

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on February 11, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Dean Newton- excused
Representative Dan Williams- excused

Committee staff present:

Jill Wolters, Revisor of Statutes
Diana Lee, Revisor of Statues
Jerry Ann Donaldson, Kansas Legislative Research Department
Cindy O'Neal, Secretary

Conferees appearing before the committee:

Allie Devine, Kansas Livestock Association
Terry Holdren, Kansas Farm Bureau
Peter Obetz, Kansas Trial Lawyers Association
Dr. Evan Sumner, Kansas Department of Agriculture

The hearing on **HB 2594 - duty of care of a producer of livestock or of meat products**, was opened.

As the sponsor of the bill, Allie Devine, Kansas Livestock Association, stated that the language in the proposed bill was requested wrongly and therefore drafted wrong. She provided the committee with new proposed language for the bill. (Attachment 1)

Livestock is inspected before they are processed and again afterwards. For the past ten years the livestock industry has considered implementation of a system to provide for early detection and eradication to contain animal disease outbreaks. Livestock producers want to be aware of what level of liability exposure they will face. The proposed bill would clarify what "duty of care" a producer must follow. There is some confusion due to the fact that livestock producers are "producing" live animals which are not "fixed products" but after they are processed they are a "product".

The proposed bill would limit the producers duty to "ordinary care" or "that of customary and ordinary due diligence in the production of livestock." Also, once the livestock and meat have been inspected and passed such inspection, the producer would have met the standard of ordinary care.

Terry Holdren, Kansas Farm Bureau, supported the re-drafted version of the bill and it's defining the duty of care required of a producer of livestock. (Attachment 2)

Dr. Evan Sumner, Kansas Department of Agriculture, stated that there is not a 100% assurance that all meat products which are inspected are free of disorders and defects. (Attachment 3)

Written testimony in support of the bill was provided by the Kansas Dairy Association. (Attachment 4)

Peter Obetz, Kansas Trial Lawyers Association, appeared as an opponent to the original version of the proposed bill but was willing to work with the Kansas Livestock Association to find compromise language.

The hearing on **HB 2594** was closed.

HB 2581 - reporting adult abuse to SRS

The sub-committee recommended that language on page 3, section (o) be stricken and page 4, section (5) be stricken; amend page 5, line 7 so SRS will send the notice to the account holder at the same time they request the records. Representative Jack made the motion to have the committee adopt the sub-committee recommendations. Representative Goering seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 11, 2004 in Room 313-S of the Capitol.

Representative Jack made the motion to report **HB 2581** favorably for passage, as amended. Representative Goering seconded the motion. The motion carried.

SB 297 - permanent docket fee to fund the judicial council

Representative Long made the motion to report **SB 297** favorably for passage. Representative Loyd seconded the motion.

The committee discussed that they were not sure that creating a judicial council fee fund would be a good idea since the Legislature has been raiding fee funds to help balance the budget.

Representative Pauls made the substitute motion to strike the language on page 2, and page 7, lines 18-25 regarding the judicial branch fund. Representative Klein seconded the motion. The motion carried.

Representative Long-Mast made the motion to report **SB 297** favorably for passage, as amended. Representative Jack seconded the motion. The motion carried.

HB 2616 - compensation for attorneys representing indigent defendant, \$80 per hour

Representative Loyd made the motion to report **HB 2616** favorably for passage. Representative Swenson seconded the motion. The motion carried.

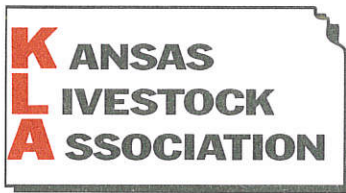
HB 2678 - increasing claim limit in small claims court from \$1,800 to \$4,000

Representative Goering made the motion to report **HB 2678** favorably for passage. Representative Long-Mast seconded the motion.

Representative Long-Mast made the substitute motion to strike subsection 2 (b), on page 2, line 3. Representative Goering seconded the motion. The motion carried.

No interest was showing in increasing the number of times one can access the small claims court.

Representative Long-Mast made the motion to report **HB 2678** favorably for passage, as amended. Representative Swenson seconded the motion. The motion carried.



Since 1894

TESTIMONY

To: The House Judiciary Committee
Rep. Mike O'Neal, Chairperson

From: Allie Devine, Vice President and General Counsel

Date: February 11, 2004

Subject: HB 2594 and suggested amendments:

Good afternoon, Mr. Chairman and Members of the Committee;

My name is Allie Devine. I am here today representing the Kansas Livestock Association. As you know KLA is a not for profit trade association representing over 6,000 members who are livestock producers.

Background of the Industry:

According to Kansas Agricultural Statistics in 2002, Kansas ranked second in the nation for live animals and meat exports valued at over \$7 billion. Red meat production by commercial slaughter plants ranked third in the nation with over 5.8 billion pounds processed. Kansas ranked second in the United States for the number of cattle and calves on farms with 6,350,000 million head.

John Leatherman, Department of Economics, Kansas State University recently studied and estimated the direct and total economic impacts of livestock production and meat processing in Kansas. The economic impacts of the livestock and meat processing industry are most visible in an analysis of the 31 counties of western Kansas. This area of the state, in 2000, accounted for about 10 percent of the total state sales and exports and about 6 percent of state employment and income. Livestock and meat processing combined accounted for 50 percent of the total sales in the region; 15 percent of employment and income, and 72 percent of the regional exports ("Exports" as used in this context means any shipment outside the region.)

Food Safety:

All meat offered for sale is inspected. It is illegal to offer meat products for sale that have not been inspected and passed. Either a state or federal inspector conducts inspections. Inspections include visual inspection of the animal before and after slaughter and visual and microbial testing of the resulting meat products. The current inspection framework

requires meat-processing facilities to take preventive and corrective measures at each stage of the food production process where food safety hazards may occur. Plants are required to have in place a Hazard Analysis and Critical Control Point (HACCP) System to manage food safety risks. State and federal inspectors verify the plan and conduct microbial and residue testing on meat products to assure wholesomeness. The frequency of testing is dependent upon the volume of product processed and the compliance rate of the facility. If the plant does not meet food safety requirements, state and federal inspectors are authorized to take necessary regulatory actions including recall product. (For more information go to <http://www.fsis.usda.gov>)

National Animal Identification;

For over 10 years, the livestock industry in the United States has considered implementation of a national animal identification system to provide an early detection and eradication system to contain animal disease outbreaks. For the past two years, representatives from over 70 organizations have been meeting to develop a national animal identification plan. The finding of one animal in Canada in May 2003 and the finding of one animal in the United States in December 2003 infected with bovine spongiform encephalopathy (BSE), escalated the need for a rapid trace back system for controlling animal diseases. KLA members strongly support the implementation of an animal identification plan as a means of protecting animal health, and consumer confidence in the food supply. The goal of the national working group is to start the animal identification process for cattle this summer. (The plan may be viewed at www.usaip.info) HB 2593 authorizes the Kansas Animal Health Commissioner to work with the United States Department of Agriculture to develop a plan in Kansas

Need for Clarity:

The implementation of a national and state animal identification system poses legal questions for livestock producers. Livestock producers want to fully understand what level of liability exposure they face. HB 2594, as redrafted, is an effort to clarify what duty of care a producer must follow.

In simplest legal terms, liability attaches where one party owes a duty to another party, and that duty is not met. In other words, if a product is placed into the market place, the party selling the product has standards to assure that the product is fit for the purpose it was intended. In the area of food, that means the product is wholesome.

Most case law involving food products revolves around a product that contains some foreign material. These cases are illustrative of what the parties must prove. For example, an injured consumer of a product containing a foreign object must show: the food consumed contained the foreign object; the food contained the foreign object at the time it left the defendant's control; the foreign object caused the injury; and, there was a clear connection between the defendant and the food.

There are also various theories of what liability and what level of proof must be presented. Suits may be brought under a variety of theories of negligence such as *negligence per se* for violations of state statutes prohibiting the selling of adulterated food, breach of warranty, or the doctrine of strict liability.

It is unclear to us from our legal research exactly what duty of care a producer of livestock owes to consumers of meat products. Livestock producers are producing a live animal. Case law from other jurisdictions indicates that, because a live animal is not a "fixed product" in that it may still change, it is not a product. However, that animal, when processed, becomes a product. In livestock transactions, the producers "control" over the animal and subsequent products ends at delivery of the product to the meat processing facility. A livestock producer has no further input into the development of products.

Since the producer's role is limited to supplying the animal, we are advocating that the producer's duty of care to the consumer through the preparation of livestock and subsequent meat products be that of "ordinary care" or that of customary and ordinary due diligence in the production of that animal. We are further advocating that if the livestock and subsequent meat products have been inspected and passed under state or federal laws, that such approval provides a rebuttable presumption that the producer has met the standard of ordinary care. We are not seeking immunity. We do not support protection for bad actors or those who fail to follow the laws and jeopardize the credibility of the industry. We believe our position is reasonable and responsible.

We had difficulty in capturing that role into statutory language. The current language of HB 2594 is confusing and has led some to believe that the term "absolute defense" provided total immunity from litigation. This is not our position and we have redrafted the bill. (See attached language.) We are prepared to work with interested parties to develop appropriate language.

Kansas is a nationally, and internationally recognized livestock and meat producing state. Livestock is critical to our economy. We believe this language will clarify to producers and the public the duty of care owed by livestock producers. As a leading livestock producing state it only makes sense that this issue be addressed and clarified as the industry move forward with a national animal identification system. We ask your support for the bill. Thank you for your interest in this legislation.

HOUSE BILL NO. _____

By

AN ACT concerning agriculture; relating to duty of care of livestock producers.

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

Section 1. (a) As used in this act, for livestock prepared in Kansas in accordance with K.S.A. 65-6a18 *et seq.*, and amendments thereto: (1) "Producer" means a person who is engaged in the production of livestock;

(2) "livestock" means the same as provided in K.S.A. 65-6a18 *et seq.*, and amendments thereto;

(3) "meat food product" means the same as provided in K.S.A. 65-6a18 *et seq.*, and amendments thereto;

(4) "person" means any individual, partnership, firm, corporation, association, feed yard or other business unit; and

(5) "prepared" means the same as provided in K.S.A. 65-6a18 *et seq.*, and amendments thereto.

(b) In a product liability action against a producer of livestock, the parties shall observe the following requirement: It shall be a rebuttable presumption that the producer of livestock met the standard of ordinary care for injuries, illness or any type of damages or economic loss suffered from the consumption of a meat food product when the livestock has been inspected and passed in accordance with the provisions of K.S.A. 65-6a18 *et seq.*, and amendments thereto.

(c) In no event shall a producer be held to a standard higher than that of ordinary care for injuries, illness or any type of damages or economic loss suffered from the consumption of a meat

food product when the livestock has been inspected and passed in accordance with the provisions of K.S.A. 65-6a18 *et seq.*, and amendments thereto.

Sec. 2. (a) As used in this act, for livestock prepared in Kansas in accordance with the Federal meat inspection act, 21 U.S.C.A. 601 *et seq.*: (1) "Producer" means a person who is engaged in the production of livestock;

(2) "livestock" means cattle, sheep, swine, goats, horses, mules or other equines;

(3) "meat food product" means the same as provided in 21 U.S.C.A. 601(j) *et seq.*;

(4) "person" means any individual, partnership, firm, corporation, association, feed yard or other business unit; and

(5) "prepared" means the same as provided in 21 U.S.C.A. 601 (1) *et seq.*

(b) In a product liability action against a producer of livestock, the parties shall observe the following requirement: It shall be a rebuttable presumption that the producer of livestock met the standard of ordinary care for injuries, illness or any type of damages or economic loss suffered from the consumption of a meat food product when the livestock has been inspected and passed in accordance with the provisions of 21 U.S.C.A. 601 *et seq.*

(c) In no event shall a producer be held to a standard higher than that of ordinary care for injuries, illness or any type of damages or economic loss suffered from the consumption of a meat food product when the livestock has been inspected and passed in accordance with the provisions of 21 U.S.C.A. 601 *et seq.*

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.



Kansas Farm Bureau

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PUBLIC POLICY STATEMENT

HOUSE JUDICIARY COMMITTEE

**Re: HB 2594 — Establishing the duty of care
of a producer of livestock**

**February 11, 2004
Topeka, Kansas**

**Presented by:
Terry D. Holdren
Associate State Director
KFB Governmental Relations**

Chairman O'Neal and members of the House Judiciary Committee, thank you for the opportunity to appear today. I am Terry Holdren and I serve as Associate State Director – Governmental Relations for Kansas Farm Bureau (KFB). As you know KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

KFB appears before you today seeking your support and favorable action on HB 2594 as redrafted. This bill is an important component of Kansas' effort to ensure that beef produced in our state is and will remain the safest in the world. To guarantee that safety, Kansas officials and the USDA have, for several years, been inspecting beef at the time it is processed and designating acceptable product as wholesome, sound, unadulterated, or fit for human consumption.

As you are aware, the recent identification of a single dairy cow suffering from BSE in the state of Washington has caused concern among producers and consumers in Kansas and around the world. Leaders in the state are in the process of discussing and developing a system of identification that will allow Kansas beef to be traced and identified to make certain the soundness and wholesome of our food supply.

As a result, discussions on both the state and national level regarding the development of a system of animal identification have increased. Our members are supportive of the development of that system through policy developed and adopted by the American Farm Bureau Federation. That policy states:

We support the establishment and implementation of a national animal identification system capable of providing support for animal disease control and eradication, as well as enhancing food safety. A cost effective national system of livestock identification, with adequate cost share among government, industry and producers, should be established and regulated by an advisory board of producers, processors and USDA. **Any such program must protect producers from liability for act of others after livestock leaves the producer's hands, including nuisance suits naming everyone who handled particular livestock.** The program should ensure the security of producer information and respect the privacy of producers by only collecting data necessary to establish a traceback system.

This legislation will define the duty of care required of a producer of livestock as ordinary care. Specifically, the bill would provide a rebuttable presumption in litigation involving products—once they have left the hands of the livestock producer—that have been inspected by state and federal inspectors and deemed wholesome, sound, unadulterated and fit for human consumption. The intent behind this bill is to provide livestock producers with a rebuttable presumption—not immunity—that the product is good and wholesome if it passed the inspection. More importantly, the presumption will serve as evidence that the producer, whose animal has passed inspection, has met the duty of care owed to the public—ordinary care.

Ladies and gentlemen, we are grateful for the opportunity to appear before you today in support of this legislation and of the livestock industry in Kansas. We would be happy to answer any questions you may have, and would request your favorable response to this proposal.

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



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on House Bill 2594

to

The House Committee on Judiciary

By Dr. Evan Sumner
Meat and Poultry Inspection Program Manager
Kansas Department of Agriculture

February 11, 2004

Good afternoon Chairman O'Neal and members of the committee. I am Dr. Evan Sumner, manager of the Kansas Department of Agriculture's meat and poultry inspection program. I appear on behalf of Secretary Polansky and the department, and we appreciate the opportunity to testify.

We recognize the need to protect producers of wholesome livestock products from unwarranted litigation related to liability, or damages related to their products. We also recognize that wholesome, quality meat products are our regulatory responsibility, and they are an essential component for public health and the demand for Kansas meat products.

We take pride in the integrity of the inspection process and the quality of products produced in state-inspected meat and poultry facilities. However, we do believe it is important to note that the inspection process cannot be used to predict or detect all potential consequences that may result from consuming a product.

Before any product bears the "Kansas Inspected and Passed" mark, an ante mortem and postmortem examination by an inspector must take place. The ante mortem inspection of the live animal focuses on detecting disorders that would be expected to be visible in a live animal.

The postmortem examination focuses on detecting visible lesions or other conditions that would render the meat or any part of the carcass unfit or adulterated. Conditions detected during postmortem inspection include abscesses, arthritis, tuberculosis lesions, systematic disease involving internal organs and lymph nodes, cancer, jaundice and anemia.

Neither ante mortem nor postmortem inspection can detect adulterants such as biological residues, bacterial pathogens, or prions, that may be present in an animal as a result of injection,

House Judiciary Committee

2-11-04

Attachment 3

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ingestion or other exposure. The potential for any such contaminant to be present depends on many factors outside of the scope of the inspection process. Strict adherence to controls and restrictions on pharmaceuticals, feed ingredients and additives, and any other exposure that may impact the wholesomeness of a product, are essential to ensure that the product is wholesome and unadulterated.

In summary, the inspection process alone cannot ensure all aspects of a presumption of wholesomeness because not all elements involved are visible at the time of inspection.

STATEMENT OF THE KANSAS DAIRY ASSOCIATION

TO THE HOUSE JUDICIARY COMMITTEE

REP. MIKE O'NEAL, CHAIR

REGARDING H.B. 2594

FEBRUARY 11, 2004

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Dairy Association. Our members include 525 of the 530 dairies in Kansas. We appreciate the opportunity to support H.B. 2594.

Our support is based not on the bill as introduced but on the revised language we have worked on with the Kansas Livestock Association and the Kansas Trial Lawyers Association. As the meat industry moves toward greater traceability of individual meat products, we believe there is a need to clarify the law with regard to the duty of care owed by livestock producers. The redrafted language is intended to provide that the duty of care is ordinary care.

This bill will define key terms and provide that there is a rebuttable presumption that the owner of livestock has met the ordinary care standard if the livestock and subsequent meat products pass government inspection.

We believe this is a very reasonable approach, to provide a standard in the law where there is not one today. Livestock groups are not seeking to establish immunity from liability for livestock owners, but rather a standard in the law stating the duty of care owed.

Thank you for your consideration of this legislation.