

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 20, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

George Teagarden, Livestock Commissioner, Kansas Animal Health Department
Pete Sherlock, DVM, Executive Board Member, Kansas Pork Association
Mike Beam, Senior Vice President, Kansas Livestock Association
Brad Harrelson, State Policy Director, Governmental Relations, Kansas Farm Bureau

Others attending: See attached list.

Hearing and action on HB 2899 - Penalties related to certain actions involving feral swine.

Chairman Johnson opened the hearing on **HB 2899**. Raney Gilliland explained that this bill expands the definition of "feral swine" and states that no person shall import or possess feral swine in Kansas. The bill would not allow any person to intentionally release any hog, boar, pig, or swine to live in a wild state on public or private land. Also, feral swine could not be used for sport or amusement purposes. Violation of these provisions would result in a civil penalty of \$1,000 to \$5,000 for each violation. Under current law, a person can import feral swine, then release them for various reasons.

George Teagarden, Livestock Commissioner, Kansas Animal Health Department, appeared in support of **HB 2899** introduced at his request. The original feral swine legislation was approved in 1995, with penalties being increased to a maximum of \$5,000 per violation in 2000. He reported that since the original legislation, the feral swine population has increased in Kansas. Under current law, it is not illegal to hunt feral swine. The Department has found that by allowing hunting, they have actually promoted illegal activity. He explained that many populations of feral swine are infected with swine brucellosis and pseudorabies, two diseases that Kansas is free of in our domestic herd. The Animal Health Department is concerned that if feral swine infect our domestic herd, the state would lose its free status and domestic producers would be required to increase testing for sales of their production. (Attachment 1)

Pete Sherlock, DVM, Executive Board Member, Kansas Pork Association, testified in support of **HB 2899**. He explained that wild pigs are carriers of external parasites and diseases important to the pork industry. Wild pigs may carry brucellosis, pseudorabies, porcine reproduction and respiratory syndrome, swine influenza virus, and leptospirosis. He said they may also be carriers of foreign animal diseases such as classical swine fever, foot-and-mouth disease, and African swine fever. He noted that flies, birds, and rodents may carry infection between feral pigs and production animals. He said an outbreak of any one of these diseases would be very damaging to the Kansas pork industry. (Attachment 2)

Mike Beam, Senior Vice President, Kansas Livestock Association, appeared in support of **HB 2899**. KFB members recognize the problems accompanied with a population of feral swine, including spread of infectious diseases. Also, landowners and agriculture producers in other states have reported damages to riparian areas and crop fields from feral swine. He noted the only economic advantage to feral swine is for sport hunting. Acknowledging that while many of their members are pursuing fee hunting ventures, most believe state and federal officials should take measures to halt the proliferation of feral swine populations, take initiatives to significantly reduce their numbers, and prohibit fee hunting activities for such animals. (Attachment 3)

There being no opponents, Chairman Johnson closed the hearing and opened discussion on **HB 2899**. Commissioner Teagarden noted that although **HB 2899** carries no fiscal note, he had requested \$125,000 from an Appropriation Subcommittee to more aggressively pursue eradication of feral swine in the state.

CONTINUATION SHEET

MINUTES OF THE House Agriculture Committee at 3:30 p.m. on February 20, 2006, in Room 423-S of the Capitol.

Gordon Self explained balloon amendments to **HB 2899** requested by Commissioner Teagarden on behalf of the Kansas Wildlife and Parks Department. (Attachment 4) Representative Gatewood moved to adopt the balloon amendments. Seconded by Representative Svaty, the motion carried.

Representative Freeborn moved to amend **HB 2899** on page 2, new Subsection (l), by adding “or their designee” after “owners or legal occupants.” The motion was seconded by Representative Gatewood.

Representative Gatewood offered a substitute motion to retain Representative Freeborn’s amendment to **HB 2899** and to also delete the words “trap or” on page 1, new Subsection (f). The motion was seconded by Representative Dahl.

Representative Knox questioned the need for new Subsection (f) on page 1. He proposed amending **HB 2899** on page 1, line 22, to read “import, transport or possess live feral swine in this state.”

Representative Gatewood, with Representative Dahl’s consent, withdrew his substitute motion.

Representative Freeborn, with Representative Gatewood’s consent, withdrew her motion.

Representative Gatewood moved to amend **HB 2899** by striking all of new Subsection (f) on page 1; inserting the word “transport” after the word “import” on page 1, line 22; and adding “or their designee” after “owners or legal occupants” in new Subsection (l) on page 2. Seconded by Representative Freeborn, the motion carried.

Representative Knox moved to amend **HB 2899** on page 2, new Subsection (l), by deleting the words “in or near buildings.” Seconded by Representative Faber, the motion carried.

Representative Svaty moved to amend **HB 2899** on page 2, by striking all of new Subsection (l). Seconded by Representative Feuerborn, the motion failed.

Representative Powers moved to recommend **HB 2899**, as amended, favorably for passage. The motion was seconded by Representative Miller. The motion passed.

Discussion and action on HB 2833 - Licenses, definitions and registration under the Kansas Veterinary Practice Act.

Chairman Johnson opened the floor for discussion on **HB 2833** and asked Raney Gilliland to review the bill for the committee.

Representative Freeborn moved to recommend **HB 2833** favorably for passage. Seconded by Representative Svaty, the motion carried.

Discussion and action on HB 2834 - Unlawful conduct under Kansas Veterinary Practice Act.

Chairman Johnson opened discussion on **HB 2834**. Gordon Self reviewed the bill and explained proposed balloon amendments to **HB 2834** that would strike the phrase “regardless of the location of such person” on page 1, line 18, and on page 2, line 9. (Attachment 5) Concern was expressed during the hearing that this provision of the bill would be unenforceable.

Representative Powers moved to accept the balloon amendments to **HB 2834**. Seconded by Representative Faber, the motion carried.

Representative Feuerborn expressed concern that a neighbor helping a neighbor in certain situations could possibly be in violation of this act. Discussion ensued.

Representative Powell moved to table **HB 2834** and request an interim committee study. Seconded by Representative Light, the motion carried.

CONTINUATION SHEET

MINUTES OF THE House Agriculture Committee at 3:30 p.m. on February 20, 2006, in Room 423-S of the Capitol.

Discussion and action on HB 2835 - Disciplinary action, assessment of penalties and confidentiality under the Kansas Veterinary Practice Act.

Chairman Johnson opened discussion on **HB 2835** and asked Raney Gilliland to brief the committee on the bill.

Representative Freeborn moved to recommend HB 2835 favorably for passage. Seconded by Representative Miller, the motion carried.

Hearing and action on HB 2432 - Liability of adjacent property owners to recreational trails.

Chairman Johnson opened the hearing on **HB 2432**. Gordon Self explained that this bill would exempt a property owner from responsibility and liability for persons who enter the property owner's land by way of a recreational trail. The bill would apply only to situations where the property owner did not imply or express permission for the person to enter the property. The owner of property adjacent to a recreational trail has responsibility and liability for injury to another person that is a result of the property owner's gross negligence or willful or wanton misconduct.

Mike Beam, Senior Vice President, Kansas Livestock Association, appeared in support of **HB 2432**, but requested clarification of the language. On lines 23 and 24, the proposed language states that the standard is "intentional or unlawful act of the adjacent property owner or willful or wanton misconduct." KLA questioned the distinction between an intentional or unlawful act and acts that are willful or wanton misconduct. Their concern is that a court may interpret this to mean that the legislature is trying to redefine liability from current law that states that a landowner is not liable to a trespasser, but must refrain from intentional acts. If there is no distinction, he thought it may be clearer to simply use the "willful or wanton misconduct" wording. KLA supports the intention of the bill. (Attachment 6)

Brad Harrelson, State Policy Director, Governmental Relations, Kansas Farm Bureau, testified in support of **HB 2432** setting limitations on liability for landowners adjacent to rail trails. KFB would like to see additional enforcement tools concerning maintenance, up-keep, and safety efforts by the responsible trail party. As there is no specific enforcement mechanism in the law, the law is being ignored. He said that a proposed amendment to the Kansas Recreational Trails Act contained in HB 2583 during the 2004 session clarified existing language and provided a specific enforcement mechanism landowners and local government could turn to when a trail sponsor is not fulfilling the requirements of the Kansas Recreational Trails Act. KFB believes this type legislation would be a "win-win" for trail supporters and landowners alike. (Attachment 7)

There being no other conferees, Chairman Johnson closed the hearing on **HB 2432** and opened the floor for discussion. It was noted that this legislation was requested by Representative Feuerborn during the 2005 legislative session. In response to the testimony concerning "intentional or unlawful" and "willful or wanton," Gordon Self explained that there are negligent acts and there are intentional acts. A willful act is an intentional act and a wanton act is a negligent act.

Representative Dahl moved to amend HB 2432 on page 1, lines 24 and 25, by deleting the words "or willful or wanton misconduct." The motion was seconded by Representative Carlson. The motion carried.

Representative Gatewood moved to table HB 2432. Seconded by Representative Powers, the motion failed.

Representative Feuerborn moved to recommend HB 2432, as amended, including any necessary technical cleanup, favorably for passage. Seconded by Representative Dahl, the motion carried.

The meeting adjourned at 5:22 p.m. The next meeting of the House Agriculture Committee is scheduled for March 1, 2006.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: FEBRUARY 20, 2006

NAME	REPRESENTING
Stina Bertna	Kansas Rail Trail Conservancy
JOHN C. BOTTENBERG	Ks Pork Assoc
Debra Duncan	KAHD
George Tezgarden	KAHD
Nick Hanz NM	KBVE
Tim Strada	Ks Pork Association
Mike Beam	Ks. LUSTK. ASSN
Doug Claussen	Ks Pork Assoc.
Mike Mitchener	KDWP
LeAnn Schmitt	KDWP
Chad Richardson	USDA Wildlife Services
BRAD HARRELSON	KFB
Kent Conroy	Ks Pork Assn.
MARY FEIGHNY	KBVE
Carole Jordan	KDA
GARY RESER	KANAS VETERINARY MEDICAL ASSN.
TESE SHERROCK	KPA
Paul Grosdidier	KAHD
Mark Tomb	LKM

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: FEBRUARY 20, 2006

NAME	REPRESENTING
Rachel Marshall	Faust - Gloudeau
Taylor Gillespie	Gatewood

STATE OF KANSAS
Kansas Animal Health Department

George Teagarden, Livestock Commissioner
708 S Jackson, Topeka, Kansas 66603-3714
Phone 785-296-2326 Fax 785-296-1765
Email gteagarden@kahd.ks.gov
web site – www.kansas.gov/kahd

February 20, 2006

Agriculture Committee
Kansas House of Representatives

Chairman Johnson and Members of the Committee,

I am George Teagarden, Livestock Commissioner, Kansas Animal Health Department. I'm here today in support of HB 2899, a bill relating to feral swine.

The original feral swine legislation was approved in 1995. The original penalties were increased to a maximum of \$5,000 per violation in 2000. Since the original legislation, the feral swine population has increased in Kansas. House Bill 2899 improves the definition of "feral swine" and adds language regarding importation and possession of feral swine and makes it illegal to release any swine for the purposes of swine for the purposes of hunting on public or private land. It also makes it illegal to assist or profit from any hunting activity whether for sport, pleasure, amusement or production of a trophy.

Under current law, it is not illegal to hunt feral swine. We have found that by allowing hunting, we have promoted illegal activity. The populations of feral swine have grown over the last several years. In other states where control of feral swine has been lacking, the populations have grown considerably. In many populations throughout the country, feral swine are infected with swine brucellosis and pseudorabies, two diseases that Kansas is free of in our domestic herd. Our main concern within the realm animal health is that feral swine infect our domestic herd, the state loses its free status and domestic producers would be required to increase testing for sales of their production.

Feral swine are a threat to the disease status of our domestic herd. They are also very destructive to riparian areas along streams and to crops and pasture land. They are a pest and need to be controlled and eradicated. HB 2899 will assist in this effort. I encourage your favorable action.

I have additional information provided by USDA Wildlife Services.

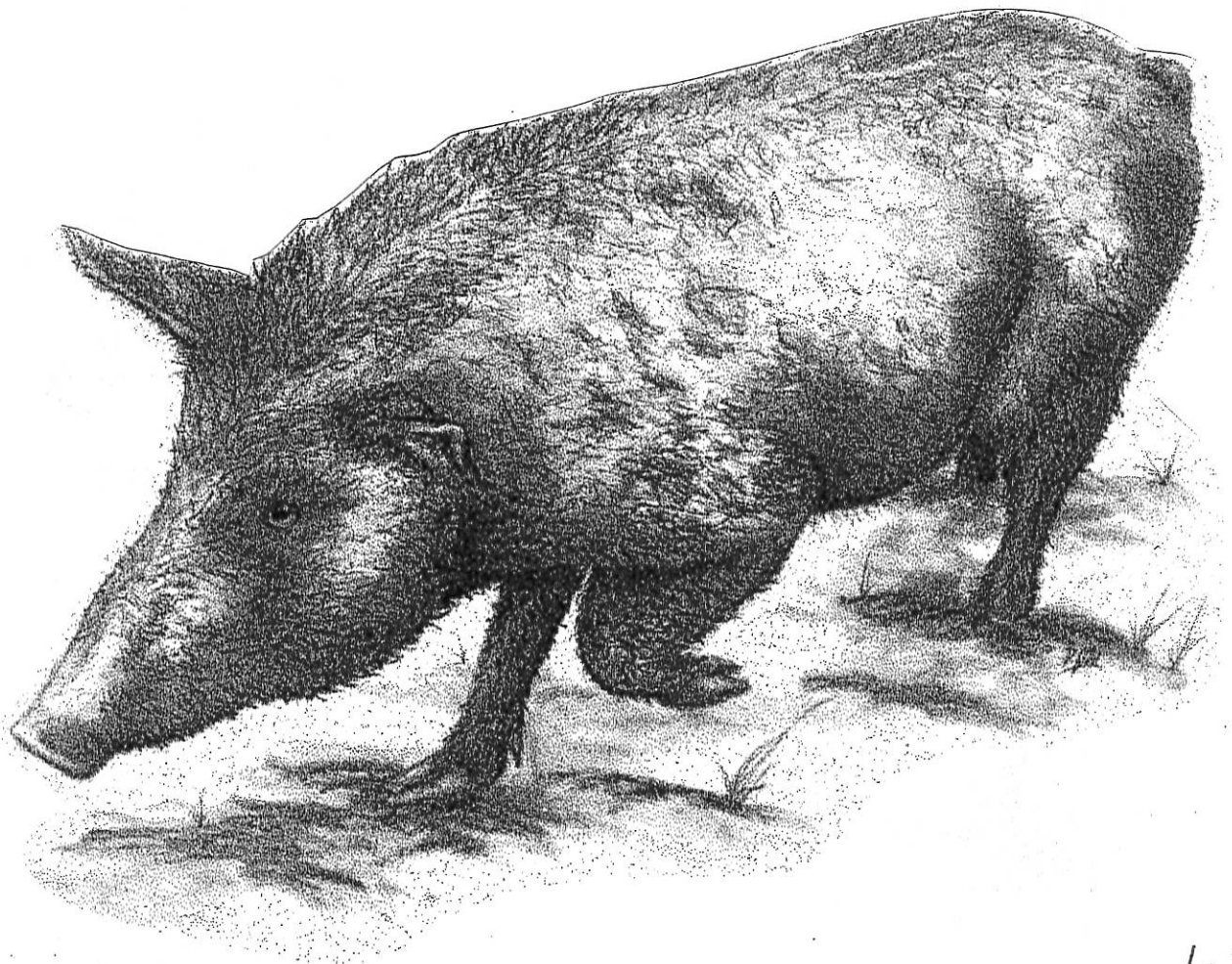
I will stand for questions.

House Agriculture Committee
February 20, 2006
Attachment 1

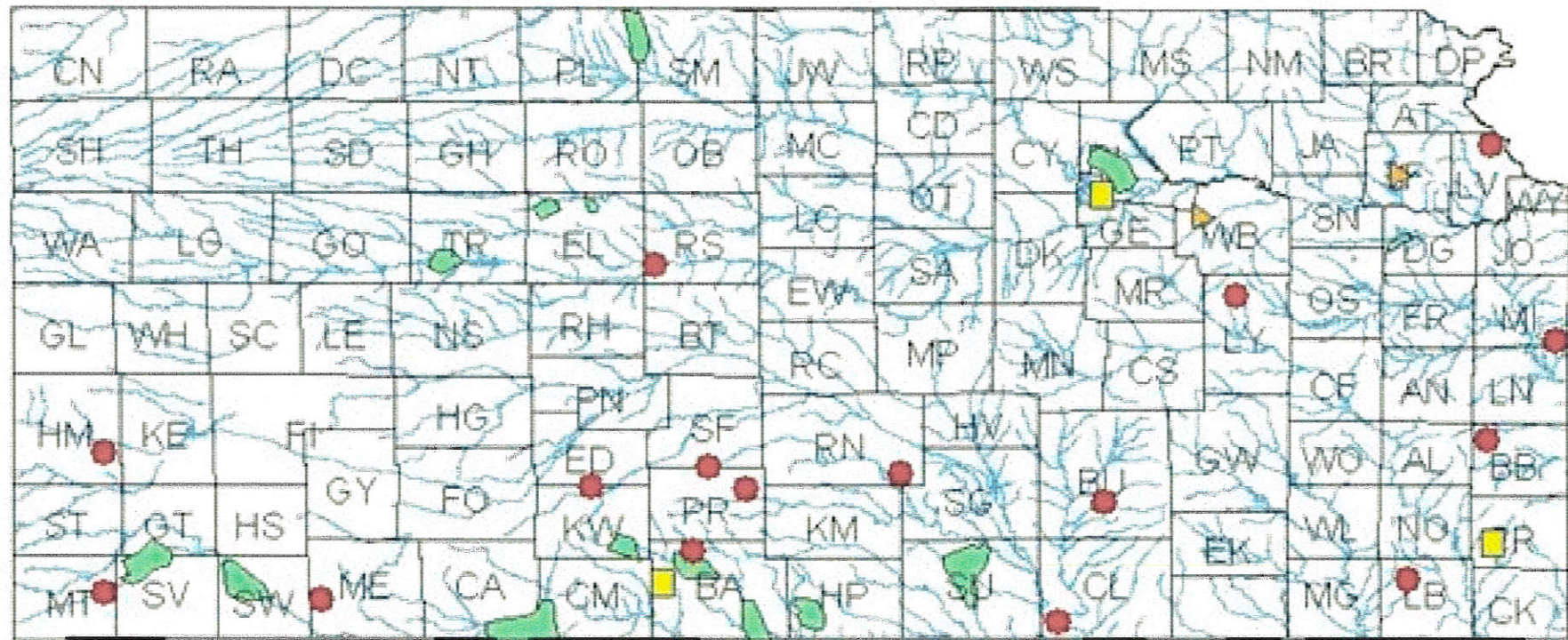
Kansas Feral Swine

Concerns with expanding populations in
Kansas, Oklahoma and Missouri.

Information compiles by USDA APHIS Wildlife Services and the Kansas Animal Health
Department.



Wild Hog Distribution



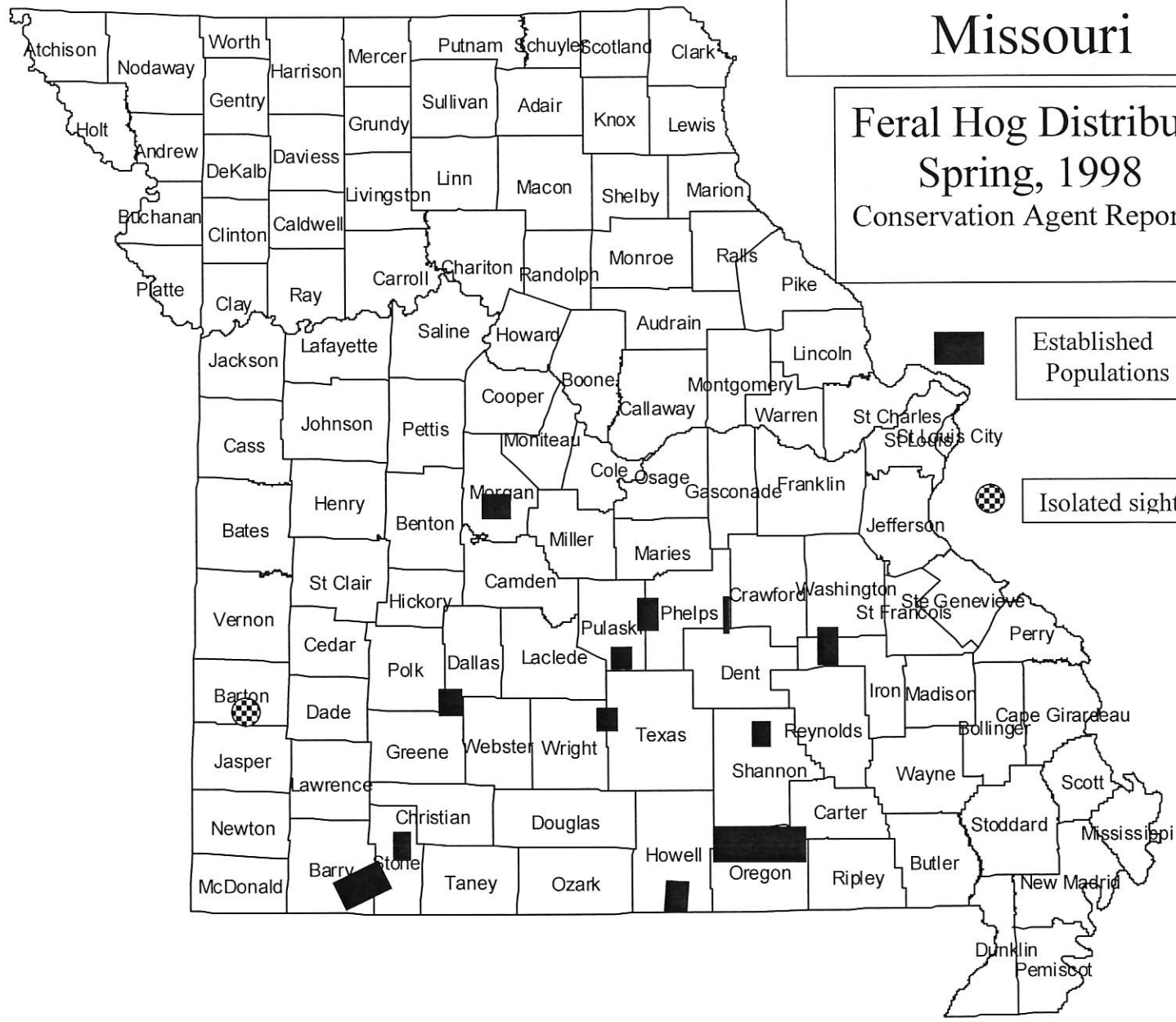
Gipson et. al 1998

- Sightings but not confirmed
- Verified populations
- ▲ Extirpated Population

Current Populations, 6/2004

Missouri

Feral Hog Distribution Spring, 1998 Conservation Agent Reports

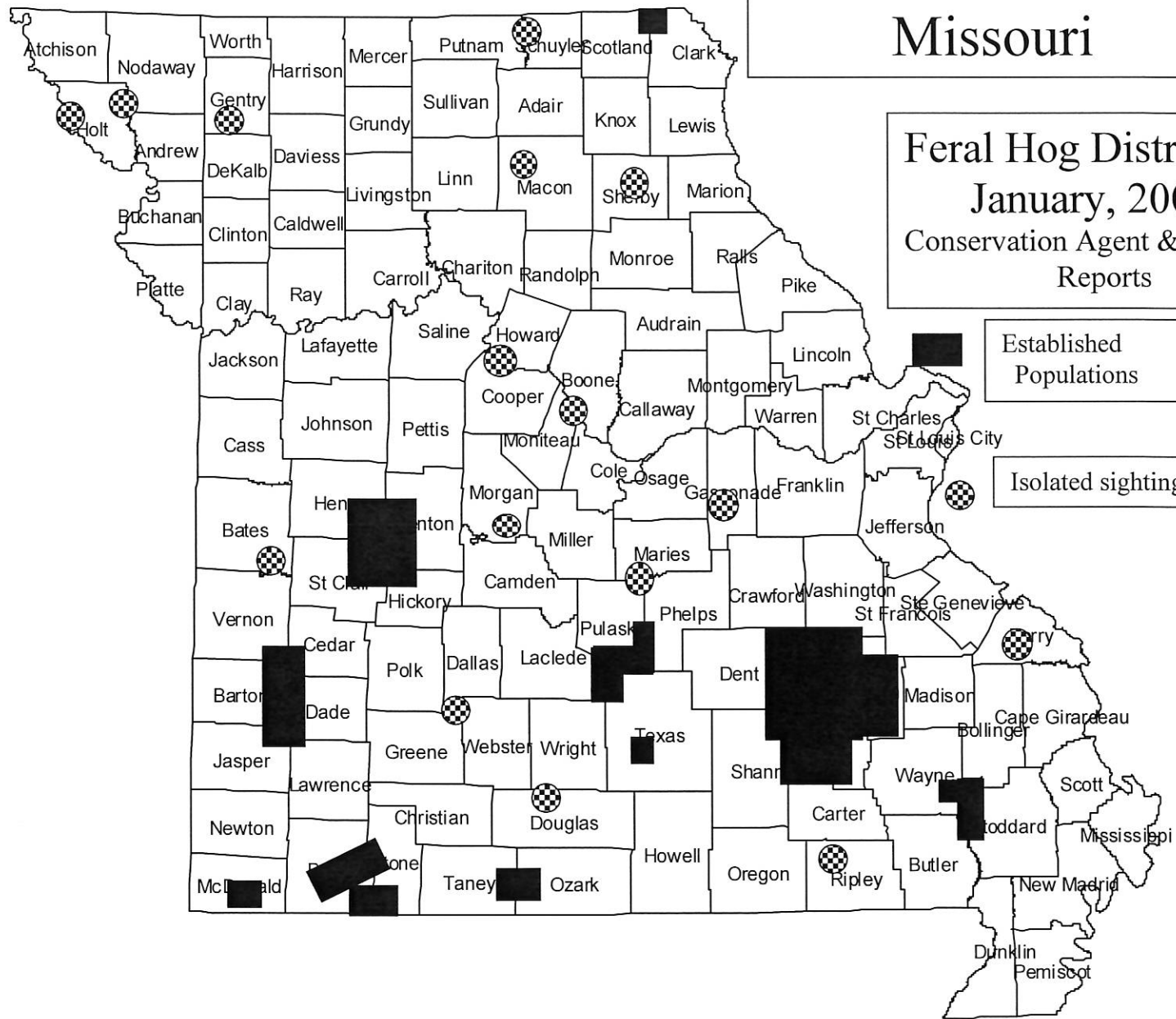


Established Populations

Isolated sighting

Missouri

Feral Hog Distribution January, 2006 Conservation Agent & General Reports



Established
Populations

Isolated sighting

Testimony on House Bill 2899



Presented on behalf of the Kansas Pork Association

By Pete Sherlock, DVM
Washington
KPA Executive Board Member

February 20, 2006

Mr. Chairman, members of the Committee, I am Pete Sherlock, a veterinarian from Washington, Kansas. As a part of our practice, I am also involved in the management of several pork production facilities in the region.

Up to this point, feral swine have not been a large issue for Kansas pork producers as there were very few populations within the state. However, it has become evident that the populations are growing in some of our border states especially Oklahoma and Missouri. Without natural boundaries to protect our state, it is only a matter of time before significant groups of feral swine find their way into Kansas.

Wild pigs are carriers of external parasites and diseases important to the pork industry. Wild pigs may carry brucellosis, pseudorabies (PRV), porcine reproduction and respiratory syndrome (PRSS), swine influenza virus and leptospirosis. They may also be carriers of foreign animal diseases such as classical swine fever, foot-and-mouth disease and African swine fever.

According to USDA data in 2005, feral pig populations that are serologically-positive to brucellosis have been found in 14 states. Pseudorabies has been confirmed in feral pig populations in at least 11 states. In 2003, feral pigs sampled in South Carolina were found serologically positive to the H1 subtype of the swine influenza virus and serologically positive to PRRS. An outbreak of any one of these diseases could be very damaging to the Kansas pork industry.

Pork producers may be able to protect their herds from contact with wild pigs though strict biosecurity methods including perimeter fencing. However, flies, birds and rodents may carry infection between feral pigs and production animals. Pigs produced outdoors are especially vulnerable to the threat of feral pigs.

The members of the Kansas Pork Association support the additional oversight provided by House Bill 2899 and ask for your favorable consideration.

2601 Farm Bureau Road • Manhattan, Kansas 66502 • 785/776-0442 • FAX 785/776-9897
e-mail: kpa@kspork.org • www.kspork.org

House Agriculture Committee
February 20, 2006
Attachment 2



Since 1894

TESTIMONY

To: The House Committee on Agriculture
Rep. Dan Johnson, Chairperson

From: Mike Beam, Senior Vice President

Date: February 20, 2006

Subj: **House Bill 2899** -A bill relating to feral swine.

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker cattle production, cattle feeding, grazing land management and diversified farming operations.

The Kansas Livestock Association (KLA) supports HB 2899.

Our members recognize the problems accompanied with a population of feral swine. According to our research, these animals are documented to carry infectious diseases. The two most common diseases are brucellosis and pseudorabies. Pseudorabies is a viral disease that can affect domestic swine and other livestock species such as cattle and horses. Swine brucellosis is contagious to humans and may cause infected or exposed cattle to show a positive blood test for brucellosis. Wildlife specialists are also concerned about the spread of diseases to other native wildlife species.

Landowners and agriculture producers in other states have reported damages to riparian areas and crop fields from feral swine.

It appears the only economic advantage of feral swine is for sport hunting. While many of our members are pursuing fee hunting ventures, most believe state and federal officials should take measures to halt the proliferation of feral swine populations, take initiatives to significantly reduce their numbers, and prohibit fee hunting activities for such animals.

Thank you for considering this legislation.

House Agriculture Committee
February 20, 2006

HOUSE BILL No. 2899

By Committee on Agriculture

2-14

Proposed Amendments to
House Bill No. 2899

House Agriculture Committee
February 20, 2006
Attachment 4

9 AN ACT concerning animals; relating to feral swine; penalties; amending
10 K.S.A. 2005 Supp. 47-1809 and repealing the existing section.
11

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

13 Section 1. K.S.A. 2005 Supp. 47-1809 is hereby amended to read as
14 follows: 47-1809. (a) As used in this section, "feral swine" means any
15 untamed or undomesticated hog, boar or pig; *swine whose reversion from*
16 *the domesticated state to the wild state is apparent; or an otherwise freely*
17 *roaming swine having no visible tags, markings or characteristics indi-*
18 *cating that such swine is from a domestic herd, and reasonable inquiry*
19 *within the area does not identify an owner.*

20 (b) ~~Importation or possession, or both, of feral swine into the state~~
21 ~~of Kansas is a violation of state law, which may incur~~ *No person shall*
22 *import or possess feral swine in this state.*

23 (c) *No person shall intentionally or knowingly release any hog, boar,*
24 *pig or swine to live in a wild or feral state upon public or private land.*

25 (d) *No person shall engage in, sponsor, instigate, assist or profit from*
26 *the release, killing, wounding or attempted killing or wounding of feral*
27 *swine for the purpose of sport, pleasure, amusement or production of a*
28 *trophy.*

29 (e) *Violation of subsection (b), (c) ~~(d)~~ may result in a civil penalty*
30 *in the amount of not less than \$1,000 nor more than \$5,000 for each such*
31 *violation. In the case of a continuing violation, every day such violation*
32 *continues shall be deemed a separate violation.*

33 ~~(e)~~ ~~(f)~~ *Any duly authorized agent of the livestock commissioner, upon*
34 *a finding that any person, or agent or employee thereof, has violated any*
35 *of the provisions stated above, may impose a civil penalty upon such*
36 *person as provided in this section.*

37 ~~(d)~~ ~~(g)~~ *No civil penalty shall be imposed pursuant to this section ex-*
38 *cept upon the written order of the duly authorized agent of the livestock*
39 *commissioner to the person who committed the violation. Such order*
40 *shall state the violation, the penalty to be imposed and the right of the*
41 *person to appeal to the commissioner. Any such person, within 20 days*
42 *after notification, may make written request to the commissioner for a*
43 *hearing in accordance with the provisions of the Kansas administrative*

live

No person shall trap or transport feral swine into or within this state.
(f)

,

or (e)

(g)

(h)

4.2

1 procedure act. The commissioner shall affirm, reverse or modify the order
and shall specify the reasons therefor.

(i)

4 ~~(4)~~ Any person aggrieved by an order of the commissioner made
5 under this section may appeal such order to the district court in the
6 manner provided by the act for judicial review and civil enforcement of
agency actions.

(j)

7 ~~(4)~~ Any civil penalty recovered pursuant to the provisions of this
8 section shall be remitted to the state treasurer in accordance with the
9 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
10 each such remittance, the state treasurer shall deposit the entire amount
in the state treasury to the credit of the state general fund.

(k)

12 ~~(5)~~ The livestock commissioner, or the authorized representative
13 of the livestock commissioner, may destroy or require the destruction of
14 any feral swine upon discovery of such swine.

(l) The provisions of this section shall not be construed to prevent owners or legal occupants of land from killing any feral swine when found in or near buildings on their premises or when destroying property.

15 Sec. 2. K.S.A. 2005 Supp. 47-1809 is hereby repealed.

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

HOUSE BILL No. 2834

By Committee on Agriculture

2-7

Proposed Amendments to
House Bill No. 2834

House Agriculture Committee
February 20, 2006
Attachment 5

9 AN ACT concerning the Kansas veterinary practice act; amending K.S.A.
10 47-834 and repealing the existing section.

11

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

13 Section 1. K.S.A. 47-834 is hereby amended to read as follows: 47-
14 834. (a) ~~No person who shall practice veterinary medicine without a cur-~~
15 ~~rently valid license may receive any compensation for services so ren-~~
16 ~~dered, except for persons exempted under Unlawful practice of~~
17 ~~veterinary medicine is the practice of veterinary medicine by a person~~
18 ~~without a license regardless of the location of such person unless that~~
19 ~~person is exempt from such requirement pursuant to the provisions of~~
20 ~~K.S.A. 47-817 and amendments thereto.~~

Delete

21 (b) ~~Any person who shall practice veterinary medicine without a li-~~
22 ~~cence or operate a veterinary premises without registering with the board~~
23 ~~shall be guilty of a misdemeanor and upon conviction shall be fined not~~
24 ~~less than \$250 nor more than \$2,000 or imprisoned for not more than 90~~
25 ~~days, or both. Unlawful operation or management of veterinary premises~~
26 ~~is the operation or management by a person of a veterinary premises that~~
27 ~~is not registered pursuant to the provisions of K.S.A. 47-840, and amend-~~
28 ~~ments thereto.~~

29 (c) (1) ~~Unlawful practice of veterinary medicine is a class B nonper-~~
30 ~~son misdemeanor.~~

31 (2) ~~Unlawful operation or management of veterinary premises is a~~
32 ~~class B nonperson misdemeanor.~~

33 (3) ~~Each act of such unlawful practice shall constitute that violates~~
34 ~~the provisions of subsection (a) or (b) constitutes a distinct and separate~~
35 ~~offense.~~

36 (d) ~~The board may order the remedying of any violations of any~~
37 ~~provision of this act or any rules and regulations of the board. The board~~
38 ~~may issue a cease and desist order upon board determination that a li-~~
39 ~~cencee, registrant or any veterinarian has violated any provision of this~~
40 ~~act, an order of the board or any rules and regulations of the board. The~~
41 ~~board may bring an action to enjoin any veterinarian from practicing vet-~~
42 ~~erinary medicine without a currently valid license or from operating a~~
43 ~~veterinary premises without registering such premises with the board. If~~

5-2

1 ~~the court finds that the person is violating this act, it shall enter an in-~~
2 ~~junction restraining such person from such unlawful acts.~~

3 ~~(d) The board may order the remedying of any violations of any pro-~~
4 ~~vision of this act or any rules and regulations adopted thereunder and the~~
5 ~~board may issue a cease and desist order upon board determination that~~
6 ~~a licensed veterinarian or the holder of a premises registration has violated~~
7 ~~any order of the board, any provision of this act and any rules and regu-~~
8 ~~lations adopted thereunder.~~

9 (e) ~~Regardless of the location of a person, if~~ If ~~the board determines that~~
10 ~~a person is practicing veterinary medicine without a license or is operating~~
11 ~~or managing a veterinary premises that is not registered pursuant to~~
12 ~~K.S.A. 47-840, and amendments thereto, in addition to any other penalties~~
13 ~~imposed by law, the board may take any or all of the following actions:~~

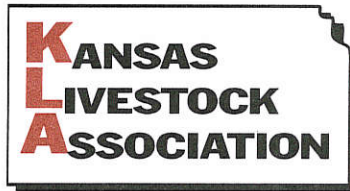
- 14 (1) *Issue a cease and desist order;*
- 15 (2) *issue a citation and fine in accordance with the procedures in*
16 *K.S.A. 47-843 and 47-844, and amendments thereto; and*
- 17 (3) *bring an injunction action in its own name in a court of competent*
18 *jurisdiction.*

19 (f) *For purposes of investigations and proceedings conducted by the*
20 *board, the board may issue subpoenas compelling the attendance and*
21 *testimony of any person or the production for examination or copying of*
22 *documents or any other physical evidence according to the procedures in*
23 *subsection (a)(19) of K.S.A. 74-821, and amendments thereto, if such evi-*
24 *dence relates to practicing veterinary medicine without a license or op-*
25 *erating or managing a veterinary premises that is not registered pursuant*
26 *to K.S.A. 47-840, and amendments thereto.*

27 (g) *The successful maintenance of an action based on any one of the*
28 *remedies set forth in this section shall in no way prejudice the prosecution*
29 *of an action based on any other of the remedies.*

30 *Sec. 2. K.S.A. 47-834 is hereby repealed.*

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



Since 1894

Testimony

To: The House Committee on Agriculture
Rep. Dan Johnson, Chairperson

From: Mike Beam, Senior Vice President

Date: February 20, 2006

Subject: **House Bill 2432-Recreational trails amendments**

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

KLA supports HB 2432 but would request clarification of the language.

KLA has a long history of working with landowners and trail groups to find liability protection for landowners who own property adjacent to recreational trails.

The current law and the proposed amendment seek to assure that the landowner adjacent to a recreational trail owes no duty of care to a trespasser. It appears that this bill is seeking to assure that the adjacent landowner has no duty of care (1) to the person using a recreational trail and (2) any person entering the adjacent landowner's property without permission to obtain access to the trail. In either case, the language seeks to assure that the landowner has no duty of care to protect the user, but the landowner must not intentionally or willfully act to harm the user.

On lines 23 and 24, the proposed amendment states that the standard is "intentional or unlawful act of the adjacent property owner or willful or wanton misconduct". We don't understand the distinction between an intentional or unlawful act and acts that are willful or wanton misconduct. Our concern is that a court may interpret this to mean that the legislature was trying to redefine liability from current law that states that a landowner is not liable to a trespasser but must refrain from intentional acts. If there is no distinction, then it may be clearer to simply use the "willful or wanton misconduct" wording.

We support the efforts of HB 2432 and will work with the committee on language if necessary.

House Agriculture Committee
February 20, 2006



KANSAS FARM BUREAU
The Voice of Agriculture

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785-587-6000 • Fax 785-587-6914 • www.kfb.org
800 SW Jackson St., Suite 1300, Topeka, Kansas 66612-1219 • 785-234-4535 • Fax 785-234-0278

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE

RE: HB 2432 – an act concerning real property; relating to recreational trails; liability of adjacent property owners.

**February 20, 2006
Topeka, Kansas**

**Testimony provided by:
Brad Harrelson
State Policy Director
KFB Governmental Relations**

Chairman Johnson, and members of the House Committee on Agriculture, thank you for the opportunity to appear today and offer testimony in support of HB 2432. I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. 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.

Kansas Farm Bureau supports limitations on liability for landowners adjacent to rail trails. To the extent HB 2432 provides modest additional protections against lawsuits from those that may be unfortunate or irresponsible in the use of trails, we urge your favorable consideration.

If the legislature is truly interested in improving the Kansas Recreational Trails Act, we would ask that you consider additional enforcement tools. Although current law requires specific maintenance, up-keep and safety efforts by the responsible trail party, there is no specific enforcement mechanism in the law. As such, the law is being ignored. The provisions in the Kansas Recreational Trails Act are good provisions. They protect trail users and landowners alike. But, it does little good to have the requirements in the statute book if we can't enforce them.

House Agriculture Committee
February 20, 2006
Attachment 7

Countless examples exist across the state where trails are not maintained as prescribed in law. Issues of fencing, maintenance, littering, trash dumping and unsafe trail conditions are not uncommon. Since there is no direct enforcement provision in the Act, landowners have virtually no recourse.

A proposed amendment to the Kansas Recreational Trails Act contained in HB 2583 of the 2004 session, clarified existing language, and provided a specific enforcement mechanism landowners and local government could turn to when a trail sponsor is not fulfilling the requirements of the Kansas Recreational Trails Act.

We believe this type legislation would be a "win-win" for trail supporters and landowners alike. Trails that are not maintained, are overgrown in weeds, are cluttered with unsightly trash or even worse, are impassable and unsafe are of no use or value to anyone. Improving the Trail Act in this way would provide a useful tool in assuring that trails are maintained as required by law for the benefit and enjoyment of all Kansans.

In conclusion, additional safeguards against undue liability would be a good start. Additional enforcement provisions within the act would be even better. We stand ready to assist as you consider this measure. Thank you.