it will be discussed on Wednesday.

Chairperson Hutchins closed the hearing on SB 134. She expressed her intention to work the bill on Wednesday, March 12.

The minutes from Feb 24 were distributed and approved without amendment.

Chairperson Becky Hutchins adjourned the meeting at 4:31 p.m.

The next meeting is scheduled for March 12, 2003.





**Travel  
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**Testimony of Sandy Braden  
Gaches, Braden, Barbee and Associates**

**On behalf of the Travel Industry Association of Kansas (TIAK)**

**Regarding Senate Bill 134  
Regarding Agritourism and Ecotourism**

**Submitted to the House Tourism Committee  
Monday, March 10, 2003**

House Tourism Committee

Meeting Date 3/10/03

Attachment 1

**Testimony of Sandy Braden  
Gaches, Braden, Barbee and Associates  
On Behalf of the Travel Industry Association of Kansas  
In Support of SB134  
Monday, March 10, 2003**

Thank you, Madam Chair and Committee members, for this opportunity to appear before you in support of SB134. I am Sandy Braden with Gaches, Braden, Barbee and Associates, testifying on behalf of the Travel Industry Association of Kansas (TIAK).

TIAK is an organization formed in 1982 with the purpose of speaking with one voice for the travel industry in Kansas, promoting and supporting all components of the travel industry and travel development field.

TIAK is made up of 120 plus members representing Convention and Visitor's Bureau's, Chamber of Commerce's; Economic Development organizations, attractions, museums, lodging, print advertising media, alliances, bed and breakfast owners and others involved in the tourism industry.

The Travel Industry Association of America (TIA) is predicting that leisure travel will continue to increase, while business travel will decrease. Through the third quarter of 2002, compared to the same time frame of 2001, total leisure travel volume increased 1.9%. And many of the leisure travelers are increasingly interested in highway travel, as well as a strong interest by both domestic and international travelers in outdoor activities, history and culture, as well as visiting small towns and rural areas.

The U.S. Department of Agriculture's (USDA) Natural Resources Conservations Service manages an alternative enterprises program that defines agritourism as "inviting the public onto your farm or ranch" and "a set of activities that occur when people link travel with the products, services and experiences of agriculture.

The U.S. Department of Agriculture's (USDA) National Survey on resource and the environment preliminary findings of agriculture questions indicated, "farm visits" were high in "reasons" for a trip. The reasons included to watch/participate in farm activities; better appreciate where food comes from; pet a farm animal; see orchards, vines, woodland, grazing animals and rural areas in general.

This, along with the ecotourism trend of sustaining or enhancing the geographical character of the place being visited, including bird watching in their natural habitat, are alternative enterprises and agritoursim allow farmers and ranchers to earn higher profits by replacing and supplementing traditional farm operations with innovative, sustainable on-farm or on-ranch ventures.

**One of the difficulties that arise when farmers and ranchers develop tourism opportunities is the issue of liability. Marci Penner, Director of the Kansas Sampler Foundation, has provided written testimony that identifies many Kansas examples of how the issue of liability has hindered the rural community in its effort to implement rural tourism opportunities.**

**SB134 would expand and define the agritourism and ecotourism opportunities in the state by limiting their liability towards persons entering their land for tourism opportunities described earlier in this testimony.**

**And the Travel Industry Association of Kansas is supportive of any efforts that this Committee develops to assist in promotion and recognition of agritourism and ecotourism in Kansas, and look forward to working with the Committee in any further discussions of this topic.**

**Thank you.**



## Liability and Recreational Use Statutes

American Whitewater has prepared this table with substantial help from the International Mountain Biking Association (IMBA) and the American Association for Horsemanship Safety (AAHS) as a tool for understanding the differences between state recreational use statutes on a national basis. This table is a valuable tool; however it is not the final word on liability law in America. Exercise your own good judgement when using the material and verify the status of your state statutes independently with an attorney before relying on this data.

### What are Recreational Use Statutes and how do they work?

#### Clarification of terms used in this table.

#### Credits and Appreciation.

STATE	YEAR PASSED	DUTY TO KEEP SAFE	DUTY TO WARN	ASSURANCE OF SAFETY	LIABILITY FOR MISCONDUCT WILFUL/WANTON	PROTECTION LOST IF FEE CHARGED
<b>Alabama</b>						
Alabama Code §35-15-1	1965, 1981	No	No	No	Yes	No, if use of land is non-commercial
<b>Alaska</b>						
Alaska Stat. §09.65.200	1980	Not Specified	Not Specified	Not Specified	Yes	Yes
<b>Arizona</b>						
Arizona Rev. Stat. Ann. §33-1551	1983	Not Specified	Not Specified	Not Specified	Yes	Yes
<b>Arkansas</b>						
Arkansas Stat. Ann. §18-11-301	1965, 1983, 1991	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>California</b>						
California Govt. Code §2-2-3-2-846	1963, 1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Colorado</b>						
Colorado Rev. Stat. §33-41-101	1963, 1970	Not Specified	Not Specified	No	Yes	Yes, but fees from land

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 Attachment 2



leased to public agency allowed

<b>Connecticut</b>						
<u>Connecticut Gen. Stat. §52-557(f)</u>	1971, 1990	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Delaware</b>						
<u>Delaware Code Ann. §7-VI-5901</u>	1953	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Florida</b>						
<u>Florida State. Ann. §XXVIII-375.251</u>	1963	No	No	No	Yes	Yes
<b>Georgia</b>						
<u>Georgia Code Ann. §51-3-20</u>	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Hawaii</b>						
<u>Hawaii Rev. Stat. §3-28-520-1</u>	1969	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Idaho</b>						
<u>Idaho Code §36-16</u>	1976, 1988	No	No	No	Not Specified	Yes
<b>Illinois</b>						
<u>Illinois Ann. Stat. §745-65-1</u>	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Indiana</b>						
<u>Indiana Code Ann. §14-22-10</u>	1969, 1995, 1998	No, for recreation trails; not specified for other locations.	Not Specified	No	Yes	Yes
<b>Iowa</b>						
<u>Iowa Code Ann. §XI-2-461(C)</u>	1967	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Kansas</b>						

<u>Kansas Stat. Ann. §58-3201</u>	1965, 1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Kentucky</b>						
<u>Kentucky Rev. Stat. Ann. §XXXVI-411-190</u>	1968, 2000	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Louisiana</b>						
<u>Louisiana Rev. Stat. Ann. §9-III-V-2-2791 &amp; 2795</u>	1964, 1989	No	No	No	Yes	Yes
<b>Maine</b>						
<u>Maine Rev. Stat. Ann. §14-1-7-159(A)</u>	1979, 1995	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Maryland</b>						
<u>Maryland Nat. Res. Code Ann. §5-1101</u>	1957, 1998	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Massachusetts</b>						
<u>Massachusetts Gen. Law Ann. §I-21-17(C)</u>	1972	Not Specified	Not Specified	Not Specified	Yes	Yes, but voluntary payments are allowed
<b>Michigan</b>						
<u>Michigan Comp. Laws Ann. §324.73301</u>	1994	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
<b>Minnesota</b>						
<u>Minnesota Stat. Ann. §604(A)20</u>	1961, 1994	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Mississippi</b>						
<u>Mississippi Code Ann. §89-2-1</u>	1978, 1986	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Missouri</b>						

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<u>Missouri</u> <u>§XXXVI-537.345</u>	1983	No	No	No	Yes	Yes
<b>Montana</b>						
<u>Montana Rev. Code Ann.</u> <u>§70-16-301</u>	1965, 1995	No	Not Specified	No	Yes	Yes
<b>Nebraska</b>						
<u>Nebraska Rev. Stat.</u> <u>§37-730</u>	1965, 1998	No	No	No	Yes	Yes, except can charge group rates & not lose immunity
<b>Nevada</b>						
<u>Nevada Rev. Stat.</u> <u>§41.510</u>	1963, 1995	No	No	No	Yes	Yes
<b>New Hampshire</b>						
<u>New Hampshire Rev. Stat. Ann.</u> <u>§XVIII-212-34</u>	1961, 1982	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
<b>New Jersey</b>						
<u>New Jersey Stat. Ann.</u> <u>§13-1(B)B-15-133</u>	1968, 1984	No	No	No	Yes	Yes
<b>New Mexico</b>						
<u>New Mexico Stat. Ann.</u> <u>§17-4-7;</u> <u>§66-3-1013;</u> <u>§16-3-9</u>	1973	No	Not Specified	No	Yes	Yes, but fees from land leased to public agency allowed
<b>New York</b>						
<u>New York Gen. Oblig. Law</u> <u>§9-103</u>	1963	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>North Carolina</b>						
<u>North Carolina Gen. Stat.</u> <u>§113(A)-6-95</u>	1987 Trails Act, 1993	Not Specified	Not Specified	Not Specified	Not Specified	Only applies to trails & not other uses of land
<b>North Dakota</b>						
<u>North Dakota Cent. Code</u> <u>§53-08-1</u>	1965, 1993	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Ohio</b>						

Ohio Rev. Code Ann. §XV-33-18	1963, 1995	No	Not Specified	No	Not Specified	Yes
<b>Oklahoma</b>						
Oklahoma Stat. Ann. Title §76-10	1965, 1994	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Oregon</b>						
Oregon Rev. Stat. §105.672	1971, 1995	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Pennsylvania</b>						
Pennsylvania Stat. Ann. §68-11-477	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Rhode Island</b>						
Rhode Island Gen. Law §32-6-1	1978	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>South Carolina</b>						
South Carolina Code Ann. §27-3-10	1962	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>South Dakota</b>						
South Dakota Comp. Laws Ann. §20-9-11	1966, 1990	No	No	No	Yes	Yes, but nonmonetary gifts up to \$100 allowed
<b>Tennessee</b>						
Tennessee Code Ann. §11-10-101	1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Texas</b>						
Texas Stat. & Codes §4-75.001	1965, 1999	No	Not specified	No	Yes	No. Revenue from charges may not exceed 2x prop. taxes
<b>Utah</b>						
Utah Code Ann. §57-14-1	1971, 1997	No	No	No	Yes	Yes, but fees from land leased to public agency allowed

<b>Vermont</b>						
Vermont Stat. Ann. §10-020-441 & §12-5791	1967, 1993	No	Not Specified	No	Yes	Yes
<b>Virginia</b>						
Virginia Code §29.1-509	1950	No	No	No	Yes	Yes, but may charge fees to maintain the land & not lose immunity
<b>Washington</b>						
Washington Rev. Code Ann. §4-24.200	1967, 1997	Not Specified	Not Specified	Not Specified	Yes	Yes, but may charge for cutting firewood & not lose immunity
<b>West Virginia</b>						
West Virginia Code §19-25-1 Also see West Virginia's Whitewater Responsibility Act §20-3b-1 to 5	1965	No	No	No	Yes	Yes
<b>Wisconsin</b>						
Wisconsin Stat. Ann. §895.52	1963, 1995	No	No	No	Not Specified	No, so long as total revenues don't exceed \$2000 annually
<b>Wyoming</b>						
Wyoming Stat. Ann. §34-19-101	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed

**CLARIFICATION OF TERMS:**

**YEAR PASSED:** When was the recreational use statute passed or modified?

**DUTY TO KEEP SAFE:** Does the owner owe a duty of care to keep their premises safe for entry and use by others for recreational purposes?

**DUTY TO WARN:** Does the owner owe any duty to warn visitors of hazardous conditions, structures, or activities on their property to persons entering for recreational purposes?

**ASSURANCE OF SAFETY:** Does the owner who gives permission to another for recreational activities on their property thereby extend any assurance that the premises are safe?

**LIABILITY FOR MISCONDUCT WILFUL/WANTON:** Does the statute limit the

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landowner's liability for wilful or malicious failure to guard or warn against known dangerous conditions, uses, structures, or activities?

**PROTECTION LOST IF FEE CHARGED:** Does the statute limit the landowner's liability for injuries suffered in any case where access permission is granted for commercial enterprise or profit? In other words, does the landowner lose their protection under the statute if they charge an access fee?

## CREDITS:

American Whitewater collected the majority of this data via private research, correspondence, and assistance from the following sources:

International Mountain Biking Association (IMBA)

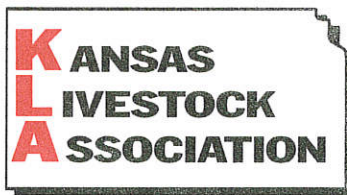
American Association for Horsemanship Safety (AAHS) & the University of Texas

*Liability and Immunity: A National Assessment of Landowner Risk for Recreational Injuries*; Ronald A. Kaiser & Brett A. Wright Environmental Policy Group, Texas A&M University, Department of Recreation, Park & Tourism Sciences

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Posted: December 11, 2000 by Jason Robertson

**Contact:** Jason Robertson  
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*Since 1894*

## Testimony

To: House Tourism and Parks Committee

From: Derenda J. Mitchell, Assistant Counsel

Subject: Senate Bill 134

Thank you for the opportunity to appear before you this afternoon. My name is Derenda Jo Mitchell. I appear today on behalf of the Kansas Livestock Association (KLA), a trade organization that represents all segments of the livestock industry. KLA has over 6,000 members.

KLA supports efforts by landowners to capture more income through recreational use of land. Clear and broad protection from the hardships of litigation is an equitable and fair exchange for the rich cultural, educational, historical, and recreational opportunities Kansas landowners can provide. We understand that SB 134 is designed to give broad protections to landowners by expanding and clarifying what constitutes a "recreational purpose." We support the bill and the version passed by the Senate.

We, however, express reservations about amending a tested and true statutory scheme. We respectfully request that the legislature not erode existing protections and not insert uncertainty in the statutory language. For example, one of the amendments considered on the Senate side referred to K.S.A. 16-1202. K.S.A. 16-1202 defines farm equipment to include parts, attachments, and marketing tools. Using a definition of farm equipment that includes parts, attachments, and marketing tools would have created such a large exception to the protections in statute that the exception would have devoured the protections. The goal of promoting agritourism would have been negated by the reference to K.S.A. 16-1202. We appreciate the Senate COW amendment that struck this confusing reference to an unrelated definition of farm equipment.

Although we support SB 134 in its current form, we caution that we will oppose amendments that lessen or remove the protections provided by law.

In conclusion, thank you for your consideration of these important matters.

House Tourism Committee

Meeting Date 3/10/03

Attachment 3



**Travel  
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**Testimony of Marci Penner  
Director, Kansas Sampler Foundation**

**Regarding Senate Bill 134  
Relating to Agritourism and Ecotourism**

**Submitted to the House Tourism Committee  
Monday, March 10, 2003**

House Tourism Committee  
Meeting Date 3/10/03  
Attachment 4



Testimony on SB134 before the House Tourism Committee  
By Marci Penner, Director of the Kansas Sampler Foundation

Chairman Hutchins, thank you for this opportunity to send testimony on behalf of rural communities across the state.

My name is Marci Penner from Inman, Kansas. I am the director of the Kansas Sampler Foundation; a non-profit organization dedicated to helping preserve and sustain rural culture.

Liability is prohibiting two things in rural Kansas: 1) economic development and 2) the ability to preserve and educate others about our rural culture.

Rural communities and those who live in the country are struggling to sustain their lifestyle. To keep our communities alive we MUST make it possible for people to use their land to make an income in ways other than farming and ranching. We need to be an innovative state that gives rural people an opportunity to stay on the land by nurturing their entrepreneurial spirit. There are some great ideas and plans out there but the cost of liability premiums is making it almost impossible to carry out the plans.

Here are the main concerns:

1. Businesses have shut down because of high premiums
2. Events have been cancelled or not even held because of high premiums
3. Events have had to eliminate certain activities because of liability premiums
4. Many events or businesses don't purchase liability insurance because of the high cost and then hope for the best
5. Some events or businesses can't find even find coverage for special Situations even if they were willing to pay high premiums

Here are some examples:

CLOVER CLIFF RANCH, Elmdale. At one time, the Donahue's had a half million dollars worth of investment in four buildings on a small percentage of their acreage in Chase County. The buildings were used as bed-and-breakfasts. They had liability insurance but NO fire protection. Mr. Donahue's fear of losing his land through a liability lawsuit was so great that he paid dearly for liability premiums but was not able to afford other insurances, like fire protection. He may lose his entire investment to fire but feels he has no choice because of the high premiums. He says he just closes his eyes and hopes it will all be OK.

CASSODAY COUNTRY INN & RANCH, Cassoday. Carl invited guests to live the life of a Flint Hills cowboy with him. Several years ago his liability insurance was \$1,800. He couldn't make a profit when he had to pay that much for liability so he dropped the policy and just hoped nothing would happen.

SANTA FE TRAIL CLUB: Landowners that have Santa Fe Trail ruts on their property statewide are extremely concerned about letting people on their land because of liability concerns.

ELK FALLS. This is a town of 121 struggling to stay alive. Tourism has been their best means of survival. In 1994, the Friends of Elk Falls (a non-profit group) paid \$157 for liability coverage for group tours. Circumstances forced one member of the group, Barry McGuire, to turn the tourism business into a for-profit venture. The liability premium increased to \$1,062 because he became a for-profit. Also, the liability policy only covered group tours and did not cover if a family wanted to stop by to see one of the attractions. Barry has since moved to California because he couldn't make it in Elk Falls. The town lost one of their key assets in Barry.

OXFORD MILL RESTAURANT, Oxford. Several years ago, the Oxford Mill hosted a 3-day arts-and-crafts festival on their property on the river. The liability premium for the show was \$2,000. The owner just closed his eyes the rest of the year and hoped that no one would sue. He has a nature walk along the river and people can tour his generator room.

CASTLE ROCK, Gove County. Many of you have probably seen this dramatic product of Smoky Hill chalk formation erosion. Until the landowner died the public had access to Castle Rock and the nearby badlands. However, the heirs are fearful of losing the land through liability lawsuits and decided to put up a gate to Castle Rock. They have relented for now, however, and there is access but they are still afraid of that one person who could sue and possibly take their land.

KANSAS COWBOY CAMP-OUTS, Red Hills. A Belvidere couple was going to offer an authentic Kansas cowboy experience in the Red Hills. They had landowners willing to allow usage of land -- except for one fear, liability. They were afraid of losing their land in a lawsuit. Because of these fears this business went under. This was a business someone wanted to do because they loved their cowboy heritage. They wanted others to enjoy an authentic outdoor cowboy experience.

PRETTY PRAIRIE RODEO. Several years ago the rodeo had trouble just finding someone to provide them coverage this last year. They didn't find a carrier until two weeks before the event. They had to eliminate their calf scramble and mutton bustin'. They have even more trouble finding coverage for their local festivals. They've had to eliminate mud volleyball. People wouldn't volunteer to be on the Heritage Day committee because they were afraid of being personally liable as members of the planning committee. The liability policy for the rodeo is higher because the policy covers board members, too. Connie has talked to farmers about doing farm tours but she can't even get them to consider it because of liability.

VONADA'S STONE QUARRY, Sylvan Grove. This is a family owned operation in North Central Kansas. The Vonada's couldn't find any one insurance carrier to cover all they do. Some wouldn't provide coverage because Donna taught swimming lessons in an indoor pool. Some wouldn't provide coverage because of the stone quarry tours and stone cutting business. Insurance carriers no longer considered their rural operation a farm. They had to stop doing guided tours of the limestone quarry because of liability. Duane Vonada has a desire to share post rock country with anyone. He could provide such a beautiful opportunity for people to learn about the limestone layers, about the stone cutting craft, about the Smoky Hill region, about the history of his area, about the people of his region but liability has put a wrench into his ability to offer these things.

KANSAS SAMPLER CENTER on the Penner Farm, Inman. For eight years we held a festival on our farm that provided Kansas communities a chance to educate the Kansas public about why they should travel Kansas. On the final year, over 130 communities came to promote and 7,500 people came to see what they had to offer. My Dad goes into a panic a month before the festival so worried about that person out there who could sue him to the point of losing his farm that his great grandfather homesteaded. We have a policy but we are just one of many people statewide who live with the fear through the festival. Our festival parking lot is the alfalfa field. We would love to transport people to the farm with a safe customized tram but the rider to the liability policy was so completely prohibitive that we could not offer this service. If we were able to offer that service it would bring more elderly people to this educational experience.

We wanted to use our farm to educate Kansans about Kansas. The thing that is keeping us from developing certain programs is liability. We wanted to offer hayrack rides along our tree-lined drainage ditch, through a cornfield and to the adjoining McPherson Valley Wetlands. At this point we can't do this because of prohibitive premiums. We can't risk our family farm to liability yet there is so much we could offer to Kansans using our farm as a resource.

BLACKSMITH SHOP, Durham. Tom Donahue restored a blacksmith shop as a hobby. People wanted to come in and see what he had done or watch him at work. He wanted to share his place except he couldn't afford to buy liability because this is just a hobby for him. He was scared that someone would sue him and take away his dream.

TAD PIERSON, McPherson. Tad wanted to provide the public the opportunity to see Kansas's back roads in the back of a wheat truck. Insurance companies didn't know what to do with a request like this and those that did required an exceptionally high premium. This was a unique venture and would have provided an experiential way to have an authentic experience in Kansas. Tad has since left the state due to this issue.

DAVE BROWN'S WELDING SHOP, Morland. Dave is a farmer and has an oil patch welding shop. But he also created wonderful sculptures and had them in the shop. He finally stopped inviting people into the shop when he checked on liability rates, which only escalated his concerns. This attraction is no longer available in Morland.

STAFFORD COUNTY FLOUR MILL, Hudson. Al offers tours of the mill and shows where and how they package flour. To my knowledge, this is the only mill in the state that offers this tour. He doesn't have a liability policy for this. He says he's not going to let fear of being sued keep him from sharing something he loves and wants others to know about. Other mills would like to offer tours but are completely fearful of the liability consequences.

FALL RIVER CANOE, Eureka. The radiator shop in downtown Eureka provided canoes for those who wanted to 'run' the river. They didn't carry a liability policy and were always worried about what could happen.

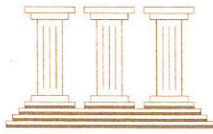
THE BREAKS, Cheyenne County. Local tourism advocates would love to have a rim drive of the Breaks but landowners are hostile about it, primarily because of potential lawsuits. What a shame. This is one of the most beautiful sights in Kansas.

LCL BUFFALO RANCH, Clifton. Lester Lawrence says as long as he doesn't charge people to see his buffalo his general policy for one million dollars is sufficient.

HISTORICAL COMPLEX, western Kansas. A museum director and her board have to consider whether to eliminate special events because of the high premiums. Anything that involves movement: machinery, animals, or transportation, either requires an unreasonably high premium. They are faced with either not having the event or closing their eyes to the risk and just doing it.

People know they need liability insurance and are willing to pay but it must be within a reasonable range. I would like to send my strongest support for Senate Bill No. 134. I've long said that money isn't always the answer. Sometime it's just a matter of removing the barriers and giving us the chance to work and earn our way. Lots of people have very intriguing ideas about how to share their part of Kansas with visitors and to also educate Kansans about their state. We just need some insurmountable barriers removed. I wish I could be there to look each of you in the eye and thank you for presenting this bill. Passing this bill would be an effective and innovative solution for improving the economy of Kansas.

Thank you.



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the House Committee on Tourism and Parks

FROM: Gary White, Legislative Vice President  
Kansas Trial Lawyers Association

RE: 2003 SB 134

DATE: March 10, 2003

Chairman Hutchins and members of the House Committee on Tourism and Parks, thank you for the opportunity to submit comments on 2003 SB 134. I am Gary White, Legislative Vice President of the Kansas Trial Lawyers Association. KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to offer comments regarding SB 134.

KTLA opposed SB 134 as originally written because it expanded immunity to persons who engage in for-profit horseback riding and other recreational "farming and ranching activities" and who, through their negligence may injure third persons and children. While KTLA does not oppose encouraging "the development of agritourism an ecotourism opportunities" in Kansas, we do oppose expansion of these activities at the cost of allowing for-profit recreational enterprises to potentially operate negligently without regard to the resulting injury to Kansas citizens.

The Council of State Government "model acts" <sup>1</sup> 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 agri-based 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 under 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 in the statute are conducted **not** to the activity itself. (i.e. **The immunity does not apply to the activity.**) <sup>2</sup>

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

<sup>2</sup> *Ratcliffe v. Mandeville*, 502 SO.2d 566; see also *Odor v. Chase Manhattan Bank*, 138 N.J. super, 464, 351 AD2d 389 (recreational use statue 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).

*Terry Humphrey, Executive Director*

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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 equine riding and recreational farming and ranching activities changes the nature of this immunity. These activities are materially different than "hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and historical archeological, scenic or scientific sights. These 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.

The modifications to SB 134 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.<sup>3</sup> In essence the statutory scheme 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. SB 134's modification to existing law 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.

The amendment passed by the Senate and the Senate Commerce Committee provides narrow protection when these activities are provided as agritourism activities. We would suggest the scope be further clarified by further defining the "recreational farming activities" exclude immunity for "riding upon" agricultural equipment.(See attached balloon amendment.). For example, should immunity be given to a person who operates a front-end loader with children riding in the front-end? Should a person not be liable for injured persons who were allowed to ride on the side rails of a combine or the tow bar of a tractor?

We encourage you to adopt our proposed amendments 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. The amending language is essential to preserving the common law tradition of land owner immunity for invitees for recreational purposes, without extending that immunity to value-added services.

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

1 [As Amended by Senate Committee of the Whole]

2 As Amended by Senate Committee

3 Session of 2003

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6 **SENATE BILL No. 134**

7 By Committee on Commerce

8  
9  
10 2-4

11  
12 AN ACT concerning land and water recreational areas; relating to limited  
13 liability; agritourism and ecotourism; amending K.S.A. 58-3201 and 58-  
14 3202 and repealing the existing sections.

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

16 Section 1. K.S.A. 58-3201 is hereby amended to read as follows: 58-  
17 3201. The purpose of this act is to encourage owners of land to make land  
18 and water areas available to the public for recreational purposes *and to*  
19 *encourage the development of agritourism and ecotourism opportunities*  
20 *in this state* by limiting their liability toward persons entering ~~thereon~~ *on*  
21 *such land* for such purposes.

22 Sec. 2. K.S.A. 58-3202 is hereby amended to read as follows: 58-  
23 3202. As used in this act: (a) "Land" means land, roads, water, water-  
24 courses, private ways and buildings, structures, and machinery or equip-  
25 ment when attached to the realty and includes agricultural and  
26 nonagricultural land.

27 (b) "Owner" means the possessor of a fee interest, a tenant, lessee,  
28 occupant or person in control of the premises.

29 (c) "Recreational purpose" includes, but is not limited to, any of the  
30 following, or any combination thereof: Hunting, fishing, swimming, boat-  
31 ing, camping, picnicking, hiking, pleasure driving, nature study, water  
32 skiing, winter sports, ~~and horseback riding~~, viewing or enjoying historical,  
33 archaeological, scenic, or scientific sites ~~and recreational farming and~~  
34 ~~ranching activities equine riding~~, ~~recreational farming activities and~~  
35 ~~recreational ranching activities provided as agritourism activities.~~  
36 *Recreational farming activities shall include all activities of farming*  
37 *identified in subsection (f) when performed on a recreational basis*  
38 *except a person's operation of farm* ~~[agricultural] equipment as de-~~  
39 ~~defined by subsection (a) of K.S.A. 16-1202 and amendments thereto~~  
40 *[this section, when such person is a member of the public on the*  
41 *land for recreational purposes].*  
42

hayrack riding,

or riding upon

43 (d) "Charge" means the admission price or fee asked in return for

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1 invitation or permission to enter or go upon the land.

2 (e) "Agricultural land" means land suitable for use in farming and  
3 includes roads, water, watercourses and private ways located upon or  
4 within the boundaries of such agricultural land and buildings, structures  
5 and machinery or equipment when attached to such agricultural land.

6 (f) "Farming" means the cultivation of land for the production of  
7 agricultural crops, the raising of poultry, the production of eggs, the pro-  
8 duction of milk, the production of fruit or other horticultural crops, graz-  
9 ing or the production of livestock.

10 (g) "Nonagricultural land" means all land other than agricultural land.

11 [(h) "agricultural equipment" means equipment including, but  
12 not limited to, tractors, trailers, combines, tillage implements, bail-  
13 ers and other equipment used in planting, cultivating, irrigating or  
14 harvesting agricultural products, excluding self-propelled machines  
15 designed primarily for the transportation of persons or property on  
16 a street or highway.]

17 Sec. 3. K.S.A. 58-3201 and 58-3202 are hereby repealed.

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

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## **Kansas Farm Bureau**

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### **PUBLIC POLICY STATEMENT**

#### **HOUSE TOURISM AND PARKS COMMITTEE**

**RE: SB 134 – regarding liability protections for recreational use of private land.**

**March 10, 2003  
Topeka, Kansas**

**Presented by:  
Leslie Kaufman, State Director  
KFB Governmental Relations**

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Chair Hutchins and members of the House Tourism and Parks Committee, thank you for the opportunity to appear today and share our support for rural economic development opportunities, as well as some of our questions and concerns with SB 134. I am Leslie Kaufman and I serve Kansas Farm Bureau (KFB) as the State Director of Governmental Relations. We represent more than 41,000 farmers and ranchers through our 105 County Farm Bureaus.

We greatly appreciate the time the legislators are spending this session considering rural economic development opportunities. This is an issue our members care deeply about. The revitalization of rural communities must be a high priority for private citizens, as well as local, state and national government. ***We support initiatives that:***

- ***Enhance the economic, social and cultural climate for farms and rural families;***
- ***Improve the general potential for rural communities to attract and retain people, business and industry; and***
- ***Include all types of farming operations in economic development activities.***

We believe the intent of the SB 134 is to help promote rural economic development by trying to improve the facilitation of agritourism and ecotourism activities. We see this goal as consistent with our policy noted above.

The statutory limitations on liability for those opening private land to recreational activities are important to our member and our state. We believe fostering an environment

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where private landowners allow others to use their property provides a considerable benefit to recreationalists and the state. Voluntary, public-private partnerships and cooperative efforts provide recreational opportunities for non-landholders without the need for the state to own larger amounts of land, saving tax dollars, retaining land on the tax rolls and preserving private land ownership.

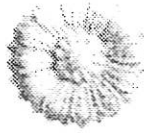
We believe it more prudent to promote voluntary recreational land use rather than expand public lands, particularly in tight budget times. Part of the state's support for voluntary programs should include appropriate and adequate protections to landowners who do allow others to use his/her land. KSA 58-3201 et. seq. is an important component in this public policy structure.

Although our policy aligns with what we see as the intent of the bill, we do have some practical questions and concerns with the manner in which SB 134 seeks to advance these goals. We approach change to this statute cautiously. We feel it has and is serving us well. We are reluctant to open it up for amendments that could alter the manner in which it is interpreted. We think the **"included but not limited to"** language currently in the statute provides coverage for various activities, even if not specifically enumerated.

Throughout the process this session we have questioned wording in this bill. Attempts have been made to try and address some of our concerns and we appreciate this very much. We still have some reservations concerning the current wording on lines <sup>37</sup>39 – 42 of page 1, and whether that language clearly identifies, when the bill is read as a whole, that the "person" referred to is not the "owner". As such, we would suggest one possible way to add clarity to this section is to strike the word "person" in line 39 and replace it with "non-owner". We do think this addition would be an improvement, but although we support efforts to increase rural economic development, we cannot whole-heartedly embrace this bill.

For the record, we would respectfully remind the committee of our strong concerns with SB 607 (2002) and amendments that were added to and proposed for the bill. We continue to hold to the belief that those changes would not benefit landowners, rural economic development or rural communities.

We appreciate the opportunity to present our questions and comments. We certainly are willing to work with this Committee to improve economic opportunities for agricultural producers, landowners and rural communities. Thank you.



## Kansas *Preservation* Alliance, Inc.

SAVING THE PAST TO ENRICH THE FUTURE

.....

### House Committee Tourism & Parks

Testimony on proposed amendment to SB 134

March 10, 2003

Room 243-N

The Kansas Preservation Alliance is a statewide, private, non-profit organization. Our mission is to promote the preservation and reuse of buildings that represent our heritage.

Two weeks ago, KPA attended the House Agriculture Committee's meeting when they deliberated on HB 2168, a proposal to eliminate Environs Review on agricultural buildings. This and 2 substitute bills were supported by the State Historic Preservation Office, which is a part of the Kansas State Historical Society. These would have abolished the Environs Review altogether. That committee made the wise decision to table the issue for 1 year. They did so to allow time for the KSHS, KPA, and preservationists from towns, cities, and rural areas across the Kansas to work out a compromise. This opportunity for dialogue among citizens most concerned with preserving and restoring historic buildings will be derailed if this amendment is adopted. There are issues other than Environs Review, which need to be addressed.

The Environs Review process has been a very useful tool in saving historic buildings. It provides the only opportunity the public may have to voice an opinion about what happens to State and National Register historic buildings and sites and other properties within the Environs boundary. It is advisory in nature.

In general, KPA would not oppose exempting property used for agricultural production from Environs Review. However, this decision should be based on opinions and experiences from every county in Kansas. It should not be based on fear or misunderstandings in only 1 of 105 counties.

.....

119 S.W. 6th Avenue • Topeka, KS 66603 • voice: 785-235-6163 • [www.kpalliance.org](http://www.kpalliance.org)

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Meeting Date 3/10/03

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