

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 21, 2005, in Room 423-S of the Capitol.

All members were present except:

Representative Joann Freeborn- excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Amy VanHouse, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes Office
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Dale Lambley, Special Assistant to the Secretary, Kansas Department of Agriculture
Duane Simpson, Director of Government Relations, Kansas Agribusiness Retailers Association
Leslie Kaufman, Governmental Relations Director, Kansas Cooperative Council
Chris Wilson, Kansas Agricultural Aviation Association, Kansas Dairy Association, and Kansas Seed Industry Association

Others attending:

See attached list.

Chairman Johnson welcomed Representative Harold Lane to the House Agriculture Committee. He is taking Representative Showalter's place on the committee until she is able to return.

Hearing and action on HB 2341 - Uniformity and jurisdiction of Kansas fertilizer law

Chairman Johnson opened the hearing on **HB 2341**. Raney Gilliland explained that this bill would amend the Kansas Fertilizer Law creating uniformity by insisting that jurisdictions conform to the proposed law. Current statutes allow local jurisdictions to have different regulations than the Kansas Department of Agriculture. Passage of **HB 2341** would prevent local jurisdictions from passing any ordinance, rule, or regulation that is in conflict with the Kansas Fertilizer Law.

Dale Lambley, Special Assistant to the Secretary, Kansas Department of Agriculture, testified in support of **HB 2341**. He stated that this legislation will ensure that fertilizer laws, rules and regulations are uniform throughout Kansas. Consistent, uniform laws and regulations are essential to effective regulation and compliance by industry. (Attachment 1)

Duane Simpson, Director of Government Relations, Kansas Agribusiness Retailers Association, appeared in support of **HB 2341**, introduced at the association's request. He explained that this legislation was modeled after the uniform statewide pesticide law. He reported that, currently, no city or county in Kansas has attempted to regulate or ban fertilizer. Unfortunately, cities and counties in other states are beginning to attempt to regulate fertilizer at the local level. He, specifically, mentioned problems in Madison, Wisconsin. He explained that this bill was a proactive approach to establish uniformity before problems should arise in Kansas. (Attachment 2)

Leslie Kaufman, Governmental Relations Director, Kansas Cooperative Council, testified in support of **HB 2341** to place regulation of fertilizer in the hands of the state, thus allowing for uniformity across Kansas. She stated that regulation of agricultural chemicals and fertilizers should be based on sound scientific principles and applied evenly to dealers, handlers, and end-users. KCC supports efforts to ensure that current regulations for storing, handling, and applying bulk fertilizers and agricultural chemicals are uniformly enforced. (Attachment 3)

Chris Wilson on behalf of the Kansas Agricultural Aviation Association, Kansas Dairy Association, and Kansas Seed Industry Association appeared in support of **HB 2341** to provide for uniform state regulation of fertilizer in Kansas. She noted that this is currently the case, but it is not spelled out in law. **HB 2341** establishes that fertilizer regulation is the state's role and not that of local governments. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE House Agriculture Committee at 3:30 p.m. on February 21, 2005, in Room 423-S of the Capitol.

There being no other conferees, Chairman Johnson closed the hearing on **HB 2341** and opened the floor for discussion.

Representative Gatewood offered a conceptual amendment to **HB 2341** to make the language uniform with the state pesticide law; to cite example of uniformity in the statute such as in the areas of storage and transportation; further, to amend the bill to provide that nothing in the bill would be construed to preempt or otherwise limit the authority of any city, county, or political subdivision to adopt and enforce zoning regulation, fire codes, or hazardous waste disposal restrictions. Seconded by Representative Light, the motion carried.

Representative Faber moved to recommend **HB 2341**, as amended, favorable for passage. Seconded by Representative Miller, the motion carried.

Discussion and Action on HB 2054 - Kansas pet animal act, definitions, rules and regulations, fees

Chairman Johnson opened the floor for discussion on **HB 2054**. Raney Gilliland explained that this bill to amend the Kansas Pet Animal Act would change the current definition of "animal" to include horses, cattle, sheep, goats, swine, ratites, domesticated deer or domesticated fowl when a state licensed animal pound or shelter is involved; would no longer exempt USDA licensed animal breeders or distributors from providing adequate veterinary care; would increase the cap on fees by 50 percent; pet shops would no longer be able to pay a reduced fee if they are USDA licensed; would eliminate the grace period for late fees and the late fee would be increased from \$50 to \$75; and would require all licensees to pay for each license under which they operate.

Representative Larkin moved to amend **HB 2054** on page 5, lines 9 - 29. His amendment would increase the maximum fee amounts, except that the commissioner shall not fix such license and permit fees in an amount which results in an increase in receipts or revenue from the previous fiscal year which exceeds \$80,000. The amendment would require the commissioner to establish categories of licenses and permits based upon the type of license or permit, size of the licensed or permitted business or activity and the premises where such business or activity is conducted, with different fees for each such category. (Attachment 5) Seconded by Representative Svaty, the motion carried.

Representative Powell moved to amend **HB 2054** on page 1 by striking the new language in lines 31 and 32: "except when such animal is being housed at a state licensed animal pound or shelter." Seconded by Representative Dahl, the motion carried.

Representative Gatewood moved to amend **HB 2054** on page 4 by striking lines 1 - 3, and inserting new language: "As used in the Kansas pet animal act, 'adequate veterinary medical care' shall not apply to United States department of agriculture licensed animal breeders or animal distributors, except that the commissioner or licensed veterinarian may assure that such animal breeders or animal distributors have a documented program of adequate veterinary medical care. The commissioner or licensed veterinarian shall not require changes in such documented program." (Attachment 6) Seconded by Representative Svaty, the motion carried.

Representative Feuerborn moved to recommend **HB 2054**, as amended, favorable for passage. The motion was seconded by Representative Svaty. The motion carried.

Discussion and Action on HB 2103 - Standards and requirements of commercial weighing and measuring devices

Chairman Johnson opened the floor for discussion on **HB 2103**. Raney Gilliland explained that this bill would remove the sunset date of August 31, 2005, and make permanent the temporary exemption for vehicle scales used solely for the purpose of weighing aggregate products from meeting the national and state compliance regulations.

CONTINUATION SHEET

MINUTES OF THE House Agriculture Committee at 3:30 p.m. on February 21, 2005, in Room 423-S of the Capitol.

Representative Powell moved to amend **HB 2103** on page 1, lines 27 - 29. The amendment would exempt those vehicle scales manufactured prior to 1994 and used solely for the purpose of weighing aggregate products where volumes average less than 100,000 tons per year. These scales would continue to be required to have a minimum tolerance of +/- 100 pounds. (Attachment 7) Seconded by Representative Svaty, the motion carried.

Representative Larkin moved to recommend **HB 2103**, as amended, favorable for passage. Seconded by Representative Lane, the motion carried.

Discussion and Action on HB 2280 - Sampling, civil penalties for violations of law and increased fees for grain warehouses

Chairman Johnson opened the floor for discussion on **HB 2280**. Raney Gilliland explained that this bill would authorize quality sampling of grain; provide for a civil penalty for violations of law; and increase the statutory maximum for annual licensing fees charged by the Grain Warehouse Program.

Representative Powell moved to amend **HB 2280** by striking Sections 2, 3 and 4; retaining only the first section concerning quality sampling of grain. (Attachment 8) Seconded by Representative Carlson, the motion carried.

Representative Powell moved to recommend **HB 2280**, as amended, favorable for passage. Seconded by Representative Williams, the motion carried.

The meeting adjourned at 4:30 p.m. The next meeting is scheduled for March 2, 2005.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 21, 2005

NAME	REPRESENTING
Dale Lambley	KDA
Duane Simpson	KARA
Mary Jane Starkiewicz	KARA
Debra Duncan	KATHD
Chris Deines	Chairman's Intern
Ramon Gonzalez	N.R. HAMM QUARRY, INC
Glady Mases	KAPA
Wendy Burns	KAPA
Jim Waggle	WHScale KAPA
Erik Wisner	KDA
Tim Tyson	KDA
Molly Copten	LPA
Tom Bruno	KS Pet Industry
Leslie Kaufman	KS Coop Council
DAN RILEY	KS DEPT OF AG
Jack Plegge	Rep Larkin Intern
BRAD HARRELSON	KFB



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on House Bill 2341
to
The House Committee on Agriculture**

**by Dale Lambley
Special Assistant to the Secretary
Kansas Department of Agriculture**

February 21, 2005

Good afternoon Chairman Johnson and members of the committee. I am Dale Lambley, special assistant to the secretary of agriculture. I am here to testify in support of HB 2341.

This legislation will ensure that fertilizer laws, rules and regulations are uniform throughout Kansas. Consistent, uniform laws and regulations are essential to effective regulation and compliance by industry. For this reason, we support HB 2341.

Thank you. I will gladly stand for questions at the appropriate time.

House Agriculture Committee
February 21, 2005
Attachment 1

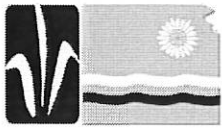
109 SW 9th ST., Topeka, KS 66612-1280

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KANSAS AGRIBUSINESS RETAILERS ASSOCIATION



KARA is
*"Committed to
Professional
Development
and Business
Viability for
the Retail Crop
Production
Industry"*

Statement of the
Kansas Agribusiness Retailers Association

Presented to the
House Agriculture Committee

In support of
House Bill 2341

Representative Dan Johnson, Chairman

February 21, 2005

Presented by:

Duane Simpson
Director of Government Relations

Kansas Agribusiness Retailers Association
(785) 234-0463

House Agriculture Committee
February 21, 2005
Attachment 2

Chairman Johnson and Members of the House Agriculture Committee, I am Duane Simpson appearing on behalf of the Kansas Agribusiness Retailers Association (KARA). KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. I appear before you in support of HB 2341.

HB 2341 would make Kansas fertilizer law uniform throughout the state. Kansas currently has a uniform statewide pesticide law which this bill is modeled after. Currently, no city or county in Kansas has attempted to regulate or ban fertilizer. Unfortunately, cities and counties in other states are beginning to attempt to regulate fertilizer at the local level.

In Madison, Wisconsin the city council has outlawed anything that contains more than a trace amount of phosphorus. It is illegal to advertise or sell the product to any resident of the city. Violations carry a \$25 to \$300 fine. Meanwhile, Dane County, Wisconsin has a similar ordinance except there are a few exceptions, including agricultural uses. Ag retailers in the county are required to know the intended use of fertilizer sold to residents of the county. They also cannot advertise in any media outlet that might be seen or heard by residents of the city.

Why should Kansas care what about what communities in Wisconsin are doing? The answer is simple, it could happen here. All it takes is 2 out of 3 county commissioners to outlaw a product based on junk-science and emotion.

Fertilizer can and should be regulated at the state and federal level to avoid the possibility of having a confusing patchwork of regulations throughout the state. Such a patchwork can put retailers within the state at a competitive advantage or disadvantage depending on what side of the county line they are on. In addition, a county regulation that does not exempt agriculture could put farmers at a competitive disadvantage with other farmers within the state. Farmers whose property crosses county lines could face a regulatory nightmare without statewide uniformity of fertilizer regulation.

In addition, State and federal agencies have the necessary resources to base regulations on science. In other states, local communities have ignored sound scientific principles and chosen to rely upon activist generated and internet based junk-science. Kansas has already recognized the value of having statewide regulation of pesticide. Rules and regulations dealing with the environment should be handled the same whether you live in Johnson County or Johnson City. On behalf of the KARA, I urge this committee to pass HB 2341. I will be happy to stand for questions at the appropriate time.



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HOUSE AGRICULTURE COMMITTEE

February 21, 2005
Topeka, Kansas

RE: HB 2341 – Statewide Fertilizer Uniformity.

Chairman Johnson and members of the House Agriculture Committee, thank you for the opportunity to comments today, on behalf of the Kansas Cooperative Council. I am Leslie Kaufman and I serve the Council as Governmental Relations Director. The Council includes more 223 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans. Included in our membership are more than 111 grain elevator/farm supply cooperatives, many with multiple facilities, which will be directly impacted by the bill before you today.

As you know, the bill before you today places regulation of fertilizer in the hands of the state, thus allowing for uniformity across Kansas. Regulation of agricultural chemicals and fertilizers should be based on sound scientific principles and applied evenly to dealers, handlers, and end-users. The KCC supports efforts to ensure that current regulations for storing, handling, and applying bulk fertilizers and agricultural chemicals are uniformly enforced. As such, we support HB 2341.

House Agriculture Committee
February 21, 2005
Attachment 3

Kansas already has statewide uniformity for regulating pesticide use. HB 2341 will extend that same philosophy to regulating fertilizer products. Consistency from one area of the state to another is extremely important. It prevents the creation of patchwork "regulatory islands". Retailers and applicators frequently provide products and services across jurisdictional boundaries. The state needs to put safeguards in place now to ensure that Kansas agribusinesses and producers are not faced with the logistic and practical nightmare of multiple regulatory systems for the same product/practice.

HB 2341 is a common sense approach to regulating fertilizer products. It provides a time-tested, workable, and appropriate mechanism to help ensure sound science controls fertilizer regulation in Kansas. As such, we encourage this committee to act favorably on HB 2341. Thank you for your consideration.

Leslie Kaufman
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STATEMENT OF THE



KANSAS AGRICULTURAL AVIATION ASSOCIATION



KANSAS DAIRY ASSOCIATION



KANSAS SEED INDUSTRY ASSOCIATION

TO THE HOUSE AGRICULTURE COMMITTEE

REPRESENTATIVE DAN JOHNSON, CHAIR

REGARDING HB 2341

February 21, 2005

Chairman Johnson and Members of the House Agriculture Committee, I am Chris Wilson, providing this statement to you today in support of HB 2341, on behalf of the Kansas Agricultural Aviation Association (KAAA), Kansas Seed Industry Association (KSIA), and Kansas Dairy Association (KDA). All are statewide trade and professional associations, KAAA representing 250 member firms involved in the aerial application of crop protection chemicals; KSIA representing 125 member firms producing and processing seed; and all the 470 dairies in Kansas – as of 2004, the 18th highest dairy production state in the country.

HB 2341 provides for uniform state regulation of fertilizer in Kansas. This is currently the case, but is not spelled out in the law. Kansas law gives the Kansas Department of Agriculture the authority for fertilizer regulation. HB 2341 establishes that fertilizer regulation is the state's role and not that of local governments.

The motivation for this bill is due to the attempts of local governments in Wisconsin to regulate fertilizer. In Madison, Wisconsin the city council has outlawed anything that contains more than a trace amount of phosphorus. It is illegal to advertise or sell the product to any resident of the city. Violations carry a \$25 to \$300 fine. Meanwhile, Dane County, Wisconsin has a similar ordinance except there are a few exceptions, including agricultural uses. Ag retailers in the county are required to know the intended use of fertilizer sold to residents of the county. They also cannot advertise in any media outlet that might be seen or heard by residents of the city.

No doubt the Wisconsin legislature intended for fertilizer regulation to be the domain of the state and didn't see the need to preempt regulation by local governments. A number of states, including Kansas, have passed statutes, known as FIFRA preemption, referring to the Federal Insecticide, Fungicide, and Rodenticide Act, providing that pesticide regulation is solely the domain of the state.

Fertilizer as well as pesticides should only be regulated at the state level, as opposed to the local level, to provide for consistent, science-based regulations and avoid a patchwork of regulations. Multiple jurisdiction regulations would be difficult or impossible to comply with if they were in conflict with one another.

The state has the expertise in this area, where it would not be possible for many local governments to have staff qualified in developing or enforcing fertilizer regulations.

Thank you for the opportunity to provide these comments in support of HB 2341. We would urge you to pass it out favorably today and I would be glad to respond to questions.

HOUSE BILL No. 2054

By Committee on Agriculture

1-13

Proposed Amendments to
House Bill No. 2054

9 AN ACT concerning animals; relating to the pet animal act; definitions;
10 rules and regulations; fees; amending K.S.A. 47-1701 and 47-1712 and
11 K.S.A. 2004 Supp. 47-1721 and repealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 47-1701 is hereby amended to read as follows: 47-
15 1701. As used in the Kansas pet animal act, unless the context otherwise
16 requires:

17 (a) "Adequate feeding" means supplying at suitable intervals (not to
18 exceed 24 hours) of a quantity of wholesome foodstuff, suitable for the
19 animal species and age, and sufficient to maintain a reasonable level of
20 nutrition in each animal.

21 (b) "Adequate watering" means a supply of clean, fresh, potable wa-
22 ter, supplied in a sanitary manner and either continuously accessible to
23 each animal or supplied at intervals suitable for the animal species, not
24 to exceed intervals of 12 hours.

25 (c) "Ambient temperature" means the temperature surrounding the
26 animal.

27 (d) (1) "Animal" means any live dog, cat, rabbit, rodent, nonhuman
28 primate, bird or other warm-blooded vertebrate or any fish, snake or
29 other cold-blooded vertebrate.

30 (2) Animal does not include horses, cattle, sheep, goats, swine, ratites,
31 domesticated deer or domestic fowl, *except when such animal is being*
32 *housed at a state licensed animal pound or shelter.*

33 (e) "Animal breeder" means any person who operates animal breeder
34 premises.

35 (f) "Animal breeder premises" means any premises where all or part
36 of six or more litters of dogs or cats, or both, or 30 or more dogs or cats,
37 or both, are sold, or offered or maintained for sale, primarily at wholesale
38 for resale to another.

39 (g) "Animal shelter" or "pound" means a facility which is used or
40 designed for use to house, contain, impound or harbor any seized stray,
41 homeless, relinquished or abandoned animal or a person who acts as an
42 animal rescuer, or who collects and cares for unwanted animals or offers
43 them for adoption. Animal shelter or pound also includes a facility of an

5-2

1 free from any visible symptoms of communicable disease.

2 Sec. 3. K.S.A. 2004 Supp. 47-1721 is hereby amended to read as
3 follows: 47-1721. (a) Each application for issuance or renewal of a license
4 or permit required under K.S.A. 47-1701 *et seq.*, and amendments
5 thereto, shall be accompanied by the fee prescribed by the commissioner
6 under this section. Such fees shall be as follows:

7 (1) Except as provided in ~~paragraph~~ *paragraphs* (5) and (6), for a
8 license for premises of a person licensed under public law 91-579 (7
9 U.S.C. § 2131 *et seq.*), an amount not to exceed ~~\$150~~ ~~297~~.

\$300

10 (2) Except as provided in paragraph (5), for a license for any other
11 premises, an amount not to exceed ~~\$300~~ ~~457~~.

\$600

12 (3) For a temporary closing permit, an amount not to exceed ~~\$75~~

\$150

13 ~~\$117~~
14 (4) For an out-of-state distributor permit, an amount not to exceed
15 ~~\$500~~ ~~750~~.

\$1,000

16 (5) For a hobby breeder license or a kennel operator license an
17 amount not to exceed ~~\$75~~ ~~117~~.

\$150

18 (6) *For a pet shop premises license, an amount not to exceed \$450.*

19 (7) A late fee of ~~\$50~~ ~~75~~ shall be assessed to any person whose permit
20 or license renewal is ~~more than 45 days~~ late.

\$100

21 (b) The commissioner shall determine annually the amount necessary
22 to carry out and enforce K.S.A. 47-1701 *et seq.*, and amendments thereto,
23 for the next ensuing fiscal year and shall fix by rules and regulations the
24 license and permit fees for such year at the amount necessary for that
25 purpose, subject to the limitations of this section. In fixing such fees, the
26 commissioner ~~may~~ establish categories of licenses and permits, based
27 upon the type of license or permit, size of the licensed or permitted
28 business or activity and the premises where such business or activity is
29 conducted, and ~~may~~ establish different fees for each such category. The
30 fees in effect immediately prior to the effective date of this act shall
31 continue in effect until different fees are fixed by the commissioner as
32 provided by this subsection.

, except that the commissioner shall not fix such license and permit fees in an amount which results in an increase in receipts or revenue from the previous fiscal year which exceeds \$80,000

shall

33 (c) If a licensee, permittee or applicant for a license or permit re-
34 quests an inspection of the premises of such licensee, permittee or ap-
35 plicant, the commissioner shall assess the costs of such inspection, as
36 established by rules and regulations of the commissioner, to such licensee,
37 permittee or applicant.

38 (d) No fee or assessment required pursuant to this section shall be
39 refundable.

40 (e) The commissioner shall remit all moneys received by or for the
41 commissioner under this section to the state treasurer in accordance with
42 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
43 of each such remittance, the state treasurer shall deposit the entire

HOUSE BILL No. 2054

By Committee on Agriculture

1-13

Proposed Amendments

9 AN ACT concerning animals; relating to the pet animal act; definitions;
10 rules and regulations; fees; amending K.S.A. 47-1701 and 47-1712 and
11 K.S.A. 2004 Supp. 47-1721 and repealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 47-1701 is hereby amended to read as follows: 47-
15 1701. As used in the Kansas pet animal act, unless the context otherwise
16 requires:

17 (a) "Adequate feeding" means supplying at suitable intervals (not to
18 exceed 24 hours) of a quantity of wholesome foodstuff, suitable for the
19 animal species and age, and sufficient to maintain a reasonable level of
20 nutrition in each animal.

21 (b) "Adequate watering" means a supply of clean, fresh, potable wa-
22 ter, supplied in a sanitary manner and either continuously accessible to
23 each animal or supplied at intervals suitable for the animal species, not
24 to exceed intervals of 12 hours.

25 (c) "Ambient temperature" means the temperature surrounding the
26 animal.

27 (d) (1) "Animal" means any live dog, cat, rabbit, rodent, nonhuman
28 primate, bird or other warm-blooded vertebrate or any fish, snake or
29 other cold-blooded vertebrate.

30 (2) Animal does not include horses, cattle, sheep, goats, swine, ratites,
31 domesticated deer or domestic fowl, *except when such animal is being*
32 *housed at a state licensed animal pound or shelter.*

33 (e) "Animal breeder" means any person who operates animal breeder
34 premises.

35 (f) "Animal breeder premises" means any premises where all or part
36 of six or more litters of dogs or cats, or both, or 30 or more dogs or cats,
37 or both, are sold, or offered or maintained for sale, primarily at wholesale
38 for resale to another.

39 (g) "Animal shelter" or "pound" means a facility which is used or
40 designed for use to house, contain, impound or harbor any seized stray,
41 homeless, relinquished or abandoned animal or a person who acts as an
42 animal rescuer, or who collects and cares for unwanted animals or offers
43 them for adoption. Animal shelter or pound also includes a facility of an

1 ~~(2) As used in the Kansas pet animal act, "adequate veterinary medical~~
 2 ~~care" shall not apply to United States department of agriculture li-~~
 3 ~~censed animal breeders or animal distributors.~~

4 (ee) "Ratites" means all creatures of the ratite family that are not
 5 indigenous to this state, including, but not limited to, ostriches, emus and
 6 rheas.

7 (ff) "Retail breeder" means any person who operates a retail breeder
 8 premises.

9 (gg) "Retail breeder premises" means any premises where all or part
 10 of six or more litters or 30 or more dogs or cats, or both, are sold, or
 11 offered or maintained for sale, primarily at retail and not for resale to
 12 another.

13 (hh) "Retail" means any transaction where the animal is sold to the
 14 final consumer.

15 (ii) "Wholesale" means any transaction where the animal is sold for
 16 the purpose of resale to another.

17 Sec. 2. K.S.A. 47-1712 is hereby amended to read as follows: 47-
 18 1712. (a) The commissioner is hereby authorized to adopt rules and reg-
 19 ulations for licensees and permittees. Such rules and regulations shall
 20 include, but not be limited to, provisions relating to: (1) Reasonable treat-
 21 ment of animals in the possession, custody or care of a licensee or per-
 22 mittee or being transported to or from licensed or permitted premises;
 23 (2) a requirement that each licensee and permittee file with the com-
 24 missioner evidence that animals entering or leaving the state are free from
 25 any visible symptoms of communicable disease; (3) identification of ani-
 26 mals handled; (4) primary enclosures; (5) housing facilities; (6) sanitation;
 27 (7) euthanasia; (8) ambient temperatures; (9) feeding; (10) watering; (11)
 28 adequate veterinary medical care; (12) inspections of licensed or permit-
 29 ted premises, investigations of complaints and training of persons con-
 30 ducting such inspections and investigations; and (13) a requirement that
 31 each licensee or permittee keep and maintain, for inspection by the com-
 32 mission, such records as necessary to administer and enforce the provi-
 33 sions of the Kansas pet animal act.

34 (b) The commissioner shall only adopt as rules and regulations for
 35 United States department of agriculture licensed animal distributors and
 36 animal breeders, and animal distributor and animal breeder premises the
 37 rules and regulations promulgated by the secretary of the United States
 38 department of agriculture, ~~cited at 9 C.F.R. 3.1 through 3.12~~, pursuant
 39 to the provisions of the United States public law 91-579 (7 U.S.C. § 2131
 40 et seq.), commonly known as the animal welfare act.

41 (c) Notwithstanding any provision in subsection (b), the commis-
 42 sioner may adopt a requirement that each licensee and permittee file with
 43 the commissioner evidence that animals entering or leaving the state are

As used in the Kansas pet animal act,
 "adequate veterinary medical care" shall not
 apply to United States department of
 agriculture licensed animal breeders or
 animal distributors, except that the
 commissioner or licensed veterinarian may
 assure that such animal breeders or animal
 distributors have a documented program of
 adequate veterinary medical care. The
 commissioner or licensed veterinarian shall
 not require changes in such documented
 program.

6-2

HOUSE BILL No. 2103

By Committee on Agriculture

1-20

Proposed Amendments

House Agriculture Committee
February 21, 2005
Attachment 7

9 AN ACT concerning weights and measures; relating to standards and
10 requirements of commercial weighing and measuring devices; amend-
11 ing K.S.A. 2004 Supp. 83-202 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2004 Supp. 83-202 is hereby amended to read as
15 follows: 83-202. (a) Except as provided further:

16 (1) The system of weights and measures in customary use in the
17 United States and the metric system of weights and measures are jointly
18 recognized, and either one or both of these systems shall be used for all
19 commercial purposes in the state.

20 (2) The following standards and requirements shall apply to com-
21 mercial weighing and measuring devices:

22 (A) "The standards of the national conference on weights and meas-
23 ures" published in the national institute of standards and technology
24 handbook 44 entitled specifications, tolerances, and other technical
25 requirements for weighing and measuring devices as published on Oc-
26 tober, 1994 or later versions as established in rules and regulations
27 adopted by the secretary, ~~except those vehicle scales installed prior to the~~
28 ~~effective date of this act~~ and used solely for the purpose of weighing
29 aggregate products shall be exempt from the provisions contained in sec-
30 tion 2.20 scales, table 6 of such handbook. Such aggregate product scales
31 shall have a minimum tolerance of +/- 100 pounds. ~~Such exception shall~~
32 ~~be in effect until August 31, 2005;~~

33 (B) "the uniform laws and regulations of the national conference on
34 weights and measures" published in the national institute of standards
35 and technology handbook 130 regarding packaging and labeling, the
36 method of sale of commodities, national type evaluation regulation, motor
37 fuel inspection and motor fuel regulation, as published on December,
38 1994 or later versions as established in rules and regulations adopted by
39 the secretary;

40 (C) "checking the net contents of packaged goods" published in the
41 national institute of standards and technology handbook 133, third edi-
42 tion, as published on September, 1988 or later versions as established in
43 rules and regulations adopted by the secretary;

manufactured

1994

where volumes average less than 100,000 tons
per year

Proposed Amendment to HB 2280. Delete Sections 2-4 of the bill to remove civil fining authority and the proposed fee increase.

Session of 2005

HOUSE BILL No. 2280

By Committee on Agriculture

2-3

9 AN ACT concerning agriculture; relating to grain warehouses; sampling;
10 violations of law, civil penalties; fees; amending K.S.A. 34-228 and
11 repealing the existing section.
12

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

14 New Section 1. (a) The secretary of agriculture or the authorized
15 representative of the secretary may sample any commodity contained in
16 a licensed warehouse whenever indications of quality problems with the
17 potential of causing a loss of value are observed. Observations indicating
18 the following may serve as the basis for the sample provided for by this
19 section: (1) Odor consistent with spoiled or rotten grain; (2) insect dam-
20 age; (3) distinct discoloration of the kernels; (4) insect webbing; (5)
21 sprouting from the kernels; (6) crust on the top layer of the grain; or (7)
22 any other evidence consistent with grain quality.

23 (b) If obtaining the sample requires the assistance of the warehouse-
24 man, that assistance shall be provided within a reasonable time of the
25 request of the secretary or the secretary's authorized representative.

26 (c) Upon obtaining a sample, the secretary or the authorized repre-
27 sentative of the secretary shall make the sample available to the ware-
28 houseman for review.

29 (d) If after examination of the sample or samples a quality problem
30 is still suspected the secretary may:

31 (1) Order the warehouseman to have all commodities suspected of
32 quality problems sampled and officially graded in a manner sufficient to
33 accurately determine the nature and extent of the problem;

34 (2) arrange for the sampling and grading of the suspected commod-
35 ities, if the warehouseman fails to do so within the time ordered by the
36 secretary and assess the costs to the warehouseman; and

37 (3) order the warehouseman to take immediate management and
38 handling steps in response to the quality problem.

39 (e) Any failure by a warehouseman to maintain grain quality, comply
40 with any order of the secretary related to quality or to remit funds to
41 cover sampling and grading costs shall be deemed a violation of the pro-
42 visions of article 2 of chapter 34 of the Kansas Statutes Annotated, and
43 amendments thereto.

1 (f) The provisions of this section shall be part of and supplemental to
2 article 2 of chapter 34 of the Kansas Statutes Annotated, and amendments
3 thereto.

4 ~~New Sec. 2.~~ (a) In addition to any other penalty provided by law, any
5 person who violates any provision of chapter 34 of the Kansas Statutes
6 Annotated, and amendments thereto, or any rules and regulations
7 adopted thereunder, may incur a civil penalty of not less than \$100 nor
8 more than \$5,000 for each such violation. In the case of a continuing
9 violation, every day such violation continues may be deemed as a separate
10 violation.

11 (b) In determining the amount of the civil penalty, the following shall
12 be taken into consideration:

- 13 (1) The extent of harm caused by the violation;
- 14 (2) the nature and persistence of the violation;
- 15 (3) the length of time over which the violation occurs;
- 16 (4) any corrective actions taken; and
- 17 (5) any and all relevant circumstances.

18 (c) All civil penalties assessed shall be due and payable within 10 days
19 after written notice of assessment is served on the person, unless a longer
20 period of time is granted by the secretary of agriculture. If a civil penalty
21 is not paid within the applicable time period, the secretary may file a
22 certified copy of the notice of assessment with the clerk of the district
23 court in the county where the warehouse is located. The notice of as-
24 sessment shall be enforced in the same manner as a judgment of the
25 district court.

26 (d) No civil penalty shall be imposed pursuant to this section except
27 upon the written order of the secretary. Such order shall state the viola-
28 tion, the penalty to be imposed and the right of the person to appeal to
29 the secretary. Any such person, within 20 days after notification, may
30 make written request to the secretary for a hearing in accordance with
31 the provisions of the Kansas administrative procedure act.

32 (e) Any person aggrieved by an order of the secretary made under
33 this section may appeal such order to the district court in the manner
34 provided by the act for judicial review and civil enforcement of agency
35 actions.

36 (f) An appeal to the district court or to an appellate court shall not
37 stay the payment of the civil penalty.

38 (g) Any civil penalty recovered pursuant to the provisions of this sec-
39 tion shall be remitted to the state treasurer in accordance with the pro-
40 visions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each
41 such remittance, the state treasurer shall deposit the entire amount in the
42 state treasury to the credit of the grain warehouse fee fund.

43 (h) The provisions of this section shall be part of and supplemental

Section 2 creates
the civil fining
authority for the
department.

1 to article 2 of chapter 34 of the Kansas Statutes Annotated, and amend-
2 ments thereto.

3 ~~Sec. 3. K.S.A. 34-228 is hereby amended to read as follows: 34-228.~~

4 ~~(a) Any person desiring to engage in business as a public warehouseman~~
5 ~~in this state shall, before the transaction of any such business, shall make~~
6 ~~written application to the secretary for a license for each separate ware-~~
7 ~~house or, if the applicant owns more than one warehouse at one point,~~
8 ~~all of such warehouses may be incorporated in one application, at which~~
9 ~~the person desires to engage in such business. The application for a li-~~
10 ~~cence shall be on a form designated by the secretary and shall contain the~~
11 ~~individual name and address of each person interested as principal in the~~
12 ~~business and, if the business is operated or to be operated by a corpora-~~
13 ~~tion, setting forth the names of the president and secretary, and such~~
14 ~~further information as the secretary may require.~~

15 ~~(b) (1) Every application for a public warehouse license shall be ac-~~
16 ~~companied by a current financial statement. The statement shall include~~
17 ~~such information as required by the secretary to administer and enforce~~
18 ~~the public warehouse laws of this state, including, but not limited to, a~~
19 ~~current balance sheet, statement of income, including profit and loss,~~
20 ~~statement of retained earnings and statement of changes in financial po-~~
21 ~~sition. The applicant shall certify under oath that the statement as pre-~~
22 ~~pared accurately reflects the financial condition of the applicant as of the~~
23 ~~date specified and presents fairly the results of operations of the appli-~~
24 ~~cant's public warehouse business for the period specified. The financial~~
25 ~~statement shall be prepared in accordance with generally accepted ac-~~
26 ~~counting principles and shall be accompanied by: (A) A report of audit~~
27 ~~or review conducted by an independent certified public accountant or an~~
28 ~~independent public accountant in accordance with standards established~~
29 ~~by the American institute of certified public accountants and the account-~~
30 ~~ant's certifications, assurances, opinions, comments and notes with re-~~
31 ~~spect to the statement; or (B) a compilation report of the financial state-~~
32 ~~ment, prepared by a grain commission firm or management firm which~~
33 ~~is authorized pursuant to rules and regulations of the federal commodity~~
34 ~~credit corporation to provide compilation reports of financial statements~~
35 ~~of warehousemen.~~

36 ~~(2) Except as otherwise provided, the secretary, upon request of an~~
37 ~~applicant, may grant a waiver of the requirements of this subsection for~~
38 ~~a period of not more than 30 days if the applicant furnishes evidence of~~
39 ~~good and substantial reasons for the waiver. The secretary may extend~~
40 ~~such waiver beyond 30 days for grain stored in an alternative location~~
41 ~~other than a location identified in the public warehouse license, if the~~
42 ~~secretary determines that the owner of the grain would suffer substantial~~
43 ~~hardship to require the grain to be stored at a location identified in the~~

Section 3 is the fee increase. If the entire section is deleted from the bill, there will be no change to the current fee structure.

1 ~~license. The secretary may determine what constitutes substantial hard-~~
2 ~~ship and what length of time the grain may be stored at such alternative~~
3 ~~location.~~

4 ~~(e) (1) Every applicant for a license to operate one or more public~~
5 ~~warehouses and every person licensed to operate one or more warehouses~~
6 ~~shall at all times maintain total net worth liable for the payment of any~~
7 ~~indebtedness arising from the conduct of the warehouse or warehouses~~
8 ~~equal to at least \$.25 per bushel of the storage capacity of the warehouse~~
9 ~~or warehouses, except: (A) No person shall be granted a license or shall~~
10 ~~continue to be licensed unless the person has a net worth of at least~~
11 ~~\$25,000; and (B) any deficiency in net worth required above the \$25,000~~
12 ~~minimum may be supplied by an increase in the amount of the applicant's~~
13 ~~or licensee's bond or letter of credit as provided by K.S.A. 34 229 and~~
14 ~~amendments thereto.~~

15 ~~(2) In determining total net worth: (A) Credit may be given for in-~~
16 ~~surable property such as buildings, machinery, equipment and merchan-~~
17 ~~dise inventory only to the extent that the property is protected by insur-~~
18 ~~ance against loss or damage by fire; and (B) capital stock, as such, shall~~
19 ~~not be considered a liability.~~

20 ~~(d) No license shall be issued to a person or entity not previously~~
21 ~~licensed in this state and making application for an original license who,~~
22 ~~in this state or any other jurisdiction, within the 10 years immediately~~
23 ~~prior to the date of the application of the person or entity for a license,~~
24 ~~has been convicted of or has pleaded guilty or *nolo contendere* to any~~
25 ~~crime which would constitute:~~

- 26 ~~(1) Embezzlement;~~
27 ~~(2) any felony defined in any statute contained in article 37 of chapter~~
28 ~~21 of the Kansas Statutes Annotated and amendments thereto;~~
29 ~~(3) unauthorized delivery of stored goods;~~
30 ~~(4) any felony defined in any statute contained in chapter 34 of the~~
31 ~~Kansas Statutes Annotated and amendments thereto; or~~
32 ~~(5) a violation of the United States warehouse act (7 U.S.C. 241 *et*~~
33 ~~*seq.*).~~

34 ~~(e) The secretary may investigate any applicant making application~~
35 ~~for an original license for the purpose of determining if such person would~~
36 ~~be qualified to receive such license under the provisions of this section.~~

37 ~~(f) (1) Every application for a public warehouse license shall be ac-~~
38 ~~companied by a license fee which shall be determined and fixed by the~~
39 ~~secretary by rules and regulations. The license fee shall not be more than~~
40 ~~the applicable amount shown in the following fee schedule plus not more~~
41 ~~than \$500 for each functional unit:~~

42
43

Capacity in Bushels	ANNUAL FEE
	Not more than
1 to 100,000.....	\$500 \$650
100,001 to 150,000.....	525 682.50
150,001 to 250,000.....	550 715
250,001 to 300,000.....	600 780
300,001 to 350,000.....	625 812.50
350,001 to 400,000.....	650 845
400,001 to 450,000.....	700 910
450,001 to 500,000.....	725 942.50
500,001 to 600,000.....	775 1,007.50
600,001 to 700,000.....	800 1,040
700,001 to 800,000.....	850 1,105
800,001 to 900,000.....	875 1,137.50
900,001 to 1,000,000.....	900 1,170
1,000,001 to 1,750,000.....	1,225 1,592.50
1,750,001 to 2,500,000.....	1,400 1,820
2,500,001 to 5,000,000.....	1,750 2,275
5,000,001 to 7,500,000.....	2,100 2,730
1 to 10,000,000.....	2,375 3,087.50
01 to 12,500,000.....	2,600 3,380
01 to 15,000,000.....	2,800 3,640
01 to 17,500,000.....	3,000 3,900
01 to 20,000,000.....	3,225 4,192.50
For each 2,500,000 bushels or fraction over 20,000,000 bushels.....	350 455

(2) Whenever a licensed warehouseman purchases or acquires additional facilities, the warehouseman, if otherwise qualified, may acquire a license for the remainder of an unexpired license period by paying to the secretary a license fee computed as follows: If the unexpired license period is nine months or more, the annual fee; if the unexpired license period is more than six months and less than nine months, 75% of the annual fee; if the unexpired license period is more than three months and not more than six months, 50% of the annual fee; and if the unexpired license period is three months or less than three months, 25% of the annual fee.

(3) In addition to any other applicable fee, the secretary shall charge and collect a fee each time a public warehouse license is amended in an amount of not more than \$300 which shall be determined and fixed by the secretary by rules and regulations.

(4) Nothing in this subsection shall be construed to authorize a refund for any unused portion of an issued license.

(g) The secretary shall examine each warehouse operated by a li

1 ~~icensed public warehouseman at least once in each 12-month period. The~~
 2 ~~licensed public warehouseman may request additional examinations of~~
 3 ~~any warehouse operated by the warehouseman. The cost of additional~~
 4 ~~examinations when requested by the warehouseman shall be charged to~~
 5 ~~the warehouseman requesting the examination. The cost of each addi-~~
 6 ~~tional examination requested by a warehouseman shall be an amount~~
 7 ~~determined therefor in accordance with an hourly rate fixed by the sec-~~
 8 ~~retary of not more than \$50 per hour, subject to a minimum charge of~~
 9 ~~four hours for the examination, plus amounts for subsistence expense at~~
 10 ~~the rate fixed under K.S.A. 75-3207a and amendments thereto and for~~
 11 ~~mileage expense in accordance with the schedule of charges established~~
 12 ~~under K.S.A. 75-4607 and amendments thereto. The secretary, at the~~
 13 ~~secretary's discretion, may make additional examinations of a warehouse~~
 14 ~~and if a discrepancy is found on that examination, or if one was found on~~
 15 ~~the last previous examination, the cost of the examination shall be paid~~
 16 ~~by the warehouseman.~~

17 (h) ~~When the secretary authorizes a grain handling facility to be phys-~~
 18 ~~ically monitored, pursuant to subsection (a)(3) of K.S.A. 34-102, and~~
 19 ~~amendments thereto, the cost and expenses of the monitoring shall be~~
 20 ~~paid by the owner of the facility at the same rates fixed in subsection (g).~~

21 (i) ~~As used in this section, "functional unit" means a public warehouse~~
 22 ~~which has the capacity to store, weigh in and weigh out grain. Any outlying~~
 23 ~~storage facility which is not a functional unit shall have its storage capacity~~
 24 ~~included as part of the combined capacity of the warehouseman's nearest~~
 25 ~~functional unit.~~

26 ~~Sec. 4. K.S.A. 34-228 is hereby repealed.~~

27 Sec. 5. This act shall take effect and be in force from and after its
 28 publication in the statute book.

This section repeals the current fee schedule. By deleting Section 3 from this bill, Section 4 is no longer needed. If Section 3 were deleted and Section 4 remained, there would be no statutory authority for the current fees.