

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on January 29, 2004 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Legislative Research  
Susan Kanarr, Legislative Research  
Helen Pedigo, Revisor of Statutes  
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

Matt Jordan, Department of Commerce  
Charles Miller, President, Kansas Connection  
Senator Derek Schmidt  
Senator Jean Schodorf  
Marci Penner, Kansas Sampler/TIAK  
Derenda Mitchell, Assistant Counsel, KLA  
Terry Holdren, Kansas Farm Bureau  
Debra Brown, Proprietor, Red Rock Guest Ranch  
Lynn Johnson, Kansas Trial Lawyers Assn.

Others attending:

See Attached List.

Chairperson Brownlee opened the meeting and announced that there would be a couple bill introductions.

Senator Jordan asked the committee for the introduction of two bills, one concerning the Kansas Center for Entrepreneurship and one concerning angel investors. Senator Jordan moved to introduce the bills. Senator Brungardt seconded the motion. The motion passed.

Mr. Matt Jordan asked the committee for the introduction of three bills under the economic revitalization plan. He explained that they concern the Kansas Business Benefits Plan to replace the high performance incentives program, Kansas First, which amends the IMPACT program, and Rural Business Development Tax Credits. Mr. Jordan included a letter from Lt. Governor John Moore explaining the three bills. (Attachment 1) Senator Barone moved to request introduction of the three bills. Senator Emler seconded the motion. The motion passed.

Mr. Miller then presented an overview of the organization over which he is the president, Kansas Connection, explaining the significance of the organization and its vision for promoting the independent film industry in the state. (Attachment 2)

Chairperson Brownlee opened the public hearing on:

SB 334--Limiting liability of persons involved in agritourism

Senator Schmidt spoke as a proponent of the bill, emphasizing the history of the bill and explaining the current version was a corroborative effort produced from several months of work. He stated that the bill was modeled on the state's domestic animal law and that he would also support the amendment that would be offered by the Kansas Livestock Association. (Attachment 3)

Senator Schodorf spoke as a proponent of the bill, recounting her personal experiences with agritourism as a family business, and illustrating its value to tourists and Kansans alike. She emphasized the importance of helping to develop this fledgling industry. (Attachment 4) She also provided the committee with an article by Stephen Kinzer, "Sowing Art on the Kansas Prairie" New York Times, January 22, 2004.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on January 29, 2004 in Room 123-S of the Capitol.

Ms. Penner spoke as a proponent of the bill. She stated to the committee that it was important to discuss how to make agritourism possible in the state and that it could be a source of important supplemental income to ranchers and farmers, as well as a great opportunity for visitors. (Attachment 5)

Ms. Mitchell spoke as a proponent of the bill. She stated that while supportive, the KLA also wanted to offer an amendment that, "provides that someone who is both an agritourism provider and a provider of land for recreational activities is entitled to the full protections of the recreational use statute. We do not want a court to interpret this new legislation as weakening the protections afforded an agritourism provider currently entitled to specific protections under the recreational use statutes."(Attachment 6)

Mr. Holdren spoke as a proponent of the bill. He stated that the bill was a great compromise and that he believes members are embracing the idea of bringing people in; KFB is supportive of the KLA amendment also.(Attachment 7)

Ms. Brown spoke as a proponent of the bill. She emphasized the enjoyment tourists get from agritourism and encouraged the committee to support the bill.(Attachment 8)

Senator Barone asked the conferees what would happen if the secretary does not act in a timely manner to process applications and offered to amend in a time limit within the bill.

Senator Schmidt agreed that this would be a friendly amendment. In response to another question from Senator Kerr, Senator Schmidt stated that the experience of an visitor would change in two ways because of this bill: the location would have more warning signs, similar to those at the state fair, and, in the event that an activity requires written consent, the same language must be used in that document.

Mr. Johnson spoke as an opponent of the bill. He argued that in response to Senator Kerr's question, an agritourist would have no recourse against a negligent agritourism provider and that there were no inspections nor oversights through the Department. In his testimony, he stated, "Enactment of [**SB 334**] would create a new and unprecedented immunity from personal responsibility through the application of the doctrine of assumption of risk, which is not currently recognized by the common-law of Kansas....There simply is no objective evidence that the legislative grant of immunity is needed or necessary to 'promote rural tourism and rural economic development..." (Attachment 9)

Senator Emler asked Mr. Johnson to bring something forward to the committee which he, Mr. Johnson, and his organization could support, because the Senator was tired of hearing phrases like "you can't" while at the same time Mr. Johnson told the committee he was in favor of agritourism.

Mr. Johnson stated that he would go back and work on it and get something for the committee.

Helen Pedigo provided the committee with a comparison of **SB 334** and **SB 134** from the past, defining terms such as ordinary negligence, gross negligence, and willful, wanton, or reckless negligence according to Black's Law Dictionary, Sixth Edition. (Attachment 10)

The committee was also given a fiscal note for the bill. (Attachment 11)

The public hearing was closed.

Chairperson Brownlee adjourned the meeting at 9:30 a.m. The next meeting will be at 8:30 a.m. on January 30, 2004 in Room 123-S of the Capitol.







# KANSAS

JOHN E. MOORE, LT. GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

January 29, 2004

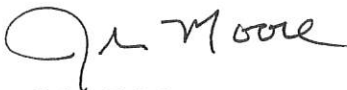
To: The Honorable Karin Brownlee, Chairman  
Members of the Senate Commerce Committee

I hereby request introduction of the following bills as part of the Governor's Economic Revitalization Plan:

- **Kansas Business Benefits Plan**: Replaces existing High Performance Incentives Program (HPIP) and Enterprise Zone Program to create a modern and flexible approach to business incentives.
- **Kansas First**: Amend the IMPACT Program to begin to create a seamless and market-driven training system by which Kansas invests in its educational institutions. These changes would allow for direct payments to education institutions for the purpose of promoting investments in workforce development, human capital, training expertise and infrastructure; also increase the Secretary's ability to invest in capital requirements of major facility expansions from 10% to 20% of IMPACT funds.
- **Rural Business Development Tax Credits**: Offer 70% income tax credit to individuals and businesses for cash and non-cash donations to regional business development funds. One fund would be established in each of seven economic development regions to provide capital for entrepreneurial efforts in rural communities, ensure regional determination of use of funds, and encourage local investment in the economic future of the region.

I wish to thank the committee for introduction of these important proposals designed to stimulate and strengthen the Kansas economy.

Sincerely,



John E. Moore  
Lieutenant Governor/Secretary of Commerce



Testimony of Charles Miller, President  
The Kansas Connection  
Los Angeles, California

Proposal Regarding Film Production Development in Kansas  
January 29, 2004

Before the Senate Committee on Commerce  
The Honorable Karin Brownlee, Chair

My name is Charles Miller. I am a native of Kansas who was raised in Independence and Coffeyville. I attended both Washburn University and the University of Kansas before moving to Los Angeles, where I now work as a motion picture writer, producer, and director. It is my honor to appear before you today in my capacity as the current President of The Kansas Connection, a nonprofit corporation of entertainment industry professionals in Los Angeles who hail from this part of the country. In addition to serving as a networking organization, Kansas Connection has the unique distinction of being a charity organization as well. In just over five years, we have grown from a small collection of Kansans to the largest non-indigenous entertainment organization in Hollywood, raising the profile of our ever-growing membership, and our home state.

I am fortunate to have with me today two other members of our organization. Scott McPhail is a Wichita native who attended Butler County Community College and the University of Kansas. He is now an executive at Dreamworks Studios and is a charter member of Kansas Connection. Shannan Keenan is also a Wichita native and works in Los Angeles as a feature film writer, producer, and director. Her award winning feature film, *Loaves*, is currently playing on the festival circuit.

I should stipulate that this testimony is based not only on my professional experience, but the considerable experience of several hundred Kansas Connection members and associates who have developed these concepts with the unanimous support of our board of directors. And while we have discussed these ideas with members of the Kansas Department of Commerce and the Kansas Film Commission, we are not speaking on behalf of those entities in our testimony today.

You may have been told I am here to discuss filmmaking incentives in Kansas. I'm not. Rather, I am here to propose to you something much more radical and forward thinking, that has the potential to fundamentally alter the economy of Kansas for the twenty-first century. Tax credits and other film production incentives are no doubt helpful in attracting location shooting to a state. Film production can vastly enhance the economy of a state. In fact, even the most conservative estimates calculate the economic impact of film production with a multiplier of 2.12 for each dollar spent. But such programs largely restrict a state to a very small piece of the pie representing the entire process of film production. Incentives forever reduce the state to the profitable, but limited role of serving as a back lot of locations for film production. Films crews arrive with their own people, shoot, and leave. There is a short-term economic boost from this activity, but no permanent jobs are created, and no part of the film industry remains in the state. And as competition between states and provinces grows, the government entity is put in an ever-increasing position of paying part of the costs of a commercial enterprise without sharing any of the revenue from the endeavor.

For Kansas to reenter the crowded field of states offering tax incentives for filming at this point would likely generate some new production here, but it is unlikely to make Kansas a serious player in this huge industry. There are those of good intention who will tell you Kansas should

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follow the footsteps of New Mexico, Delaware, or even several Canadian Provinces by funding an incentive program modeled on the successes in these regions. But this is an industry where having your name first in the credits means everything. Following other states with similar programs will not distinguish Kansas, and more than likely will only draw productions that were already interested in filming here. Clearly, a new approach is in order if our state is to make an impact.

Accordingly, we offer that there is an unprecedented opportunity in the world of low budget independent filmmaking. Film commissions and politicians in general dream of attracting hundred million dollar blockbuster films to their states. And certainly, this makes sense from the standpoint of political expediency. It's easy to communicate to your electorate that your program resulted in Tom Cruise filming in your state. The sex appeal and photo ops abound. But while a blockbuster uses your locations, it will not cause the film business to locate here. Regardless of where they are shot, these films are made in Hollywood with people employed there. They do this very well, and there is no way Kansas can hope to compete with a major studio. On the other hand, there is no home in the world for low budget independent films. Films with budgets of one to two million dollars get made despite the studio system, not because of it. Yet, films made at this level of production, still employ skilled working professionals in highly sought jobs.

We propose that Kansas become the new and permanent home for low budget independent filmmaking in the world. With the money it would cost us to provide tax incentives to a couple of blockbusters, we can build an entire niche industry and seize a new job base for the state before another region establishes it elsewhere. Cutting to the chase, we propose:

1) The State of Kansas should create an Office of Film Development, or OFD, to work in conjunction with the Kansas Film Commission and under the auspices of the Department of Commerce.

2) The State should allocate \$25.78 Million over four years to finance the OFD in the following amounts:

YEAR ONE: \$250,000

YEAR TWO: \$8,255,000

YEAR THREE: \$8,510,000

YEAR FOUR: \$8,765,000

3) The Director of the OFD will function as Executive Producer for no fewer than twelve films to be financed no fewer than four per year, starting in year two of the existence of the OFD. All projects shall be approved by the Kansas Film Commission Board of Directors. The State, through the OFD, shall retain a position of 50% revenue ownership in joint partnership with all individual project producers and shall have the right to premiere and distribute program films in Kansas before other distribution options are explored.

4) Films shall be produced in Kansas. At least one of the following creative team members must be a Kansan: Writer, Director, Producer, Lead Cast. A Kansan shall be defined as anyone who is or was previously a legal resident of Kansas, or who is a member in good standing of the professional entertainment industry organization, The Kansas Connection, Inc. All below-the-line personnel must be Kansans, using the same definition as above, except in cases deemed necessary by the Director of the OFD.

It's a simple but revolutionary concept. Instead of playing the seduction game and waiting for the industry to come to us, we build it. There remain details to be hammered out here, but the key to this concept—more than anything—is pipeline. That is the one element that will establish a niche entertainment industry in our state. The necessary impetus to production growth, is active production. To borrow a contemporary film proverb, *if we build it, they will come*. And that is the key to a sustainable industry with permanent employment.

A good pragmatist's first question of anything that sounds good on paper—and I imagine there are several of you thinking such at this moment—is why haven't other states done this, given that there is so much to gain? Well the cold truth is, some are on the verge of doing it. When we began developing this idea almost two years ago, there was no discussion of anything similar being debated in the industry. But the idea was prescient. Now, other states are moving closer to such a plan, and we believe it is merely a matter of time before someone establishes such a program. That

being said, one obstacle to attracting production to an area like Kansas has been a shortage, or at least a perceived shortage on the part of the film industry, of qualified film production personnel. That's where you have a singular opportunity because of the existence of Kansas Connection. I can tell you from experience that the people in my organization represent some of the best and brightest that Kansas has produced. We had to leave Kansas because our career calling doesn't allow us to work in Kansas very often. But we want to work here, and we have that needed talent and experience to do so in professional level productions.

Previously, the lack of ancillary support businesses have also been an obstacle to sustained film production in this part of the country. We are at an unparalleled moment in the history of cinema. Technology has recently evolved that reduces the necessary capital required to invest in and operate the ancillary businesses that support filmmaking. But what has not and will not change, is that a pipeline of product is needed to support such businesses. Before now, there has been insufficient production to warrant the growth in Kansas (or anywhere nearby) of businesses like processing labs, film equipment rental shops, post production facilities, title and special effect labs, and prop houses. With a guaranteed pipeline of production running several years, venture capital will see fit to invest in building this kind of foundation and thus, garnering for Kansas a true film industry whose employment impact reaches far beyond that of production crews. You are in the unique position of being able to start this engine of economic growth. As ancillary support businesses grow and want to expand their enterprises, and as Kansas assumes its position as a home for independent film production, more filmmakers will want to make films in this part of the country, well beyond the seed program you would be planting. Our talent base will evolve and perpetuate the industry we are all growing.

An appealing element of our proposal is that the state would be in a position to benefit from the revenue a film earns. This reveals another benefit of investing in low budget films. Even if we could obtain a profit participation position on a blockbuster film that received tax incentives, we would have very little chance to recoup that direct expenditure. Most films fail financially. A few break through and make very good money. The money we would spend on a small percentage of one or two blockbuster films, instead under our proposal would be spread over twelve or more productions that would have a much lower break-even threshold. If just one film becomes a surprise hit, we pay for this program and finance the continuation of it. But that is not the reason you should do this. Do it because at the end of four years we will have together created a viable industry employing thousands in the state.

Look, I know money is tight now. Costs for education and other vital state services are hard to meet and revenue is tight. I don't proclaim to know how a program like this would be financed. The people of the State of Kansas have entrusted those kind of decisions to you. But I need you to understand that we aren't proposing an elaborate "support the arts" endeavor. We are here as representatives of a vital American industry that in recent years has surpassed agriculture as the number one United States export. Unlike agriculture, Kansas has not of yet played an important role in the entertainment industry. But there is a segment of this industry that, for the moment, is up for grabs. With your help, we have certainty that we can together take it and make it a sustainable and significant part of our state economy. Successful job creation is not political, and there should be nothing partisan about supporting the establishment of a new economy for the state. We, therefore, call on you as members of this committee, to help us establish bipartisan support for this proposal and develop legislation before year's end to pursue this valuable opportunity for all of us. The full effort of our organization is available to assist in bringing this to fruition.

Thank you again for the honor of appearing before you, and for receiving my testimony. We need your help so that Kansas can take action as a courageous trailblazer. Such a program would truly represent not only the frontier spirit, but also the sophisticated savvy and business acumen of our people. My colleagues and I will be more than pleased to stand for questions.



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**Senator Derek Schmidt**  
**15th District**

**Testimony in Support of Senate Bill 334**  
**Presented to the Senate Commerce Committee**  
**By Senator Derek Schmidt**

**January 29, 2004**

Committee Assignments  
Agriculture (Chairman)  
Legislative Post Audit (Chairman)  
Judiciary  
Natural Resources  
Elections and  
Local Government  
Message Only (800) 432-3924  
During Session  
e-mail: schmidt@senate.state.ks.us

Chairman Brownlee, members of the committee, thank you for the opportunity to testify today in support of Senate Bill 334.

You all know the history on this issue. Last year, after two years of work, the legislature passed legislation to limit the liability of landowners who promote tourism and rural economic development by bringing tourists onto their land. We were attempting to establish as a matter of public policy that “agritourism” is important to the Kansas economy.

In a move that surprised many of us, Governor Sebelius vetoed that bill. The Senate voted overwhelmingly to override the veto, but the House of Representatives fell short of the needed two-thirds majority.

In the months since the veto, the governor has repeatedly stated her support for legislation to promote agritourism by limiting the liability of landowners. The administration, however, has not brought forward a bill. Therefore, I have been working with interested parties for several months – including Chairman Brownlee, Senator Jordan, and Senator Schodorf – to craft new legislation. The result of our work is Senate Bill 334.

Like last year’s vetoed bill, this bill encourages agritourism by limiting the liability of landowners when tourists are on their land. However, unlike last year’s proposal, which amended the state’s recreational use statute, this bill would create a new statute specifically aimed at protecting and promoting agritourism.

This new statute is modeled on our state’s domestic animal law. The concept is one of notice and assumption of risk. In short, this bill requires agritourism operators to give notice to their customers describing what activities are occurring and informing them that risk is involved. Once that notice is given, the customers are considered to have assumed the risk of participating in those activities and the agritourism operators are relieved of liability if the customer is harmed by the activity – unless the harm is caused by the operator’s intentional misbehavior.

I am aware of an amendment that will be proposed by the Kansas Livestock Association to further clarify that this new statute would not in any manner diminish the protections afforded to landowners by our existing recreational use statute. I support that amendment.

Thank you again for having me here today. I would stand for questions.

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Attach #3

JEAN SCHODORF

SENATOR, 25TH DISTRICT  
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DURING SESSION

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TOPEKA

## SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: ARTS AND CULTURAL RESOURCES (JOINT)

MEMBER: EDUCATION  
TRANSPORTATION  
WAYS AND MEANS

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**TESTIMONY ON SB 294**

## Limiting liability of persons involved in agritourism

Last year both the House and Senate passed the bill on agritourism, sponsored by Senator Jordan. As you know, it was vetoed by the Governor. SB 294 is another attempt to pass a bill which would help the fledgling industry of agritourism. Senator Schmidt will be discussing the changes in the bill. I simply wanted to tell you a little about the visitors who are crossing our fair state and who want to stop if there are facilities and attractions.

I call it, the Prairie Mystique. If visitors have the opportunity to stop their car and actually walk around in the country, they are fascinated and they want to experience more. For the last 27 years, my family has operated a small, non-profit, tourist attraction, the original site of the children's book, *Little House on the Prairie*. We have had visitors from every state each year, and visitors from about 25 countries every year. When they get out of the car and look at the cabin, the first question is "How did they do it?". These visitors linger and sit and watch the birds or go into the buildings. They like to talk and ask questions. We have recently added trails so children and families can walk to the creek where Laura visited. Many people ask us at the Little House on the Prairie, "What else is there to see around here?" We have developed a brochure called "A Weekend Guide to Southeastern Kansas" to show visitors what there is to see, and there is a lot to see in SE Kansas.

These visitors are driving through Kansas. They either see the sign on the road or are coming specifically because they have read the books. Some are dressed in prairie garb. Some want to stay the night. We have had weddings at the Little House on the Prairie, television crews from Japan, and we even had one family want to cook a Thanksgiving dinner in the cabin.

Down the road near Sedan, my brother's Red Buffalo Ranch offers trails and an art sculpture, Prairiehenge, for visitors to see. It has become a destination, too. These visitors stop in town, shop, and buy souvenirs. Besides the Red Buffalo Ranch, there are new bed and breakfast businesses and shops. One person even restored their old barn, called Three Barns, which has antique art, and other shows/sales for the public.

Recently, I was fortunate to be a part of the Wichita delegation visiting our Sister City, Orleans, France. When we left Orleans, the French told us that when their delegation comes to Kansas in May, they have to visit La Petite Maison de la Prairie.

The point of all this is that there are many people driving through Kansas. If there are attractions and facilities, they will stop and visit Kansas. SB 294 is simply an attempt to help this fledgling industry develop and bring added tourism and revenue to the state.

Thank you for the opportunity to testify.

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Attach #4



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**Senate Commerce Committee  
Testimony in Support of SB 294  
Marci Penner  
January 29, 2004**

Madam Chairman Brownlee, and members of the Senate Commerce Committee, my name is Marci Penner and I'm a member of the Travel Industry Association of Kansas (TIAK) board of directors, and the director of the Kansas Sampler Foundation, a non-profit whose mission is to preserve and sustain rural culture.

The goal today is to discuss how to help make agri-tourism more possible through this bill. Agri-tourism is an economic development tool for farmers and ranchers. Many need the supplemental income and agri-tourism offers a great opportunity for visitors in our state. The main barrier to date has been liability issues.

This bill appears to be a launching pad for more - and expanded agri-tourism efforts in the state. There are still some issues but my hope is that this bill will have a snowball effect that will cause Kansas insurance companies to reconsider their policies and willingness to underwrite these kind of efforts.

Here is a quick summary of the issues not addressed directly by the bill but hopefully will be positively effected by the bill.

- 1) At present, I don't know of any insurance companies in Kansas that underwrite agri-tourism liability policies.
- 2) It's even hard to find a Kansas agent to help find an underwriter.
- 3) Guidelines from one insurance company to another are inconsistent.

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- 4) Safety precautions aren't rewarded with reduction in premium.
- 5) The issue of liability needs to be included in agri-tourism workshops to help separate facts from misconceptions.
- 6) At present, the cost of premiums makes it unprofitable or barely profitable to engage in small-scale agri-tourism.

I do believe SB <sup>334</sup> ~~294~~ will encourage change in those issues – and then we'll really be making progress.

Just to make the point why this bill is so important, I'd like to share a few examples.

#### EXAMPLE ONE

A buffalo rancher/farmer has recently put up a new visitor center near their buffalo pasture. They have a multi-faceted operation that includes selling buffalo meat, catering parties in their facility, and offering a tram ride into the buffalo herd. They had a major problem finding anyone that would insure them. They said that once an insurance company heard phrases like "tram ride", "buffalo", "farm tours", and "school children" they weren't interested. They finally found someone who would insure them. The premium was \$4,000. They charged \$10 per person for a tram ride into the buffalo herd. In their first year, they only had 75 or 15% of their customers who would pay the \$10 to see the buffalo. It will take a lot of buffalo steaks and parties to make up the remaining \$3,250 for that policy. The underwriter they eventually found was from out-of-state so the policy was written without anyone seeing the safety precautions that had been put in place. This is a quality facility and experience.

#### EXAMPLE TWO

This family has a corn maze that is open for three months of the year. The local carrier would not cover them and they had a very difficult time finding someone that would write a policy. They found an out-of-state company who wrote a million dollar policy for a \$1,250 premium, which was equivalent to half of their profit. One of the issues is that they haul people to the corn maze on a hayrack. "Hay rack", of course, is one of those words that insurance companies don't like. The premium was increased when they found out about this. They also had a claim this year because a little boy went behind the checkout desk and jumped on a sleeping dog. The dog nipped at the boy but didn't break the skin. A claim was filed and insurance was dropped.

#### EXAMPLE THREE

This family offers a chuck wagon meal prior to live family/country entertainment in their arena. Livestock are involved in the show. They give horse-pulled wagon rides prior to the meal. They don't charge for the wagon ride operating under the commonly held belief that if you offer something for free you aren't liable. Anyway, they have been offering the live entertainment for several years. It took them forever, as they said, to find a liability insurance policy but they finally found one out of state. After about a year and a half they realized that they couldn't make it with the cost of the premium so they dropped the insurance and now operate without it.

#### EXAMPLE FOUR

This winery and vineyard had liability insurance until a lady claimed that she twisted her back at the vineyard and filed a claim. The insurance company dropped the vineyard and they can't find anyone else to cover them. They no longer are able to have events at the vineyard because they can't find liability insurance.

#### EXAMPLE FIVE

This is another pumpkin patch and corn maze operation. They have tree houses, tree swings, playground equipment, pull wagons, and trails. They charge for wagon rides and a corn maze, and pumpkins. They finally found someone who would cover the farm and pumpkin patch but wouldn't include the tractor-pulled hayrack. So, they had to buy separate million-dollar policy with a premium of \$848 from an out-of-state company just for the hayrack.

Because of the lack of information and education about the liability issue and because local insurance companies aren't able to answer questions, there are a lot of fears, concerns, and possibly misconceptions. This bill will give everyone a starting ground - a base. Prior to this, there was nothing official regarding liability and so everyone floundered. If SB 294 passes, there will be something in print and a conversation can happen.

It appears that the Governor might have done us a long-term favor by vetoing last year's SB 134. This bill is much cleaner, much stronger, much better defined and I think will serve the purpose much more effectively. Specifically, agri-tourism is better defined in this bill and using the domestic animal statute warning as a template is more effective than using the recreational use statute.

Will the legislature need to support the Department of Commerce with extra dollars since you are asking them to handle agri-tourism registration in this bill? If the Division of



Travel and Tourism Division were asked to play this role it would be a definite hardship on their budget.

Agri-tourism is a natural extension to Kansas farm and ranch life, a logical economic development tool, and a valued-added response to the reduction of traditional farm income. My great hope is that Kansas insurance companies will now view agri-tourism in a different light and begin to underwrite policies and charge more reasonable and affordable rates.... This is a positive step for entrepreneurs in rural Kansas. Thank you.



*Since 1894*

## Testimony

To: Senate Commerce Committee

From: Derenda J. Mitchell, Assistant Counsel, Kansas Livestock Association

Subject: Senate Bill 334

Date: January 29, 2004

My name is Derenda J. Mitchell. I appear today on behalf of the Kansas Livestock Association (KLA). KLA is a trade organization that represents all segments of the livestock industry and has about 6,000 members.

KLA is supportive of efforts by landowners to capture more income through agritourism. We commend Senators Brownlee, Jordan, Schmidt and all others who have worked to promote our agricultural heritage. This bill addresses the concerns expressed last year and provides for notice and warnings of known hazards.

We ask for one simple amendment to clarify the language in this bill. Our amendment seeks to avoid interpretations that would erode or undermine the protections of the recreational use statutes. Our amendment is attached to this testimony and provides that someone who is both an agritourism provider and a provider of land for recreational activities is entitled to the full protections of the recreational use statute. We do not want a court to interpret this new legislation as weakening the protections afforded an agritourism provider currently entitled to specific protections under the recreational use statutes.

In addition, we oppose amendments that lessen the protections afforded to landowners by this bill or under the current recreational use statutes. In summary, we support broad protection and do not want to see the current law lessened, removed, or substituted for a different set of liability requirements.

Again, thank you for the opportunity to outline our support for the intentions of the bill and to propose our amendment.

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Attach # 6

Italicized language is new language:

Sec. 8. Any limitation on legal liability afforded to a qualified agritourism operator by this act shall be in addition to any other limitation of legal liability otherwise provided by law. Nothing in this act, nor failure by any person to comply with the provisions of this act, shall be construed to limit, restrict or impede the application of K.S.A. 58-3202, et seq., and amendments thereto, to any person, ***and a qualified agritourism operator entitled to coverage under K.S.A. 58-3202, et seq., shall be entitled to the full limits of liability afforded under K.S.A. 58-3202, et seq.***





## **Kansas Farm Bureau**

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800 SW Jackson St., Ste. #1008, Topeka, Kansas 66612 • 785.234.4535 • 785.234.0278

### *PUBLIC POLICY STATEMENT*

### SENATE COMMERCE COMMITTEE

Re: SB 334 - Liability protection for providers  
of agritourism activities.

**January 29, 2004  
Topeka, Kansas**

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

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Chair Brownlee, Vice Chair Jordan and members of the Senate Commerce Committee, thank you for the opportunity to appear today and share our support for legislation that promotes rural economic development, as well as our perceptions of Senate Bill 334. 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.

We are very appreciative of the time you have spent during the 2003 session, over the interim and during the first weeks of this session considering rural economic development initiatives. Our members care deeply about this issue. The revitalization of rural communities must be a high priority for private citizens, as well as local, state and national governments. We support initiatives that will:

- Enhance the economic and social climate for farm and rural families;
- Strengthen activities designed to help rural communities obtain grants and loans for infrastructure improvements;
- Improve the general potential of rural communities to attract and retain people, business and industry; and

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- Include all types of farming operations in economic development and incentive programs.

Our members have supported limits on liability for many years. Current KFB policy states, "**We support legislation which will prevent any increased liability for owners of land or livestock.**"

Our national policy also supports agritourism activity and the promotion of those business ventures. AFBF policy also supports limiting liability for farmers and ranchers who are maintaining compliance with statutes and regulations.

SB 334 through its registration process will identify and approve agritourism activities. The Kansas Department of Commerce will work with venue owners to market and promote these activities. Providers will, with adequate notice to participants, be exempt from liability via an affirmative defense for assumption of the risk by the participant. Providers who by willful conduct or knowledge of dangerous conditions cause injury will not be protected by this legislation.

Our members are embracing the concept of inviting the public onto their lands for hunting and fishing activities. They are also creating other opportunities through farmers markets, sporting clay activities, pumpkin patches, bakeries, etc. This legislation will encourage them and others to expand their activities.

Thank you for your attention today. We respectfully ask that the committee act favorably on SB 334.

## INTRODUCTION

Agritourism enterprises allow farmers and ranchers to earn higher profits by supplementing traditional farm/ranch operations with innovative on-farm or on-ranch ventures. Alternative enterprises can take many forms. They can produce food and fiber, produce new or unique crops or livestock or add value to traditional agricultural products. They can produce fun, recreation, nature-based, or educational products. They can rely on traditional farm/ranch practices or use alternative methods, such as organic systems. They can be labor and resource intensive or require few inputs. They can operate seasonally, or year-round.

But they all have a common theme: farmers and ranchers rely on the natural resources on their land - the soil, water, air, plants, wildlife, and scenery - to keep their family on the farm and the farm in their family. They also require sound land care. Since the land's resources generate income, conserving those resources makes good business sense. And finally, they provide an opportunity for visitors to experience rural life.

## HISTORY OF THE RED ROCK GUEST RANCH

BY DEBRA BROWN - PROPRIETOR

The original 80 acre ranch property in Northwest Jackson County was purchased by my husband Bill and myself in 1995 so that Bill could fulfill his life long dream of owning "cows". The 100-year-old farmhouse, consisting of 700 square feet on two floors, had been a rental property for many years and was in poor condition. The most recent tenants had been a pair of pygmy goats. Many such dilapidated, old, unoccupied farm homes dot rural Kansas. Rather than raze the old farmhouse, Bill and I chose instead to renovate, restore and expand the home. Located 1.5 miles east of Soldier, Kansas, The Red Rock Guest Ranch now consists of nearly 350 acres and the home has grown to 8000 square feet of gracious living area.

When Bill and I first moved to the area, we quickly learned that there was no facility close by where family could stay when visiting Soldier, Kansas. The closest motel was located over twenty minutes away in Holton. In January, 2000 I opened our home as a three bedroom Bed and Breakfast (Soldier Inn Bed and Breakfast) to serve the needs of the local community. For the next three years Soldier Inn B&B provided lodging for visiting family and friends of local residents. They came for holidays, weddings, funerals, vacations, and reunions and without exception, the visitors to Soldier Inn enjoyed the quiet country setting along with the activities inherent in running a ranch. The "city folk" were eager to help with the daily chores of caring for the ranch animals, to ride on the tractor, pick up

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eggs from the hen house, repair barbed wire fence, help remove honey from the hives, walk among the cattle, fish in the ponds or just take long walks in the country setting. Many people have fond memories of visiting the farms of their grandparents, aunts and uncles or other relatives. Our ranch rekindles the positive emotions from those family visits. Others have no connection to rural living and take great pleasure in new experiences unlike any offered in the city.

In the spring of 2003 I decided that the name Soldier Inn Bed and Breakfast no longer described what was offered at the ranch and the name was officially changed to The Red Rock Guest Ranch. Bill had retired in 1999 and I was looking for a way to increase revenues at the Ranch sufficiently to allow me to work from home. We had attended a Chuckwagon Supper and Western Show in Calgary, Canada in 2002 and I felt that a similar venture might be feasible on our ranch. Thus the "Red Rock Guest Ranch Chuckwagon Suppers and Western Show" was born! The initial plan was to offer a supper and show once each month May through September and the goal was to seat at least 50 guests for each event. The first show opened on May 17, 2003 to a packed house of 165 guests. There was no looking back! The Red Rock Guest Ranch Chuckwagon Supper and Western Show was held nearly every Saturday night from May 17<sup>th</sup> through the end of November seating an average of 125 guests each night. Two Christmas dinner/show events were held in December with over 165 guests at each event. In total, nearly 4000 guests visited the Red Rock Ranch during our first season.

## MORE THAN JUST ANOTHER RESTAURANT

One of my goals was to bring top notch musical talent to Northeast Kansas for the enjoyment of my guests. One of our visiting entertainers was Mr. Les Gilliam "The Oklahoma Balladeer" from Ponca City, Oklahoma. Les tells the story of the American Cowboy through his music. He played to a packed house and received a standing ovation from the crowd. Les and his lovely wife Martha stayed with us that night in our B&B. While visiting with him after the show, he confided in me that as he was driving through Soldier on his way to the ranch he commented to Martha that he wasn't sure "what he had gotten them into". The 1.5 mile on a narrow gravel road to our ranch didn't help matters any. He was pleasantly surprised to find our large, well appointed Bed and Breakfast along with our wonderful "Chuckwagon Supper Barn" with a modern kitchen and indoor bathrooms!



He was even more surprised when 165 people showed up for dinner and his show. Les asked me how I managed to get people to drive to Soldier, Kansas in the middle of nowhere for dinner and a show every Saturday. The answer is simple. We are not just another restaurant; we are a "destination". Our guests leave the city and travel to the Red Rock Guest Ranch to experience a bit of the "Old West" right here in Northeast Kansas. They are greeted by cowboys on horseback and can try their hand at roping a dummy calf. They enjoy seeing our vintage 1800's Chuckwagon and hearing the cattle trail tales as told by our 85 year old Wagon Master who has driven long-horned cattle on the Oregon Trail. They delight in seeing our ranch animals up close and personal. Without exception, they enjoy our narrated hay rack rides, saloon girl, vintage player piano and sarsaparillas from the Long Horn Bar. And we consistently provide an excellent meal with good wholesome entertainment. Ours is a smoke free, alcohol free facility and we start each dinner and show with the Pledge of Allegiance to this great country and a blessing. These are our values, which we share with our guests at the Red Rock Ranch. I firmly believe that rural Kansas has a lot to offer visitors, and that's what keeps our guests coming back. Through agritourism activities such as this, we can plant a seed, especially in children, who become educated about agriculture and its importance to feed our nation. When visitors pick an apple from the orchard, a pumpkin from the patch, collect an egg from the nest, or when they see for themselves how livestock is raised, they learn the basics of farming and ranching and form an important connection to the land.

## WHAT WE HAVE LEARNED

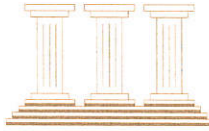
Based on the overwhelming response to our opening season, we have learned that there is a demand in northeast Kansas for a venue where families can enjoy rural Kansas in a smoke and alcohol free environment. Visitors are eager to participate in ranch activities even though there may be inherent risks associated with the activities. Ours is a real working cattle ranch and our animals and activities are real. We take extreme care in making sure our facility is safe for visitors. Although we carry liability insurance, there are some requested activities we don't feel we can offer our guests due to liability risks. The most commonly requested are guided horse trail rides and pony rides for children. We have to carry additional insurance just to allow guests to dance during our western show if they so desire. Clearly guests to our ranch need to understand that they assume some risk



when voluntarily participating in these types of ranch activities. Legislative support of this would help to continue to promote agritourism in Kansas.

## OUR GOALS

- TO BE A LEADER IN CREATING A RANCH/FARM EXPERIENCE THAT IS PLEASING, SAFE, WHOLESOME AND ACCESSIBLE TO ALL
- TO BE RESPONSIBLE AND PRO-ACTIVE IN MEETING THE NEEDS OF FAMILIES, SCHOOLS, CHURCHS, COMPANIES AND ORGANIZATIONS VIA THE USE OF AGRI-TOURISM. THIS INCLUDES SERVING AS AN EDUCATION AND INFORMATIONAL RESOUCCE CENTER THROUGH RECREATION, NATURAL RESOURCES AND RANCH ANIMAL CARE.
- TO PRESERVE AND SHARE THE HISTORY OF THE GREAT CATTLE DRIVES OF THE 1800'S AND THE IMPORTANT ROLL THAT KANSAS PLAYED
- TO PROVIDE FUN EMPLOYMENT OPPORTUNITIES FOR LOCAL RESIDENTS
- TO PROVIDE A SAFE, SMOKE FREE, ALCOHOL FREE AND DRUG FREE ENVIRONMENT FOR ALL WHO VISIT OUR RANCH
- TO PROVIDE A "DAY AT THE RANCH" OPPORTUNITY FOR ELEMENTARY SCHOOL CHILDREN
- TO TAKE AN ACTIVE ROLL IN PROMOTING AGRITOURISM IN KANSAS



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the Senate Commerce Committee  
FROM: Lynn R. Johnson, Kansas Trial Lawyers Association  
RE: SB 294  
DATE: January 29, 2004

Chairman Brownlee and members of the Senate Commerce Committee, I am Lynn Johnson and I appear before you today on behalf 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 present written and oral testimony in opposition to SB 294 (and by reference SB 334 – an identical bill).

I have a personal ongoing interest in the agricultural economy of Kansas, including what is currently referred to as “agritourism.” My interest and concern is based upon the fact that I grew up on a family farm 10 miles east and two miles south of Oberlin, Decatur County, Kansas. My father was a third-generation farmer and rancher, and my brother and I still own and operate the family farm. I am personally concerned about the ongoing economic viability of family farms and the communities—such as Oberlin—that they support.

In addition to my personal concern, KTLA certainly supports the concept of promoting rural tourism and rural economic development—but without creating a new and unnecessary immunity through the legal doctrine of assumption of risk for “qualified agritourism operators” who engage in “specified agritourism activity” at a “designated agritourism location.” Enactment of SB294 would create a new and unprecedented immunity from personal responsibility through the application of the doctrine of assumption of risk, which is not currently recognized by the common-law of Kansas. KTLA opposes this creation of immunity in derogation of the common-law because there is no

*Terry Humphrey, Executive Director*

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demonstrated need for the immunity; there is no demonstrated evidence that the purpose of the act would be furthered by the immunity granted; and the immunity granted by the legislation would violate §18 of the Kansas Constitution's Bill of Rights as well as Article 2, § 17, and Article 2, §21, of the Kansas Constitution.

SB294 creates immunity from personal responsibility and liability for personal injuries and wrongful death through the legal doctrine of assumption of risk. We first must understand the status of the doctrine of assumption of risk as recognized by the Kansas common-law. The doctrine of assumption of risk is very restricted in terms of its periphery of application.<sup>1</sup> The restricted periphery of application is limited to cases involving employer-employee relationships. "In Kansas, the common-law assumption of risk doctrine is restricted to cases involving employer-employee relationships."<sup>2</sup> In its application to employer-employee relationships, the common-law assumption of risk doctrine constitutes an absolute bar (immunity) to recovery for personal injury or wrongful death damages.<sup>3</sup> Assumption of risk arises as a result of either an express or implied contract between the employee and employer wherein the employee assumes the risk of the known dangers of employment. In essence, the employee agrees that there are certain dangers of personal injury inherent in the employment, and through the employee-employer relationship the risks are to be borne by the employee and not the employer.<sup>4</sup> In order to successfully assert assumption of risk against the employee's claim for recovery, the employer must be free of any negligence.<sup>5</sup>

SB294 creates a statutory assumption of risk outside of the employee-employer relationship—a "participant" assumes the risk of "agritourism activities" which bars recovery by providing immunity to an "agritourism operator." This would be directly contrary to and in derogation of established Kansas common-law. We have not seen any necessity for a legislatively created immunity through the application of the doctrine of assumption of risk outside of its limited common-law application to employee-employer relationships. We have reviewed the testimony of the proponents of SB 134 which was introduced and passed in the last legislative session and vetoed by Governor Sebelius. Specifically, we have reviewed the testimony of Marci Penner, Executive

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<sup>1</sup> *Jackson v. City of Kansas City*, 235 Kan. 278, 306, 680 P.2d 877 (1984).

<sup>2</sup> *Tuley v. Kansas City Power & Light Co.*, 252 Kan. 205, 210, 843 P.2d 248 (1992) (emphasis added).

<sup>3</sup> *Jackson v. City of Kansas City*, 235 Kan. 278, 302-306, 680 P.2d 877 (1984); *Tuley v. Kansas City Power & Light Co.*, 252 Kan. 205, 210-211, 843 P.2d 248 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> *Jackson v. City of Kansas City*, 235 Kan. 278, 305, 680 P.2d 877 (1984).

Director of the Kansas Sampler Foundation, and the examples that she cites in her written testimony. The examples are anecdotal and do not provide a basis for establishing any public policy need for a dramatic change in the current common-law through legislatively enacted immunity for certain “qualified agritourism operators.” Immunity for the sake of immunity is never good public policy.

There simply is no objective evidence that the legislative grant of immunity is needed or necessary to “promote rural tourism and rural economic development” through “owners or operators of farms, ranches and rural attractions” inviting “members of the public to view, observe and participate” in such farming, ranching, and rural attraction activities “for recreational or entertainment purposes.” Personal injury and wrongful death litigation in the setting of “agritourism activity” as defined by SB294 has not been demonstrated to be significant and is in fact very rare. This is borne out by the fact that there are no reported Kansas Court of Appeals or Kansas Supreme Court cases that cite the law upon which SB294 is based—60-4001 et seq., Assumption of Risk of Domestic Animal Activity.

### **SB294 VIOLATES §18 OF THE KANSAS CONSTITUTION’S BILL OF RIGHTS**

Enactment of SB294 would violate §18 of the Kansas Constitution’s Bill of Rights, which provides that: “All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.” As the Kansas Supreme Court has explained, a statute challenged on due process/right to effective remedy grounds (§18) is “reviewed under a standard which is more stringent than the rational basis test” typically used to evaluate equal protection challenges—that is challenges brought under §1 of the Kansas Bill of Rights.<sup>6</sup> The Kansas Supreme Court will review the constitutionality of SB294 and SB334 under the *quid pro quo* test, which provides:

“If a remedy protected by due process is abrogated or restricted by the legislature, ‘such change is constitutional if “[1] the change is reasonably necessary in the public interest to promote the general welfare of the people of the state,” and [2] the

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<sup>6</sup> Lemuz v. Fieser, 261 Kan. 936, 947, 933 P.2d 134 (1997).

legislature provides an adequate substitute remedy to replace the remedy' to replace the remedy which has been restricted.”<sup>7</sup>

SB294 would fail both parts of this stringent test that will be applied by the Kansas Supreme Court.

[1] SB294 is not reasonably necessary to promote the general welfare of the people of the state of Kansas.

There is little doubt that promoting agritourism and recreation is a legitimate state interest. However, there is no evidence that enactment of SB294, which confers complete and absolute immunity to anyone engaged in agritourism, is reasonably necessary to promote the general welfare as opposed to merely being hypothetically desirable. Thus, aside from a few untested, unproven anecdotes from individuals who claim concern about liability or liability insurance, there is no evidence that a crisis exists at all in the nascent agritourism industry—and certainly no substantial empirical evidence that any crisis exists or that SB294 would cure such a crisis if it did exist.

While we do not know whether there is any crisis that SB294 would cure, we can certainly be sure of who will assume the financial burden for injuries caused by—but no longer insured and paid for by—“agritourism operators.” Nothing should be done to remove the incentive to prevent injuries in the first place. If the Legislature believes it is necessary to promote the agritourism industry, there are more direct and undeniably constitutional ways of doing so, such as direct subsidies or tax credits. As U.S. Supreme Court Justice Oliver Wendell Holmes explained: “a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922)(Holmes, J.).

Imposing liability—and personal responsibility—on the persons who can most appropriately avoid and prevent accidents within “agritourism activities” is the most sensible way to reduce the overall number and cost of accidents. SB294 would turn this formula on its head—removing all incentives to investigate hazards and repair dangerous conditions would insure that hazards will go undetected and dangers will be unrepaired. This policy hardly seems appropriate to promote agritourism in the long run; to improve the state’s economy; or to enhance the state’s reputation.

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<sup>7</sup> *Id.*, 261 Kan. at 948 (internal cites omitted).



Very few churches, schools or out-of-state tour operators will want to schedule visits to Kansas farms and ranches if they know that the owner has no duty to find and fix hidden dangers and has no liability if anything goes wrong, and if they know that they will have to assume the risk of all accidents and bear the cost of all injuries. Such a policy hardly seems reasonably necessary to promote the general welfare and well-being of the State of Kansas.

[2] SB294 and SB334 do not provide injured persons with anything close to an effective or adequate *quid pro quo*:

Even if it could be proven that enactment of SB294 would somehow be reasonably necessary to promote the general welfare and thus satisfy the first part of the due process right to remedy by due course of law standard, that is not where a §18 review stops. In order to ensure due process, the legislature is required to provide an adequate, substitute remedy when a common-law remedy is modified or abolished—which it would be by expanding the assumption of risk immunity outside of the common-law employee-employer relationship to what are defined as “participant”-“qualified agritourism operator” relationship. As the *Lemuz* court explained, “[o]bviously, this test is more stringent than the rational basis test because it requires a substantive *quid pro quo* to replace any common-law remedy that has been extinguished by statute.”<sup>8</sup> Clearly, SB294 would flunk this more stringent test because the statute simply provides no *quid pro quo* at all and certainly nothing like the constitutionally requisite substantive, adequate or effective remedy for the common-law rights and remedies it would extinguish. In this respect, SB294 is completely unprecedented and unique. An example of a substantive adequate or effective *quid pro quo* is the Kansas Workers Compensation Act, which was enacted initially in 1911. As the Kansas Supreme Court explained in *Injured Workers of Kansas v. Franklin*, the Kansas legislature’s abolishing an employee’s common-law right to sue employers for personal injuries met a §18 challenge because the legislature simultaneously provided the employees with an adequate substitute remedy for the right abolished—the Workers Compensation Act. That act allowed employees to quickly receive a smaller set amount of money for injuries received at work regardless of whether the injuries were caused by negligence of the employer.<sup>9</sup>

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<sup>8</sup> *Id.*, 261 Kan. at 948.

<sup>9</sup> *Injured Workers of Kansas v. Franklin*, 262 Kan. 840, 855, 942 P.2d 591 (1997).

## **SB294 VIOLATES ARTICLE 2, §17, OF THE KANSAS CONSTITUTION**

Unlike the historic common-law immunities provided to legislators, judges, police officers and state agencies—all of which are qualified or restricted in one respect or another—the immunities bestowed by SB294 are limitless and unprecedented. No other business in this state enjoys anything remotely like it. No state agency—including potential competitors like the Department of Wildlife and Parks, the Travel and Tourism and Film Services Division of the Department of Commerce, the Great Plains Nature Center, the State Fair, and the State Historical Society to name a few—enjoy similar degrees of immunity. The narrow number of “agritourism operators” who will benefit from the broad immunities both in absolute terms and in comparison to their competitors bestowed by SB294 are unique and historically unprecedented.

SB294 is clearly impermissible “special legislation” in violation of Article 2, §17, of the Kansas Constitution, which mandates, in pertinent part, that: “All laws of a general nature shall have a uniform operation throughout the state.”

Providing immunity from suit is manifestly a law of general nature and the business of offering agritourism to members of the public is likewise a general one throughout the state. But the immunity promised by SB294 will be anything but uniform in operation throughout the state—instead, only certain non-uniform types of businesses will qualify, and only those that are designated by the Secretary of Commerce. It is difficult to conceive how SB294 is anything but “special interest legislation” and thus difficult to imagine how it could survive a constitutional challenge.

Although obviously well-intentioned, SB294 does not meet any demonstrated need and through the establishment of a new immunity not recognized at common-law, it clearly would be in violation of the Kansas Constitution and Bill of Rights. The Kansas Trial Lawyers Association urges that the legislature seek other ways to promote the overall agricultural economy and agritourism activities throughout the State of Kansas. The grant of absolute immunity is not sound public policy and does not enhance personal responsibility of all citizens of the State of Kansas, including “agritourism operators”—personal responsibility that all Kansans are justifiably proud of and must continue to promote. Safe and responsible agritourism is sound public policy.



Definitions:

Ordinary negligence is the omission of that care which persons of common prudence usually take of their own concerns. Ordinary negligence is based on fact that one ought to have known results of his or her acts. Gross negligence rests on assumption that one knew results of his acts but was recklessly or wantonly indifferent to results. The distinction between "ordinary negligence" and "gross negligence" is that the former lies in the field of inadvertence and the latter in the field of actual or constructive intent to injure.

Gross negligence consists of a conscious and voluntary act or omission which is likely to result in grave injury when in face of clear and present danger of which the alleged negligent person is aware. It is an indifference to present legal duty and utter forgetfulness of legal obligations, so far as other persons may be affected, and a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence.

Willful, wanton or reckless negligence are terms customarily treated as meaning essentially the same as gross negligence. The usual meaning assigned to these words is that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. The action is usually accompanied by a conscious indifference to the consequences, amounting almost to willingness that they shall follow. Also defined as highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger is apparent. As a result there is often no clear distinction between such conduct and "gross" negligence, and the two have tended to merge and take on the same meaning, of an aggravated form of negligence, differing in quality rather than in degree from ordinary lack of care. Such aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention.

"Wantonness" constituting gross and wanton negligence within automobile guest statute indicates a realization of imminence of danger and a reckless disregard, complete indifference, and unconcern of probable consequences of the wrongful act. Mann v. Good, 202 Kan. 631, 451 P.2d 233, 236.

Willful conduct is action indicating a design, purpose or intent on the part of a person to do wrong or to cause an injury to another. Wanton conduct is action indicating a realization of the imminence of danger and a reckless disregard and complete indifference and unconcern for the probable consequences of the action. Anderson, Administrator v. White, 210 Kan. 18, 19.



# KANSAS

DIVISION OF THE BUDGET  
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

January 29, 2004

The Honorable Karin Brownlee, Chairperson  
Senate Committee on Commerce  
Statehouse, Room 136-N  
Topeka, Kansas 66612

Dear Senator Brownlee:

SUBJECT: Fiscal Note for SB 334 by Senator Schmidt, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning SB 334 is respectfully submitted to your committee.

SB 334 would create the Agritourism Promotion Act. The act would allow the use of certain agricultural activities to promote rural tourism and rural economic development in the state. The Secretary of the Department of Commerce would have the responsibility to review and approve applications for the designation of an agricultural activity as an "agritourism activity" and the land on which the activity would be conducted as an "agritourism location." An agritourism activity would be defined as an activity allowing the public to view or participate in farming, ranching, nature, or rural culture. The bill would prohibit the Secretary from charging application fees for agritourism designations.

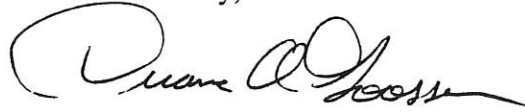
SB 334 would increase the Department of Commerce's operating expenditures by between \$133,408 and \$158,408 from the State General Fund or the Economic Development Initiatives Fund in FY 2005. The Department would need an additional Economic Development Representative III position costing \$58,408, including benefits. Marketing the activities outlined in the bill would increase operating costs by between \$75,000 and \$100,000. Actual costs for marketing would depend on the size, scope, and number of agritourism operators designated.



The Honorable Karin Brownlee, Chairperson  
January 29, 2004  
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The bill would also require reprioritization of the agency's current tourism programs and additional work hours from the Department's existing staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane A. Goossen". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Duane A. Goossen  
Director of the Budget

cc: Matt Jordan, Department of Commerce