

MINUTES OF THE SENATE AGRICULTURE

The meeting was called to order by Chairman Mark Taddiken at 8:30 a.m. on March 8, 2006 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research
Lisa Montgomery, Office of Revisor of Statutes
Judy Seitz, Committee Secretary

Conferees appearing before the committee:

John Donley, Kansas Livestock Association
Brad Harrelson, Kansas Farm Bureau
Duane Simpson, Kansas Agribusiness Retailers Association
Leslie Kaufman, Kansas Cooperative Council
Callie Denton, Kansas Trial Lawyers Association

Others attending:

See attached list.

The hearings on **HB 2432--Liability of property owners of land adjacent to recreational trails** were opened.

John Donley spoke in favor of **HB 2432 (Attachment 1)**. He said the current law and the proposed amendment would assure that the landowner adjacent to a recreational trail owes no duty of care to a trespasser.

Mr. Donley took questions from the Committee.

Brad Harrelson offered testimony in support of **HB 2432 (Attachment 2)**. He said that some additional tune-ups to the Recreational Trail Act would be appropriate.

Mr. Harrelson stood for questions.

There were no other conferees to appear on **HB 2432** and the hearings were closed.

Hearings on **HB 2798--Immunity from liability for owners of anhydrous ammonia; sunset extended from July 1, 2006 to July 1, 2009** were opened.

Brad Harrelson spoke as a proponent for **HB 2798 (Attachment 3)**. He said the members of the Kansas Farm Bureau support limits on liability for owners of land, equipment or livestock in regard to anhydrous ammonia. He further stated that the sunset provision should be stricken from the bill and extended through 2009.

There were no questions for Mr. Harrelson.

Duane Simpson testified in support of **HB 2798 (Attachment 4)**. He also said that this law is good, common-sense state policy and should be extended until 2009.

Mr. Simpson stood for questions.

Leslie Kaufman spoke in favor of **HB 2798 (Attachment 5)**. She stated that Kansas has taken some important and significant steps to address methamphetamine use and production. Her organization still feels that the agriculture producers and agribusinesses, legitimate owners and uses of anhydrous still need this protection.

Ms. Kaufman stood for questions.

CONTINUATION SHEET

MINUTES OF THE Senate Agriculture at 8:30 a.m. on March 8, 2006 in Room 423-S of the Capitol.

Callie Denton spoke as an opponent of **HB 2798** (Attachment 6). She said if the bill is passed the sunset should be extended.

Ms. Denton took questions from the Committee.

Hearings on **HB 2798** were closed.

Discussion was held on **HB 2835--licenses, definitions and registration under the Kansas veterinary practice act**.

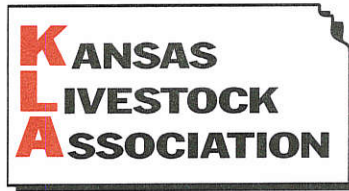
Senator Schmidt made a motion to pass **HB 2835** favorably. Motion seconded by Senator Francisco. Motion passed. **HB 2835** will be reported as be passed favorably.

Discussions were opened on **HB 2833--Licenses, definitions and registration under the Kansas veterinary practice act**.

Senator Lee moved to add amendments regarding the definition of a “companion animal,” repealing definitions of “ECFVG” and “veterinary medical specialist,” examinations and re-examinations, premise registration and inspections and the penalty for unlawful practice of veterinary medication. Motion was seconded by Senator Ostmeyer. Motion passed. **HB 2833** will be reported be passed as amended.

The Committee meeting adjourned at 9:14 a.m.

The next meeting is scheduled for March 14 at 8:30 a.m. in Room 423-S.



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TESTIMONY

To: The Senate Committee on Agriculture
Sen. Mark Taddiken, Chairperson

From: John Donley, Governmental Affairs Staff

Date: March 8, 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.

Good morning Mr. Chairman and members of the Committee. My name is John Donley. I am testifying today on behalf of the Kansas Livestock Association in support of HB 2432.

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 harm the user.

In closing, KLA supports the efforts of HB 2432. I would be happy to stand for questions at the appropriate time.

*Senate Agriculture Committee
3-8-06*

Attachment 1

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

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

March 8, 2006
Topeka, Kansas

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

Chairman Taddiken, and members of the Senate 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 they aren't enforced.

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Attachment 2

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.

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

RE: HB 2798 – an act concerning civil procedure; relating to immunity from liability for owners of anhydrous ammonia.

March 8, 2006
Topeka, Kansas

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

Chairman Taddiken, and members of the Senate Committee on Agriculture, thank you for the opportunity to appear today and offer testimony in support of HB 2798. 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 has long encouraged its members to be actively engaged in efforts to prevent and fight the production of methamphetamine on agricultural lands. We have conducted educational efforts and have partnered with local law enforcement to assist their efforts to prevent and report instances where methamphetamine is produced in our state. Despite those efforts and the commitment of law enforcement professionals across the state, production of methamphetamine continues to affect thousands of landowners, families, and individuals each day.

Anhydrous ammonia is a vital source of nitrogen fertilizer in modern ag production in Kansas. It is also a key ingredient of Methamphetamine. KFB member adopted policy supports efforts to reduce the ability of criminals to access many of the ingredients used to manufacture methamphetamine, including Ephedrine and Pseudoephedrine. While

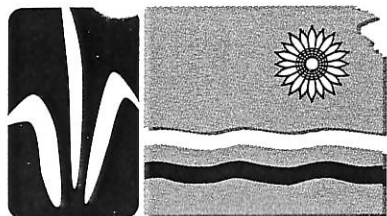
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Attachment 3

recent legislation, which we supported, has had significant impact on the availability of these meth ingredients, the scourge of meth production continues to plague our state.

As a consequence, our members also support limits on liability for owners of land, equipment or livestock. Responsible ag producers, or distributors should not be held liable for the actions of criminals that may result in injury or loss during the theft of anhydrous ammonia. We believe the statutory protections provided in K.S.A. 60-4601 are appropriate and should be extended indefinitely by striking the sunset provision in line 40. It is wishful thinking and unlikely at best that methamphetamine abuse will go away in the next three years. At the very minimum, this statutory provision is good public policy and should be extended through 2009 as drafted in HB 2798.

In conclusion, thank you for your consideration, and we respectfully urge your recommendation for favorable passage of HB 2798. We stand ready to assist as you consider this important measure. Thank you.



KARA

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Kansas Agribusiness Retailers Association

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**Statement of the
Kansas Agribusiness Retailers Association
In Support of HB 2798
March 8, 2006
Senate Agriculture Committee
Sen. Mark Taddiken, Chairman**

Thank you Chairman Taddiken and Members of the Committee, my name is Duane Simpson and I am appearing today on behalf of the Kansas Agribusiness Retailers Association in support of HB 2798. 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.

You will recall that in 2002, KARA introduced legislation to protect our members from lawsuits resulting from tampering with anhydrous ammonia storage facilities and tanks in the field. That law grants immunity from lawsuits for theft-related damages to the thief and third parties. At the time of its passage, there was concern by opponents to the bill that third parties injured by a methamphetamine thief's actions would not be able to be compensated. As a result of that concern, the Legislature made the immunity clause for third parties expire in July this year.

After four years of experience, we have seen that those concerns were misplaced. There has not been a single case of a third party being injured or having property damage resulting in a lawsuit. Regardless, should that damage occur, who should be responsible? The Legislature decided in 2002 that our industry should not be liable for damages when they are caused by thieves or vandals. Why should there be any question of liability when a person is trespassing, vandalizing, or stealing something that will be used to manufacture an illicit product? These thieves are vandalizing our members' equipment that is locked, has D.O.T. placards, and "CAUTION AMMONIA" warning labels on all four sides. Without a key, honest access is completely restricted. In addition, our members are experimenting with additives to further deter theft. They have implemented surveillance, fencing and security lights. None of that works to deter theft. Ammonia thieves have cut locks, cut fences, drilled holes in tanks, taken hack saws to pressurized lines and even used armor piercing bullets to get ammonia for their drug making process. Yet, without this law, our members could be held liable for damages caused by the theft.

Before passage of the 2002 law, the average ag retailer was seeing 30-40% increases in their liability insurance. Many insurance companies stopped writing liability insurance for our industry all together. We turned the corner on insurance prices with the passage of the immunity legislation. With affordable insurance, our members have managed to keep this product available for farmers. Without affordable insurance, most retailers would stop using anhydrous ammonia altogether.

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3-8-06
Attachment 4*

With energy costs as high as they are, fertilizer costs are at or near all-time highs. Anhydrous ammonia is 30% cheaper than most other sources of Nitrogen. It is the building block for ammonium nitrate, ammonium sulfate, urea, nitrogen solutions, and ammonia phosphates. In Kansas, approximately 235,000 tons of anhydrous ammonia are used per year. It is the primary fertilizer for wheat in Kansas.

With the passage of SB 27 last year, the state has seen a dramatic decrease in methamphetamine production. That decrease has in turn caused a decrease in methamphetamine related anhydrous ammonia theft. It is our belief that theft will continue to decline over the next three years. HB 2798 gives us three more years to see if the decline in thefts makes a permanent immunity feasible. This law is good, common-sense state policy and it should be extended.



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Senate Committee on Agriculture

March 8, 2006

HB 2798 - Extending Immunity from Liability for Owners of Anhydrous Ammonia.

Chairman Taddiken and members of the Senate Agriculture Committee, thank you for the opportunity to comment today in support of HB 2798. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director. As you know, the bill before you today will continue the policy of granting immunity from liability for owners of anhydrous ammonia for injuries caused by actions of a tamperer.

The Kansas Cooperative Council represents all forms of cooperatively structured, member-owned/member-controlled businesses. We have nearly 200 members across Kansas. More than one-half of these members are engaged in grain storage and farm supply enterprises and are direct beneficiaries of this legislation.

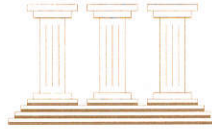
The immunity provisions contained in HB 2798 are extremely important to our industry. It helps insure they can continue to provide an essential crop input to producers.

You will remember the immunity provisions were initially enacted in 2002 to protect legitimate anhydrous owners from those engaged in illegal drug manufacturing. Methamphetamine cooks were targeting anhydrous tanks at agribusinesses and farms across the state in an effort to obtain a needed ingredient for their illegal recipe. Many of these efforts resulted in injury to the tamperer or another.

Kansas has taken some important and significant steps to address methamphetamine use and production in this state. That does not alleviate the need to continue the liability protections afforded under KSA 60-4601. Agriculture producers and agribusinesses, legitimate owners and users of anhydrous, still need this protection. We urge the committee to act favorably on HB 2798.

Thank you.

Senate Agriculture Committee
3-8-06
Attachment 5



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Senator Mark Taddiken, Chair
Members of the Senate Agriculture Committee

From: Callie Jill Denton
Kansas Trial Lawyers Association

Date: March 8, 2006

Re: HB 2798 Immunity for owners of anhydrous ammonia; extension of sunset

I am submitting testimony today on behalf of the Kansas Trial Lawyers Association, a statewide nonprofit organization of attorneys who represent consumers and advocate for the safety of families and the preservation of Kansas' civil justice system. I appreciate the opportunity to provide you with testimony on HB 2798, which extends the sunset on immunity for owners of anhydrous ammonia.

We would like to take the opportunity to remind the committee of the genesis of the immunity provisions in K.S.A. 60-4601. KTLA was a strong opponent of the immunity provisions because they shield owners of anhydrous ammonia even where the owners' negligence contributed to cause serious injury to an innocent third party.

KTLA does not excuse the actions of a "tamperer". However, many people besides the tamperer are at risk when thefts of anhydrous ammonia occur. An accidental chemical release caused by theft puts neighbors, employees of the owner, and law enforcement officials at risk.

The solution to the problem of anhydrous ammonia theft is not to insulate the owner from liability, but to encourage owners to take precautions against theft including valve locks, regular monitoring, keeping the tank well-lit, and fencing for unattended tanks. The sweeping immunity in K.S.A. 60-4601 does not provide any incentive for owners to secure their tanks against theft and consequently, more than the thief is at risk for exposure to anhydrous ammonia.

Anhydrous ammonia carries with it the risk of blindness, lung damage, burns, and death. It quickly dehydrates living tissue and attacks any part of the body that is moist—eyes, ears, nose, throat, bronchia, lungs. Any tissue that contains moisture is chemically burned and reduced to a sticky, goeey substance. Skin that is chemically burned by the ammonia is actually killed and is not capable of healing or replacing itself. Damaged tissue must be removed by a medical doctor so that healing can proceed. The results can often be disfiguring.

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Attachment 6

Terry Humphrey, Executive Director

KTLA recommends that the immunity provisions in K.S.A. 60-4601 to be allowed to sunset on July 1, 2006. To our knowledge, there are no cases pending where an injured third party was barred by the immunity provisions from seeking compensation for their injuries. We hope that, if the sunset is extended, that the same is true when this issue is reviewed again in 2009.

Thank you for the opportunity to offer our concerns.