

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Karin Brownlee at 8:45 a.m. on February 24, 2003 in Room 123-S of the Capitol.

All members were present except: Senator Barone, excused
 Senator Brungardt, absent
 Senator Emler, excused
 Senator Steineger, excused
 Senator Wagle, absent

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: Judy Moeller, Public Safety Alliance

Others attending: See attached list.

April Holman from Legislative Research distributed a new side-by-side comparison of SB 153, SB 180, and the compromise between the wireless industry and local governments that was reached on February 21, 2003. (Attachment 1)

Judy Moeller from the Public Safety Alliance distributed a handout on the compromise. (Attachment 2) She explained that the local governments would charge 50 cents, with 25 cents going to the PSAPs and 25 cents going to the revolving grant fund. The advisory committee would also include one person from the deaf community and one legislator. A post audit will be done in 2006 to evaluate the charge. Ms. Moeller answered questions and confirmed that she estimated \$6 million per year will be given to the local governments, but because they do not know how many cell phones are in Kansas, they cannot give an exact amount. Danielle Noe from Johnson County stated that the county has approximately 200,000 wireless users, which would generate \$600,000 per year.

Chairperson Brownlee closed the hearings on SB 153 and SB 180.

Chairperson Brownlee continued discussion on SB 134, regarding agritourism. Senator Jordan briefed the committee on the compromise reached with the various interested groups. He distributed his balloon to the bill and affirmed that this bill is important to the tourism industry in Kansas. (Attachment 3) Revisor Mitch Rice distributed current Kansas statutes pertaining to Land and Water Recreational Areas. (Attachment 4)

Chairperson Brownlee announced that because they do not have the quorum needed to vote, this bill will be voted on tomorrow.

The meeting was adjourned at 9:25 a.m.

The next meeting is scheduled for February 25, 2003 at 8:30 a.m. in Room 123-S.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Monday, Feb. 24, 2003

NAME	REPRESENTING
Judy Mohr	KAC
John Pinegar	Kansas Legislative Policy Group
Megan J. Chalfant	Burgess and Associates
Erik Sartorius	City of Overland Park
JANET BUCHANAN	KCC
TOM DAY	KCC
Eileen Detelke	KHP
Mary White	KTLA
Whitney Jamron	City of Topeka
Tom Bruno	IAK
Stephanie Buchanan	DOB

Comparison of SB 153 and SB 180

Senate Bill 153

- Would establish a public safety fee of \$0.25 per month on each wireless service user. *New Section 3(a), page 2*
- Would remove the prohibition on charging the current 911 tax for wireless, thereby allowing local governments to impose a tax of up to \$0.75 per month per exchange access line or its equivalent. *Section 11(a), page 5.*
- Would create the Public Safety Loan Fund within the State Treasury. *New Section 2, page 1.*

Senate Bill 180

- Would establish a surcharge of \$0.50 per month per subscriber telephone number. *New Section 2, page 3.*
- Does not address the current 911 tax.
- Would create the Enhanced Wireless 911 Fund. Doesn't specify that the fund is to be in the State Treasury, but does direct carriers to remit funds to the State Treasurer to be

Feb.21,2003 Compromise

- Would collect a total of \$0.75 per wireless service user per month to be divided as follows:
\$0.25 to local gov't
\$0.25 to grant fund
\$0.25 to carriers
- ?
- Would create a Public Safety Grant Fund within the State Treasury.

placed in the fund.
New Section 5, page 4; New Section 3(b), page 3.

- Would allow wireless carriers to retain 2 percent of the fees they collect. *New Section 3c, page 2.*
- Deposits to the fund would include federal moneys, state appropriations, public safety fees, repayment of loans, interest and other contributions. *New Section 2, page 1.*
- Fund would be administered by the Kansas Corporation Commission (KCC). *New Section 4, page 2.*
- Administrative support would be provided through the KCC. *New Section 4, page 2.*
- Permissible uses of fund moneys would include making loans to cities for project costs,
- Would allow wireless carriers to retain 50 percent of the surcharge they collect. *New Section 3c, page 3.*
- Deposits to fund would include wireless E-911 surcharges, state appropriations, federal funds, and other contributions. *New Section 5, page 4.*
- Fund would be administered by an administrator appointed by the governor. *Section 1(a), page 1.*
- Administrative support would be provided through the Kansas Highway Patrol (KHP). *New Section 6(b)(3), page 5.*
- Permissible uses of fund moneys would include necessary and reasonable PSAP costs to
- Carriers would receive \$0.25 per wireless service user per month.
- SB 153 language.
- Fund would be administered by the Department of Administration.
- Administrative support would be provided through the Department of Administration.
- SB 180 language.

earning interest, and
p a y i n g
administrative costs.
*New Section 2c, p.
2.*

implement wireless
E-911 service and
the purchase,
installation,
maintenance and
operation of
telecommunications
equipment and
services required for
provision of E-911.
*New Section 6(b), p.
5.* Administrative
costs would also be
permitted. *New
Section 5, p. 4.*

- Would create the Public Safety Loan Fund Advisory Committee, which would have nine members. *New Section 5, page 3.*

- Would create Enhanced Wireless 911 Advisory Board, which would have six members. *New Section 4, page 3.*

- Would create the Public Safety Grant Fund Advisory Committee, which would have nine members. (SB 153 language, except there would only be one legislator and one member would h a v e a communication disability.

- The KCC would be required to prepare an annual progress report on enhanced wireless 911. *New Section 9, page 5.*

- Board would be required to report progress to the Legislature during the 2005 and 2007 sessions. *New Section 4(b).*

- A legislative post audit would be required in 2006.

- Does not address whether wireless carrier information would be considered proprietary.

- Wireless carrier information provided to administrator or Advisory Board would be treated as proprietary upon

- SB 180 language.

request. *New Section 8, p. 6.*

- Does not contain a tort liability limitation.
- Would contain a tort liability limitation for the administrator, governmental bodies, PSAPs and wireless carriers. *New Section 9, p.6*
- The entire act will sunset on June 30, 2013. *New Section 10, page 5.*
- The provisions relating to the Board and the creation of the fund would sunset on July 1, 2007. *New Section 4(b), page 4.*
- SB 180 language.
- SB 153 language.



- American Heart Association
- City Attorneys Association of Kansas
- City Clerks/Municipal Finance Officers Association
- Johnson County Sheriff's Office
- Johnson County Fire Chiefs Association
- Kansas 9-1-1 Providers Association
- Kansas Association of Counties
- Kansas Association of Chiefs of Police
- Kansas Association Council/Commissioners
- Kansas Association for Court Management
- Kansas Chapter, National Emergency Number Association
- Kansas County Sheriff's Association
- Kansas Emergency Medical Services Association
- Kansas Fire Service Alliance
- Kansas Government Finance Officers Association
- Kansas Human Resource Management Association
- Kansas Human Relations Association
- Kansas Legislative Policy Group
- Kansas Mayors Association
- Kansas Municipal Insurance Trust
- Kansas Recreation & Park Association
- Kansas State Association of Fire Chiefs
- League of Kansas Municipalities
- Mid-America Regional Council

Enhanced Wireless 911

On Friday, February 21, 2003, the interested parties met with Senator Brownlee and Senator Jordan concerning a compromise to the E-911 legislation. The following outlines the parameters of the tentative agreement.

4. New Sec. 12. On and after July 1, 2003, pursuant to FCC ruling _____, each wireless carrier who has a subscriber with primary place of use as defined in the mobile telecommunications sourcing act in the state of Kansas may collect from each subscriber a surcharge, not to exceed \$.25 per month per subscriber telephone number in the state. The surcharge hereunder shall ensure, over a reasonable period of time, the full recovery by wireless carriers of costs associated with developing and maintaining an emergency telecommunications service on a technologically and competitively neutral basis. The wireless carrier shall add and may state separately the surcharge on each subscribers bill.

Would require local governments to charge \$.50 on wireless phones. A quarter would go to PSAPs and the other quarter would go to a state-wide *grant* fund to be used by PSAPs that are having difficulty accumulating money to build the infrastructure.

Other changes would be that the advisory board contained in SB 153 would be the same except only one legislator and a member from the hearing impaired community. A Legislative post audit would be conducted in 2006. The fund would be administered by the Department of Administration. Taking language from SB 180, permissible uses of fund money would include necessary and reasonable PSAP costs to implement wireless E-911 service and the purchase, installation, maintenance, and operation of telecommunications equipment and services required for the provision of E-911.

These are the major changes, and because of the lateness of the discussion, not everyone has had a chance to talk to their members of their associations. However, this is the direction that we are heading in forging a compromise this session.

Senate Commerce Committee

2-24-03
Attachment 2

SENATE BILL No. 134

By Committee on Commerce

2-4

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

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

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

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

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

(c) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and ~~horserack riding~~, viewing or enjoying historical, archaeological, scenic, or scientific sites ~~and recreational farming and ranching activities provided as agritourism activities.~~

equine riding, recreational farming activities, recreational ranching activities, and

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

Recreational farming activities shall include all activities of farming identified in subsection (f) when performed on a recreational basis except a person's operation of agricultural equipment as defined by K.S.A. 16-1202 (a).

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

(f) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock.

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

Article 11.—CONTINUING CARE AGREEMENTS

Revisor's Note:

Later act, see 40-2231 et seq.

16-1101 to 16-1105.

History: L. 1986, ch. 88, §§ 1 to 5; Repealed, L. 1989, ch. 73, § 9; July 1.

Article 12.—FARM EQUIPMENT DEALERSHIP AGREEMENTS

16-1201. Purpose. The purpose of this act is to prevent arbitrary or abusive conduct and to preserve and enhance the reasonable expectations for success in the business of distributing farm equipment.

History: L. 1986, ch. 2, § 1; July 1.

Research and Practice Aids:

Trade Regulation — 871.2.

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

Attorney General's Opinions:

Intoxicating liquors and beverages; brand name ownership change; effect on franchise agreement. 88-41.

16-1202. Definitions. As used in this act:

(a) "Farm equipment" means equipment including, but not limited to, tractors, trailers, combines, tillage implements, bailers and other equipment, including attachments and repair parts therefor, used in planting, cultivating, irrigation, harvesting and marketing of agricultural products, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

(b) "Farm equipment manufacturer" means any person, partnership, corporation, association or other form of business enterprise engaged in the manufacturing, assembly or wholesale distribution of farm equipment.

(c) "Farm equipment dealer" or "farm equipment dealership" means any person, partnership, corporation, association or other form of business enterprise engaged in the retail sale of farm equipment.

(d) "Dealership agreement" means an oral or written agreement of definite or indefinite duration between a farm equipment manufacturer and a farm equipment dealer which provides for the rights and obligations of the parties with respect to the purchase or sale of farm equipment.

History: L. 1986, ch. 2, § 2; July 1.

16-1203. Change of farm equipment dealership agreements; restrictions. No farm equipment manufacturer, directly or through any officer, agent or employee may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. For the purposes of this subsection, good cause means and includes the failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, provided such requirements are not different from those requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

(a) The farm equipment dealer has transferred an interest in the farm equipment dealership without the manufacturer's consent, or there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or there has been a substantial reduction in interest of a partner or major stockholder without the consent of the manufacturer;

(b) the farm equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the farm equipment business, or there has been a commencement of dissolution or liquidation of the dealer;

(c) there has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement;

(d) the farm equipment dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the farm equipment manufacturer, or there has been a revocation or discontinuance of any guarantee of the dealer's present or future obligations to the farm equipment manufacturer;

(e) the farm equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned its business;

(f) the farm equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer;

**Article 32.—LAND AND WATER
RECREATIONAL AREAS**

58-3203

Chapter 58.—PERSONAL AND REAL PROPERTY
PART 6.—MISCELLANEOUS PROVISIONS
Article 32.—LAND AND WATER RECREATIONAL AREAS

58-3203. Limited liability of property owners; owner's duty of care. Except as specifically recognized by or provided in K.S.A. 58-3206 and amendments thereto, an owner of land who makes all or any part of the land available to the public for recreational purposes owes no duty of care to keep the premises, or that part of the premises so made available, safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes. An owner of land who does take actions to keep the premises safe or to warn persons of a dangerous condition, use, structure or activity on the premises shall not be deprived of the protection which this law would provide had the owner not taken such actions or given such warning.

History: L. 1965, ch. 559, § 3; L. 1995, ch. 167, § 1; Apr. 27.

58-3204

Chapter 58.—PERSONAL AND REAL PROPERTY
PART 6.—MISCELLANEOUS PROVISIONS
Article 32.—LAND AND WATER RECREATIONAL AREAS

58-3204. Same; owner's responsibility. Except as specifically recognized by or provided in K.S.A. 58-3206, and amendments thereto, an owner of land who either directly or indirectly invites or permits any person to use such property, or any part of such property, for recreational purposes or an owner of nonagricultural land who either directly or indirectly invites or permits without charge any person to use such property, or any part of such property, for recreational purposes does not thereby:

- (a) Extend any assurance that the premises are safe for any purpose.
- (b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
- (c) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

History: L. 1965, ch. 559, § 4; L. 1988, ch. 198, § 2; L. 1995, ch. 167, § 2; Apr. 27.

58-3205

Chapter 58.—PERSONAL AND REAL PROPERTY
PART 6.—MISCELLANEOUS PROVISIONS
Article 32.—LAND AND WATER RECREATIONAL AREAS

58-3205. Same; application to lands leased to state or subdivision. Unless otherwise agreed in writing, the provisions of K.S.A. 58-3203 and 58-3204 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

History: L. 1965, ch. 559, § 5; July 1.

58-3206

Chapter 58.—PERSONAL AND REAL PROPERTY
PART 6.—MISCELLANEOUS PROVISIONS
Article 32.—LAND AND WATER RECREATIONAL AREAS

58-3206. Same; nonapplication of act to certain liabilities. Nothing in this act limits in any way any liability which otherwise exists: (a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

(b) For injury suffered in any case where the owner of nonagricultural land charges the person or persons who enter or go on the nonagricultural land for the recreational use thereof, except that in the case of nonagricultural land leased to the state or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

History: L. 1965, ch. 559, § 6; L. 1988, ch. 198, § 3; July 1.

58-3207

Chapter 58.—PERSONAL AND REAL PROPERTY
PART 6.—MISCELLANEOUS PROVISIONS
Article 32.—LAND AND WATER RECREATIONAL AREAS

58-3207. Same; construction of act as to certain liabilities and obligations. Nothing in this act shall be construed to: (a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which such person may have in the absence of this act to exercise care in his or her use of such land and in his or her activities thereon, or from the legal consequences of failure to employ such care.

History: L. 1965, ch. 559, § 7; July 1.

Senate Commerce Committee

2-24-03

Attachment 4