

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on February 20, 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research
Deb Hollon, Legislative Research
Mitch Rice, Revisor of Statutes
Norman Furse, Revisor of Statutes
Jodie Anspaugh, Secretary

Conferees appearing before the committee: Mike Lawless, Mahaffie Stagecoach Stop and Farm Foundation

Others attending: See attached list.

Norman Furse, Revisor of Statutes, explained the amendment to SB 65, regarding venture capital. This amendment clarifies who can be an officer or director of a fund, and replaces "schedule" with "requirements" on page 1, line 40. Senator Brungardt moved to amend the bill. Senator Jordan seconded. The motion carried. Senator Jordan moved to pass the bill out of committee favorable for passage as amended. Senator Emler seconded. The motion carried.

Chairperson Brownlee continued the hearing on SB 134, regarding agritourism. Michael Lawless from the Mahaffie Stagecoach Stop and Farm Foundation testified in opposition to SB 134. (Attachment 1) He is concerned that the bill could leave injured tourists without legal rights. He believes that the Mahaffie Foundation is immune from suits by visitors under current law. He doesn't want to see a visitor injured or killed on the Mahaffie site due to negligent acts and then see the Mahaffie insurance counsel assert immunity with respect to recreational farming or ranching activities. Mr. Lawless recommends the committee consider a State of Kansas sponsored self-insurance pool for tourism. He answered questions about his testimony, regarding liability. Senator Jordan expressed that the intent is not to put people on wild horses, or in pens with buffalo. Bill Kurtis know that people from the east coast would like to experience life in the Midwest. The intent of the bill is to help those who want to make a little extra money and allow visitors on their land. Mr. Lawless responded that those Marcie Penner referenced in her testimony are misinformed about their liability. Most of the examples in her testimony already enjoy immunity.

Leslie Kaufman, State Director of Kansas Farm Bureau, submitted written testimony. (Attachment 2)

Chairperson Brownlee closed the hearing on SB 134. She announced that Commerce Committee will start at 8:15 a.m. tomorrow. The Commerce Subcommittee on Workers Compensation will consist of Senators Brownlee, Wagle, Emler, Barone, and another which will be announced soon.

The meeting was adjourned at 9:30 a.m.

The next meeting is scheduled for 8:15 a.m. on February 21, 2003 in room 123-S.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Thursday, Feb. 20, 2003

NAME	REPRESENTING
Megan Chalfant	Burgess and Associates
Mike Huttles	Wichita Economic Development
Leslie Kaufman	Ks Farm Bureau
Derenda Mitchell	Ks. Livestock Assn.
LS leathermens	KTLA
Tom Nungesser	KTLA
Walter N. Lutz	KTLA - MATTHEW FOUNDATION
NATE KOCH	
Eden Defrixhe	KAP
RaeAnne Davis	KDOCH
John Robinson	Lt. Governor's Ofc.
Kevin Brown	Mem law firm
Don Seibert	City of Olathe
Mark Tomb	LKM
LARRY R BAER	LKM
Amber Kishner	Sen. Brungardt
Kerry Stanley	
Sal Khan Delaney	
Bill Sneed	Ks Speedway Corp
DENNY KOCH	CABELA'S
Kevin Rhodes	Cabela's
Carole Jordan	Ks Dept of Ag

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Thursday, Feb. 20, 2003

NAME	REPRESENTING
Blake Schrode	Lexca Chamber of Commerce
Barb Covert	KTRA

Testimony of Michael R. Lawless of Lawless & Stanley, Overland Park, Kansas and as a member and Chairman of the Board of Trustees of the MAHAFFIE STAGECOACH STOP & FARM FOUNDATION, Olathe, KS and of the Kansas Trial Lawyers

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

**Submitted to the Honorable Karen Brownlee, Chairperson
And the Senate Commerce Committee – Thursday February 20, 2003**

Dear Senator Brownlee and Members of the Commerce Committee:

Thank you for the opportunity to appear here today and to discuss the issues raised by the proposed amendments to K.S.A. 58-3201 and K.S.A. 58-3202. I would also like to share my opinion with respect to Marci Penner's testimony from the Kansas Sampler Foundation of February 7, 2003.

As Chairman of the Mahaffie Foundation's Board of Trustees I share the enthusiasm for promoting Agritourism and Ecotourism throughout the State of Kansas and for the economic benefit of all. Our Foundation runs the last stagecoach stop on the Santa Fe Trail that is open to the public and we fit somewhat into these two "niche" categories S.B. 134 seeks to address and into the "Western niche".

As an attorney who primarily represents plaintiff's I am concerned that the proposed amendments contained in Senate Bill 134 could leave innocent injured tourists and others without a remedy at law. I think ultimately such a result is injurious to the tourism industry in Kansas and potentially could increase the burden on Kansas taxpayers to provide services for injured victims.

With regard to the K.S.A.58-3202 I believe the Mahaffie site fits into the definition of (e) "Agricultural land" which means "land suitable for use in farming". The definition of (f) "Farming" includes land for the "production of agricultural crops", which we do on a very limited basis, and "the raising of poultry" we raise poultry (every year we get a new batch of hatchlings in the mail and raise them to adulthood) and "the production of eggs" these chickens, as they grow, allows for our sites production of eggs. "Farming" also includes "grazing or the production of livestock". We also graze and produce livestock. One of our stagecoach team, Babe, gave birth January 1, 2003 to her foal Cora. We have produced a set of mules, several head of cattle and a lamb.

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The Mahaffie site fits into the definition of "Recreational purpose" to the extent that we have daily visitors who come to picnic, hike around, study nature, and view our scenic areas and historical buildings.

I believe it is clear that under these limited circumstances and under the current statutes in question that the Mahaffie Foundation is immune from suits by visitors with respect to the condition of our premises (whether it is safe or unsafe).

Senator Brownlee recently contacted me regarding the Kansas statutory provisions that granted immunity to the owners and occupiers of agricultural land for recreational purposes K.S.A. 58-3201 through 58-3206. As an avid deer hunter in Kansas I can certainly see the fairness of these statutory provisions as I frequently obtain permission from those in possession of agricultural land to hunt upon. I think it would be unfair for me to bring suit for an injury received due to some natural or man made conditions of the land, which is what the current statute protects against. It seems to be a fair "quid pro quo" for me to give up my potential right to make a legal claim against the owner or occupier in exchange for my access to and hunting use of their premises.

The proposed amendment to K.S.A. 58-3201 seeks to add the following "*and to encourage the development of agritourism and ectotourism opportunities in this state...on such land*". The proposed amendment to K.S.A. 58-3201 © seeks to add additional enumerated activities to the non-exclusive list of "recreational purpose" to include "*horseback riding*" and "*recreational farming and ranching activities provided as agritourism activities*".

As an attorney I am concerned about what the intent of these proposed amendments are and whether they are confusing and ambiguous. The current statutory scheme contemplates immunity to owners and occupiers of agricultural land from persons injured who go upon this land with respect to the dangerous natural or man made conditions for "recreational purposes". The same protection is afforded the owners and occupiers of non-agricultural land so long as they don't charge a fee for admission.

The addition of "*horseback riding*" seems unnecessary, as the current list of "recreational purpose" is not limited to those specific activities listed. In other words, I could ride my horse across the "agricultural land" or "nonagricultural land" if I paid no fee, and if injured due to the condition of the premises the owner and occupier would be immune from liability.

Does the proposed amendment to "Recreational purposes" mean a tourist could go upon "Agricultural land" for purposes of "*viewing or enjoying recreational farming or for purposes of viewing or enjoying ranching activities*". and then forfeit the right to a legal remedy for a condition of the premises that causes injury or death or, does the amendment relate to the owner or occupiers activity of "*recreational farming or ranching activities*??

In the current definition of “recreational purposes”, there is set forth a non-exclusive list of activities to be performed by the person going upon the land and not the owner or occupier of the land, i.e. “hunting, fishing swimming, boating etc. I can’t tell if the intent of this proposed amendment is to protect the owner or occupier of “agricultural land” from tourists or others who have permission to be on the land who then engage “*in viewing or enjoying recreational farming activities provided as agritourism activities*” or engage in “*viewing or enjoying ranching activities provided as agritourism activities*”. Or, is the intent to protect the owner or occupier from injuries or death to tourists or others who have permission to be on the land while the owner or occupier engages in “*recreational farming or ranching activities*” ?

I think that it would be important to define the terms agritourism, ecotourism, recreational farming activities provided as agritourism activities and ranching activities provided as agritourism to give guidance to the intent of the amendments. Otherwise a court may have to guess at the Legislatures intent in using these terms.

At Mahaffie we carry general liability insurance to protect any of our visitors from injury or death with respect to activities we engage in. Unfortunately our insurance premium has gone up over 20% each of the last two years. We shopped it through several brokers only to get identical quotes.

I would hate to have a visitor injured or killed on the Mahaffie site due to our negligent acts and have our own insurance defense counsel assert immunity with respect to our “recreational farming or ranching activities”.

I have had a chance to review the testimony of Marci Penner, Director of the Kansas Sampler Foundation. Mahaffie has participated in several Kansas Sampler exhibitions and it is a fine organization. Here is my opinion with regard to the situations she describes.

Regarding CLOVER CLIFF RANCH. With respect to his B & B on his rural acreage he has protection under the current statute to those people who stay there as they surely must view and enjoy the scenic Chase county sites. I agree that rural fire/property damage insurance premiums are too high. Expanding personal injury/death immunity won’t change that.

Regarding CASSODAY COUNTRY INN & RANCH. Assuming Carl has agricultural property he is covered under the current act with respect to the conditions of his land and structures for any injury or death to those who “live the life of a Flint Hills cowboy with him”. With regard to cowboy activities he should consult with his attorney over a possible waiver of liability contract. I would be willing to waive liability to live the life of a Flint Hills Cowboy.

Regarding SANTA FE TRAIL CLUB. This is a shame that they have this fear. Under the current Act they clearly are immune to those visitors who view the trail ruts as these visitors are viewing or enjoying a historical site.

Regarding ELK FALLS. When this in town (non-agricultural property) operation went for profit by "charg"(ing) "an admission price" per K.S.A.58-3202, they subjected the operation to liability as provided for in K.S.A.58-3206 (b) for their *negligence*, which negligence would now apply to the condition of the property, if any.

Regarding OXFORD MILL RESTAURANT. I am assuming this is non-agricultural land in Oxford. If they didn't charge the public and admission to the 3-day arts and craft festival they had no liability with regard to the use of the property on the river as this is a non-specific "recreational" activity. Likewise, so long as they do not charge for the nature walk along the river and viewing of the generator room they are under the protection of the current law "viewing and enjoying scenic sites and historical sites".

Regarding CASTLE ROCK. They sound like good people. They are allowing the public access to this beautiful and historically significant site notwithstanding their unfounded fear. Clearly the current statute has afforded them protection since it's passage in 1965. They should have asked their lawyer about this.

Regarding KANSAS COWBOY CAMP-OUTS, Red Hills. Sign me up for this one. There is no problem with regard to liability to the agricultural property "landowners willing to allow usage of their land" as this is exactly what the current statute protects. These landowners were mistaken as to their "one fear, liability".

Regarding PRETTY PRAIRIE RODEO. I can't tell if this is an agricultural or non-agricultural property. It sounds more like an insurance issue regarding the elimination of the calf scrabble and mutton busting and the issue of having the board liability policy with the general liability policy. It sounds like they need insurance for these types of activities.

Regarding VONADA'S STONE QUARRY. It sounds like the quarry is on agricultural property. Therefore there should be no issue with respect to the condition of the premises for purposes of conducting tours of the stone quarry and cutting business. Duane has the desire to share the quarry view of the limestone layers, and teach the visitors about the stone cutting craft and about the Smokey Hill region, and its history. All fall within the current "recreational" definition to include "viewing or enjoying historical, archaeological, scenic or scientific sites. There should be no issue with respect to liability for the condition of the property for tours. He should speak to his attorney about the "insurance company no longer considering the property a farm.

Regarding KANSAS SAMPLER CENTER on the Penner Farm. I don't know how big the farm is but Dad should be aware that this farm as a great legacy that his great grandfather "homesteaded" is subject to the liberal provisions found in the Kansas Constitution and in K. S.A. 60-2301. Homestead; extent of exemption. "A homestead to the extent of 160 acres of farming land,...occupied as a residence by the owner or by he family of the owner, or by both..., together with all the improvements on the same, shall be exempted from forced sale under any process of law..." He has to pay his mortgage, if any, but no judgment creditor can levy on this property. No judgment liens attach to the homestead. A 160-acre homestead can be carved out of a larger property when necessary. The Penner's should consult with their attorney to get some relief from their "worry". I'm going to try to get up to their festival this year, it sounds like a lot of fun on a beautiful agricultural property.

Regarding BLACKSMITH SHOP, Durham. It sounds like non-agricultural property. If he doesn't charge admission he has no liability problem under the current statute with regard to the condition of the premises. At MAHAFFIE we have a beautiful fully operational BLACKSMITH SHOP, which is manned by our staff, and volunteer blacksmiths. We have thousands of visitors each year watch the hot heavy work that occurs there during its frequent operation. During our special "Events" we have thousands of visitors each day that spend much time enjoying this activity. We sell blacksmith made items in our gift shop. Although the sparks fly and the heat is hot we have never had a staff member, volunteer or any visitor injured with respect to the condition of the property or any activity that the blacksmiths engage in.

Regarding TAD PIERSON. No offense intended but his tour with people riding in the back of a wheat truck on Kansas back roads seems like a "unique venture" that no one would do. I don't think I would trust Tad to drive my wife and I and our four children around. I can drive back roads myself and my wife is even better. Maybe Tad was better off leaving the state.

Regarding DAVE BROWN'S WELDING SHOP. One of the former MAHAFFIE board member has a welding shop west of Olathe. It is not open to the public as it is a potentially dangerous activity. However, when welding is not in progress people may enter without charge to this non-agricultural property and view the "art" that has been created and there is no liability with regard to the premises under the current law.

Regarding STAFFORD COUNTY FLOUR MILL. If this is non-agricultural property and if Al is not charging the public to share something he loves (as it sounds in the description) then he has no reason for the "fear of being sued" under the current statute for "viewing or enjoying historical or scientific sites" as this appears to be.

Regarding FALL RILVER CANOE. I think the radiator shop owner might have a problem if he rents a canoe to an underage or intoxicated person to “run the river”. It would seem like a good idea for him to at least consult with his insurance agent since they haven’t and “were always worried about what could happen”.

Regarding THE BREAKS, Cheyenne County. If they look like the ones in Rawlins County, just to the east, they should be fabulous. I don’t know about letting the general public “drive around” the rims just from an ecological standpoint of the landowner when you can walk, although clearly such activity is currently exempt from liability under the current law, which specifies “pleasure driving” and “viewing and enjoying scenic sites”. Again, I assume this to be agricultural land.

Regarding LCL BUFFALO RANCH, Clifton. Maybe this is non-agricultural property since he believes that “as long as he doesn’t charge people to see his buffalo his general (liability) policy for one million dollars is sufficient”. I don’t believe the current statute applies to animals placed upon land that may pose a danger to life and limb. It is my understanding that humans need to be careful around buffalo. We don’t know from this example how the visitors “see” the buffalo.

HISTORICAL COMPLEX, western Kansas. Sounds like they have the same problem as the MAHAFFIE STAGECOACH STOP in Olathe. This museum director complains of unreasonably high premiums for events that involve movement of animals and transportation. We have at two of our three main Events 20 to 30 horse-mounted Calvary or cowboys, our stagecoach and other horse or oxen driven vehicles. We have never had an injury to any guest and nothing serious to the Ft. Riley Calvary, the Confederate Irregular Calvary or to the James Gang, Wild Bill Hickock, Buffalo Bill Cody (except when his own horse kicked him in the head in a stall in our barn), Annie Oakley or Frank Butler or any other cowboy, thank goodness.

In considering the issues stated by Ms. Penner and the issues trying to be addressed by the proposed amendments to S.B. 134 I would recommend rather than changing the statute, consideration of a State of Kansas sponsored self-insurance pool for all of these categories of niche tourism. I think we all would feel better if we promoted these wonderful events and opportunities in Kansas with the knowledge that if someone is hurt through the negligence of the owners or occupiers of the land that a remedy and right of recovery be available to our valued citizens, tourists and other invited guests.

Thank you for allowing me to present my thoughts to the Committee.

Very truly yours,



Michael R. Lawless



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PUBLIC POLICY STATEMENT

SENATE COMMERCE COMMITTEE

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

February 20, 2003
Topeka, Kansas

Presented by:
Leslie Kaufman, State Director
KFB Governmental Relations

Chair Brownlee and members of the Senate Commerce 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 this committee has spent 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

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environment 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 roles 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 enumerated.

We question the inclusion of "horseback riding", as we understand horse activities are covered in other statutes.

We do not know what "recreational farming and ranching activities" are. Additionally, it appears from Section 2 (b) that they are included within the definition of "recreational purpose" only if they are connected with "agritourism activities". Why tie "recreational farming and ranching only to "agritourism." What if the activity is an "ecotourism" opportunity or something else?

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